




PRESIDENCY OF THE REPUBLIC OF BRAZIL

Code of Conduct for the Senior Government Officers at the Federal Executive branch

A stylized map of Brazil is depicted in the bottom left corner, composed of a mosaic of small squares in shades of blue, green, and yellow, representing the colors of the Brazilian flag.

BRASÍLIA
2000



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**Code of Conduct
for the Senior
Government Officers
at the Federal
Executive branch**

**Approved by the President of the Republic
on August 21, 2000**

**BRASÍLIA
2000**

August 18, 2000

Your Excellency the President of the Republic of Brazil,

I hereby submit for Your Excellency's worthy consideration, the attached proposed *Code of Conduct for the Senior Government Officers, at the Federal Executive branch*, which has been prepared taking into consideration the work and important contributions of the Commission on Public Ethics (CEP), created by the Decree of May 26, 1999, whose distinguished members, Chairman João Geraldo Piquet Carneiro, Célio Borja, Celina Vargas do Amaral Peixoto, Lourdes Sola, Miguel Reale Júnior and Roberto Teixeira da Costa, have rendered the most significant and invaluable contributions in their work on this matter.

This code will primarily serve as an ethical commitment to the President on the part of high-level members of the Executive Branch of the Federal Government, providing for a high standard of ethical conduct capable of ensuring, without exception, the integrity and transparency of actions undertaken in public matters.

The conduct of these senior government officers, who occupy the highest positions of the governmental hierarchy in the Executive branch, will serve as examples to be followed by the rest of the civil servants, who are moreover subject to the various laws that establish required standards of conduct, such as the Civil Servant Statute, the Law on Dishonesty and the Brazilian Penal Code itself, as well as other lower level laws and regulations. Actions and examples set by their superiors are to contribute to inspire them in the exercise of their duties.

It is noteworthy, at the same time, that society's dissatisfaction with the ethical conduct of the government - the executive, legislative and judicial branches - is neither

an exclusively Brazilian nor a situational phenomenon. As a general rule, all the developed democratic countries, as demonstrated in a recent study by the Organization for Economic Cooperation and Development (OECD), are faced with the growing skepticism of public opinion with respect to the behavior of public sector officials and political figures. This trend seems to be linked primarily to structural changes in the role of the State as a regulator of economic activities and as the authority that grants concessions for the private sector operation of public services that were previously state-owned monopolies.

Consequently, the public sector has increasingly come to depend on the recruitment of professionals from the private sector, which has aggravated the possibility of conflicts of interest and has increased the need for greater control over the private activities of government officers.

In this new situation, it is natural that society's expectations concerning the conduct of public officials have become more demanding. Clearly, rather than merely investigating its causes, it is far more important for us to recognize the existence of society's dissatisfaction and the fact that it is a political issue intimately associated with the process of cultural, economic and managerial changes that Brazil and the world are experiencing.

The deep desire for a public civil service guided by ethical values cannot be satisfied by merely approving more rigorous laws. In reality, the laws and decrees in force already contain many requirements concerning the conduct of civil servants. However, they do so in generic terms or based on a point of view that over-emphasizes the criminal aspects of the legal and ethical issues.

In fact, most of the current ethical issues arise in the increasingly large gray area that separates public from private interests. Generally, these issues do not constitute violations of legal rules, however they are deviations from ethical conduct. As these deviations are not subject to specific punishments, society begins to sense that they enjoy impunity, which in turn fuels skepticism concerning the legitimacy of the government's decision-making process.

For this reason, improving the ethical conduct of civil servants is not an issue to be confronted by means of proposing one more piece of legislation that establishes new definitions of civil servant offenses. On the contrary, this improvement in ethical conduct will arise from the issuance of clear and explicit rules of behavior, as well as from the establishment of a specific strategy for its implementation.

The formulation of this strategy was based on the assumption that the ethical foundation of the career government service is structurally solid, as it is based on the traditional values of the middle class from which its members are recruited. We therefore reject the interpretation that we are facing a problem of "endemic" corruption. Aside from being incorrect, this conjecture is unfair, counterproductive and capable of discouraging government employees from becoming engaged in the effort to improve ethical conduct, which society is demanding.

Therefore we have begun with the attempt to prevent conduct that is incompatible with the ethical standards desired in the public service, taking into consideration that, in practice, merely repressive measures are not always effective. Thus it is necessary to identify the areas of the government in which such conduct can occur more frequently, so as to give them specific attention.

This comprehensive task it to begin at the highest level of the Federal Government - Cabinet Members, Deputy Cabinet Members, Directors of state-owned companies and of regulatory agencies - endowed with decision-making authority. Once full compliance with the Code of Conduct has been guaranteed among the most senior government officers, the work to disseminate these new rules in the other areas of the public service will certainly be facilitated.

Another goal is that the Code of Conduct will constitute a positive factor providing security for the government officers, setting clear guidelines for his or her behavior while in office and protecting him or her from unfounded accusations. In the absence of clear rules and practices of conduct, there is a risk of inhibiting honest citizens from accepting prominent positions in the public sector.

