



## MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel  
*Chair*

Susan Beard  
*Vice Chair*

**May 19, 2020**

**Waiver 20-05-006**

Eduardo Mendes is a Program Specialist II in the Office of Community Affairs Division of the Community Action Agency at Montgomery County Department of Health and Human Services (DHHS). He would like to engage in outside employment as the Rockville Library Site Supervisor for Community Tax Aid DC (CTA), an entity which provides services to low income tax filers in a manner that closely parallels his official role with DHHS.

As a Program Specialist II with DHHS, Mr. Mendes works for the County's VITA program, engaging partners to recruit, train, schedule, and lead 100+ volunteers to provide free tax assistance, outreach, and to support access to VITA services. Mr. Mendes supports VITA services and assures the accuracy of its multi-site, tax preparation program. He provides customer service in compliance with respective standards, requirements, and certifications as established by the IRS, Montgomery County Department of Health and Human Services, and other partners. He also conducts outreach related to free tax help and obtaining suitable tax credits to potentially eligible low-to-moderate income households, including persons with disabilities, limited English proficiency speakers, seniors, and others, while engaging a variety of stakeholders who share education and provide referrals. At the County VITA program, he assists Montgomery County residents who make less than \$56,000 annually. Mr. Mendes's official responsibilities include instances where he may be involved in directing County clients to the services provided by his proposed outside employer (through County-provided literature as discussed further below).

At CTA, Mr. Mendes would manage and ensure tax return preparation quality at the tax site. He would help manage workflow, facilitate sign-in and intake of clients, ensuring orderly and thorough screening processes. He would also provide on-site tax expertise; answer tax volunteers' preparation questions and assist with any tax-related issues. He would not prepare any tax returns in his proposed role with CTA; he would only provide intake or close-out cases that have been prepared by other CTA volunteers. CTA provides tax preparation assistance to individuals who earn less than \$35,000 annually and couples who earn a combined total of less than \$56,000 annually. There are no residency restrictions on persons seeking assistance from CTA, which distinguishes it from the DHHS VITA program, which requires residency in Montgomery County.

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While CTA holds no contracts with DHHS, CTA is listed as a partner organization on literature that is available at County VITA sites. Because of this, there is a conflict of interest in that Mr. Mendes could be perceived as directing services to his prospective outside employer. The conflict involves pre-printed literature that lists CTA as another resource for tax preparation assistance and that Mr. Mendes had no hand in crafting. It is noted that CTA may employ Mr. Mendes to provide services at a County library, adding to the possibility that Mr. Mendes' proposed private role with CTA could be confused with the services that he provides in his County capacity for County residents.

Mr. Mendes would be barred pursuant to 19A-11(a)(1)(B) from distributing County literature identifying CTA's services absent his obtaining a waiver from the Ethics Commission under Section 19A-8(a). Section 19A-11(a)(1)(B) of the County's Public Ethics Law provides that, unless waived by the Ethics Commission, a County employee is prohibited from participating in "any matter that affects, in a manner distinct from its effect on the public generally, any business in which the public employee holds an economic interest." The term "economic interest" is defined in the Public Ethics Law as including "any source of income." (Mont. Co. Code Sec. 19A-4(j).) Section 19A-8(a) states that the Ethics Commission may grant a waiver of these prohibitions if the Commission concludes that it is in the County's best interests to grant the waiver, the importance of the County employee fulfilling his or her official duties outweighs any actual or potential harm of conflicts of interest, and granting the waiver will not give the public employee an unfair economic advantage over other public employees or members of the public.

Montgomery County Public Ethics Law Section 19a-12(b)(2) indicates that a public employee may not "hold any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee." The Commission may waive this prohibition under Section 19a-8(b)(1) and (2) if the Commission determines "the waiver is needed to ensure that competent services to the County are timely and available;" [or] "failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees."

Mr. Mendes does no contract monitoring, procurement or negotiating in either his official County role or in his proposed outside employment role with CTA. It is possible that he may encounter crossover clientele if an individual or couple seeks assistance at VITA but is not qualified for VITA assistance due to the residency restrictions. They may be turned away and then appear for assistance at a CTA tax preparation site. If this occurs, he will ask a colleague to handle these clients to avoid any potential conflict of interest.

Upon a review of the request and the Department's concurrence in and support for the waiver request, as regards the prohibitions of § 19A-11(a)(1)(B), the Commission finds that pursuant to the standard of § 19A-8(a), it is in the County's best interests to grant the waiver, the importance of the County employee fulfilling his or her official duties outweighs any actual or potential harm of conflicts of interest, and granting the waiver will not give the public employee an unfair economic advantage over other public employees or members of the public. As regards the prohibition of 19A-12(b)(2), the Commission finds that the waiver is needed to ensure that competent services to the County are timely and available and that failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees.

The waiver approval is conditioned on the facts on which the waiver is based remaining unchanged. The waiver is also conditioned on Mr. Mendes' commitment to not directly refer any County clients to CTA or CTA clients to the County VITA sites.

In reaching this decision, the Commission has relied upon the facts as presented by Mr. Mendes.

For the Commission

A handwritten signature in blue ink, appearing to read 'Rahul Goel', with a stylized flourish at the end.

Rahul Goel, Chair