



# Office of the Public Auditor

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## MEMORANDUM

OPA Ethics Opinion 2020-1

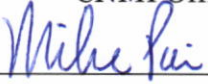
DATE: August 12, 2020

FOR PUBLIC RELEASE PURSUANT TO 1 CMC § 8561(j)

FROM: Joseph Przyuski, Legal Counsel  
CNMI Office of the Public Auditor

Signature:  Date: 8/12/2020

REVIEWED BY: Michael Pai, Public Auditor  
CNMI Office of the Public Auditor

Signature:  Date: 8/13/2020

### **Subject: Government Ethics Code Advisory Opinion**

In July 2020, OPA received an anonymous inquiry regarding the propriety of using a private credit card to purchase goods and services for government purposes, earning airline mileage or other private rewards for the purchases, and then seeking reimbursement for the purchases from the government. OPA has construed the inquiry as a request for an advisory opinion under the CNMI Government Ethics Code Act of 1992 (“the Ethics Act”). OPA is empowered to offer advisory ethics opinions by statute, based upon actual or hypothetical facts,<sup>1</sup> however it is not authorized to offer general opinions regarding the legality of actions under other sections of the CNMI Code. Therefore this opinion will be confined to evaluating the particular hypothetical facts as presented under the Ethics Act.

The Ethics Act applies to public employees and public officials and prohibits the use of their public position to obtain private financial gain or other direct or indirect personal or private advantage.<sup>2</sup> Strictly speaking, this provisions prohibits the use of personal credit cards for reimbursed purchases for a public purpose where airline mileage benefits, cash back, or other rewards (“rewards”) are earned by the credit card holder. While such rewards are earned by the holder at no cost or expense to the Commonwealth, they constitute a direct private financial gain or advantage and are earned using their public position. Public officials or public employees are prohibited from using personal credit or debit accounts for public purchases for the purpose of earning private rewards.

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<sup>1</sup> 1 CMC § 8561(j).

<sup>2</sup> 1 CMC § 8532(a).

While no exceptions to the Ethics Act exist, OPA recognizes that situations arise in public administration where goods or services may need to be procured and ordinary means of government purchasing (*i.e.* purchase orders) are impossible. In such limited circumstances, because most Commonwealth agencies do not have government credit card accounts, it would be reasonable for the procuring authority to make purchases on their personal credit or debit account and seek reimbursement through appropriate channels with supporting documentation. OPA finds under such limited instances, where ordinary means of government purchasing are not possible and public purchases are made on a private credit or debit account, that the account holder may seek reimbursement and retain any rewards earned for those purchases. Under such a limited scenario any rewards earned would be incidental to an otherwise necessary purchase and not run afoul of the Ethics Act.