Aside from this, we sought to create an efficient mechanism for the formulation, dissemination and oversight of these rules, as well as a commission to which government officers can appeal in the case of uncertainties and for the investigation of violations - namely, the Commission on Public Ethics (CEP).

In truth, the Code is a set of rules to which are subject those individuals appointed by the President of the Republic to occupy any of the public offices stipulated therein. Infringement of these rules will not necessarily constitute a breach of the law, but rather - and primarily - a failure to comply with both an ethical commitment and the qualitative standards as established by the Code of Conduct for the Senior Government officers, at the Federal Executive branch. Consequently, the punishment provided for is political in nature: a warning and an "ethical reprimand".

In addition, a recommendation for dismissal is also provided for, depending on the seriousness of the transgression.

The language of the Code is simple and accessible, avoiding overly technical legal terms. The goal is to ensure clarity of the rules of conduct for the public sector officers, so that society can exert the control over such officers that is inherent in the democratic system.

In addition to behaving in accordance with the stipulated rules, the Code demands that the government officer observe the decorum inherent in his or her public office. In other words, it is not enough to merely be ethical; it is also necessary to appear ethical, out of respect for society.

This proposed measure aims to achieve qualitative improvement in the standards of conduct of the Senior Government officers, so that, once approved, this Official Statement of Justifications, together with the attached Code of Conduct for the Senior Government officers, at the Federal Executive branch, can guide the actions of senior government officers. It is bearing this in mind that I allow myself to recommend to Your Excellency the publication of both these texts, which are to be made public and applied immediately.

Your Excellency, President of the Republic, these are the justifications that are the basis for the proposal that I hereby submit for your most worthy consideration.

Respectfully,

PEDRO PARENTE
Minister Chief of Staff to the President of the Republic

CODE OF CONDUCT FOR THE SENIOR GOVERNMENT OFFICERS, AT THE FEDERAL EXECUTIVE BRANCH

Article 1. The Code of Conduct for the Senior Government officers, at the Federal Executive branch, is hereby established for the following purposes:

I — to clarify the ethical rules of conduct for high-level government officers, at the Executive branch, so that society can evaluate the integrity and good faith of the government decision-making process;

II — to contribute to the improvement of the ethical standards of the Federal Government, at the Executive branch, through the example set by the Senior Government officers at the highest levels;

III — to uphold the image and reputation of the Government officers whose conduct are in compliance with the ethical standards established herein;

IV — to establish basic rules regarding conflicts between public and private interests and limitations on professional activities undertaken after leaving public office;

V — to minimize the possibility of a conflict between private interests and the official duties of the Senior Government officers;

V — to create a consultative mechanism with the aim of clarifying expeditiously and in advance any doubts regarding the ethical conduct of the government officer.

Article 2. The rules of this Code apply to the following senior government officers:

I — Cabinet members and heads of federal government Secretariats;

II — those who hold senior level special positions, deputy Cabinet members or those in high-level managerial positions (DAS rank, level six);

III — presidents and directors of government agencies of the Federal Executive branch, including the special agencies, foundations maintained by the public sector, state-owned companies and companies with both private and public ownership.

Article 3. In exercising their duties, public authorities shall comply with the ethical standards, especially those regarding integrity, public morality, clearly defined positions and decorum, with the aim of fostering respect and confidence from the public in general.

Sole paragraph. The compliance with the ethical standards mentioned in this article should ensure that conflicts of interest, or the possibility thereof, between public duties and private activities are avoided.

Article 4. In addition to the statement of assets and income as provided in Law No. 8,730 of November 10, 1993, the senior government officer shall, within ten (10) calendar days of taking office, send to the Commission on Public Ethics (CEP) - established by the Decree of May 26, 1999, published in the *Diário Oficial da União* [Brazilian Federal Register] on the following day, May 27, 1999 -, in the manner specified by the CEP, information regarding his or her personal assets that actually would or potentially could raise a conflict of interest, indicating the way in which it will be avoided.

Article 5. Any relevant changes in the personal assets of the high level government officer shall be notified immediately to the CEP, particularly when they pertain to:

I — asset management actions involving:

- a) the transfer of assets to a spouse, family member or relative;
- b) the direct or indirect acquisition of the control of a company; or
- c) any other significant or relevant changes in the value or nature of the assets;

II — asset management actions whose value may be substantially affected by a government decision or policy about which he or she has prior knowledge due to his or her public position or function, including variable income investments or commodities, futures contracts or currencies for speculative purposes.

§ 1 If any question arises on how to deal with a specific asset situation, the senior government officer shall formally consult the CEP.

§ 2 In order to safeguard the confidentiality of the information pertaining to the asset situation of the senior government officer, once verified by an individual designated by the CEP, such information will be secured in a sealed envelope that shall only be opened by order of the Commission.

Article 6. The senior government officer who maintains equity holdings of more than five (5) percent in any company whose stock ownership is in both the private and public sectors, or any financial institution, or any other company that does business with the public sector shall make this fact known to the public.

Article 7. The senior government officer shall not receive a salary nor any other form of monetary compensation from any private sources contrary to the law, nor receive any means of transportation, lodging accommodations, nor any favors from private individuals, which would create a situation that could generate doubts regarding his or her honesty or integrity.

Sole Paragraph. Participation in seminars, conferences and similar events is permitted, provided that information is made public on any possible financial compensation, as well as payment of travel expenses by the event promoter, who must not have a personal interest in any decision to be made by this senior government officer.

Article 8. The senior government officer may carry out non-compensated obligations when exercising delegated authority, provided that this does not involve conducting commercial transactions or any other acts that are incompatible with the performance of his or her public position and functions, pursuant to the law.

Article 9. The senior government officer is prohibited from accepting any gifts, except from senior foreign officials, in cases involving protocol, where there is reciprocity involved.

Sole paragraph. For the purposes of this article, inexpensive items received shall not be considered gifts if they:

I — do not have any commercial value; or

II — are distributed by any entity as a courtesy, for publicity purposes, as a customary public affairs matter, or on the occasion of a special event or commemorative date, and which do not have a value of over one hundred Reais (R\$ 100.00).

Article 10. In his or her interactions with other entities and employees of the Federal Government, the senior government officer shall make clear the existence of a potential conflict of interest and shall notify them of any circumstance or fact that could prevent his or her participation in any collective decision-making process or entity.

Article 11. Any conflicts between senior government officers shall be resolved internally by administrative coordination, as it is not appropriate for them to make public comments on matters that do not fall within their respective areas of responsibility.

Article 12. Senior government officers are prohibited from publicly expressing opinions regarding:

I — the honor and professional performance of another federal senior government officer; or

II — the substance of issues that will be submitted to him or her for a decision to be made individually or by a collective decision-making entity.

Article 13. Any proposals of future work or business in the private sector, as well as any negotiation that may involve a conflict of interest shall be immediately communicated to the CEP by the senior government officer, regardless of whether it was accepted or rejected.

Article 14. After leaving office, the senior government officer is prohibited from:

I — acting for the benefit of, or on behalf of, any individual or legal entity, including unions or professional associations, in a legal case or business arrangement in which he or she had participated, due to the office held;

II — providing consulting services to any individuals or legal entity, including unions or professional associations, making use of information that has not been made public with

respect to programs, policies of a federal government agency or entity to which he or she was affiliated or with which he or she had a direct and relevant relationship in the six (6) months prior to the end of his or her public office.

Article 15. In the absence of a law specifying a different period of time, there shall be a four (4) month period beginning from the date of his or her departure from public service, during which the former officer is barred from performing any activity that is incompatible with the office held previously. Within this period, the former senior government officer shall be required to comply with the following rules:

I — He or she may not accept any position as a manager or counselor, or establish professional relationships with an individual or legal entity with which he or she had previously maintained a direct official and relevant relationship within the last six (6) months prior to his or her departure from a public position;

II — He or she may not interfere for the benefit of, nor on behalf of, any individual or legal entity, nor in contact with any federal government entity or agency, with which he or she had a direct and relevant official relationship during the last six (6) months prior to his or her departure from a public position.

Article 16. In order to facilitate compliance with the rules contained herein the CEP will inform the senior government officer of the obligations arising from the acceptance of employment in the private sector after separation from a public position or function.

Article 17. Violation of the rules stipulated herein will lead to the following actions, depending on the severity of the violation:

I — a warning, applicable to those officers still holding public office;

II — an ethical reprimand, applicable to those senior government officers who have already left their positions.

Sole Paragraph. The penalties established in this article shall be applied by the CEP, which, on a case-by-case basis, may send to the individual's direct hierarchical supervisor a recommendation for dismissal from public service.

Article 18. The process of investigating acts involving violations of the rules established in this Code shall be established by the CEP, by written notice, or based on a well-founded accusation, provided there is sufficient evidence.

§ 1 The senior government officer shall be notified to respond within five (5) days.

§ 2 The accuser in the case, the senior government officer and also the CEP, in the performance of its official responsibilities, may provide documentary evidence.

§ 3 The CEP may conduct the inquiries that it deems necessary and may request an expert opinion when deemed indispensable.

§ 4 Upon conclusion of the inquiries mentioned in the previous paragraph, the CEP may notify the senior government officer to respond again within three (3) days.

§ 5 If the CEP concludes that the accusation is true, it will apply the penalties set forth in the previous article and will inform the senior government officer and his or her hierarchical superior of the outcome.

Article 19. The CEP, should it deem it necessary, may submit recommendations or suggestions to the President of the Republic regarding rules or regulations to complement, interpret and offer guidance concerning the provisions of this Code, and shall respond to the inquiries posed by senior government officers about specific situations.

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