

A BASIC GUIDE TO ETHICS

WHICH WAY DO I GO?



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***Code of Scientific Ethics
for the United States Department of Agriculture
Agricultural Research Service***

I dedicate myself to the pursuit and promotion of beneficial scientific investigation, consistent with the mission of the Agricultural Research Service.

I will never hinder the beneficial research of others.

I will conduct, discuss, manage, judge, and report science honestly, thoroughly, and without conflict of interest.

I will encourage constructive critique of my personal science and that of my colleagues, in a manner that fosters harmony and quality amid scientific debate.

I recognize past and present contributors to my science and will not accept unwarranted credit for the accomplishment of others.

I will maintain and improve my professional skills and be a mentor to others.

I will ensure safety and humane treatment of human and animal subjects and will prevent abuse of research resources entrusted to me.

ETHICS – A BASIC GUIDE

The following information is intended as a basic guide to USDA Ethics Policies. Before you embark on a course of action – you should clear what you are doing with your Supervisor. Appropriate forms should be filled out, approved by your supervisor, and sent to the Area Office for approval. If questions exist after Area Office review, it will be sent to the Science Ethics Branch for review and approval.

It is up to you to ask questions – don't agree to do something you are ethically unsure of because ultimately you will be held accountable for your actions, "I didn't know I couldn't do that" is not an excuse. You're presumed to know and are required to follow ethics rules. Failure to do so may result in criminal prosecution, a fine or administrative action. Agencies ensure ethical behavior through mandatory financial disclosure reporting and ethics training.

Ethics information can be found at the USDA Ethics Website: <http://www.usda-ethics.net/science/index.htm>

Specific topics can be found at: <http://www.usda-ethics.net/science/topic-index/index.htm>.

The MSA Ethics Advisor is the Associate Area Director; the Ethics Assistant is Marlene Coley. You can contact us at 662-686-5266 or marlene.coley@ars.usda.gov.

Science Ethics Branch contacts are:

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DEFINITIONS OF ETHICS TERMS

[ABC](#) - [DEF](#) - [GHI](#) - [JKL](#) - [MNO](#) - [PQR](#) - [STUV](#) - [WXYZ](#)

A

Adjunct Professor

Is a generic title with no specific meaning. What an “adjunct professor” is depends exclusively upon the rights, privileges, and duties/obligations conveyed with the title from a given university to a given employee. Some universities may vary their terminology, not using "adjunct faculty." For example, some universities might use the term "Special Membership on the Graduate Faculty," or "Courtesy Faculty," or simply "Faculty." Whether one’s status as an “adjunct professor” creates, or is likely to create, a conflict of interest or other ethical problem will depend upon whether the rights, privileges, duties and obligations bestowed by the university or assumed by the employee create the problem. For purposes of this issuance, the term "adjunct professor" will include any term, except "tenure," that a university uses to confer status.

Anti-Lobbying Act

18 U.S.C. Section 1913, prohibits the use of appropriated funds, directly or indirectly, to pay any personal service, advertisement, telegram, telephone, letter, printed or written matter or other device intended to influence a member of Congress.

Appearance of Conflict-of-Interest

A situation in which it could reasonably be concluded that an employee's private interest is in conflict with the employee's Government duties and responsibilities, even though there may not actually be such a conflict.

Authorized Departmental Officer's Designated Representative (ADODR)

An individual who is granted a written limited delegation of authority to represent the Authorized Departmental Officer (ADO) in the administration of an agreement. The individual provides administrative oversight of activities that occur under the agreement and provides technical interactions on behalf of the Agency. All ADODRs are required to file a Financial Disclosure Report.

B

Bribery

The offering, giving, receiving, or soliciting of anything of value to influence an official act of an employee. Often bribery attempts are very subtle and are preceded by attempts to do small favors for, or give gifts to, an employee. Bribery is a violation of the law. Solicitation or acceptance of a bribe by a Federal employee is one of the most serious breaches of the public trust.

C

Charitable Organization

An organization which is qualified with respect to deductible charitable contributions under 26 U.S.C. 170(c) because it is organized or operated exclusively for scientific, literary, educational or another specified purpose. It includes, but is not limited to, an organization exempt from Federal taxation.

Compensation

Any form of consideration, remuneration or income, including royalties, transportation, lodging, and meals, whether provided "in kind," by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred.

Conflict-of-Interest

A situation in which a Federal employee's private interest conflicts with the full, fair, and impartial performance of Government duties and responsibilities. In other words, a situation in which a Federal employee's private interest, usually of an economic nature, conflicts with his or her Government duties and responsibilities. Conflict-of-interest statutes are contained in Chapter 11, Sections 202-209 and 216 of Title 18 U.S. Code.

Consultant

A person referred to for expert or professional advice.

Cooperative Research and Development Agreement (CRADA)

An official document that provides for cooperative research, licensing of patents made under these agreements and the transfer of a technology from the Agency to another party or from another party to the Agency. A CRADA between a commercial firm and the Agency includes what provisions on research, development, and commercialization will be done by each party, what the Agency will contribute, what the commercial firm will contribute, confidentiality, publication of results, inventions, copyrights, and liability. Scientists and the Agency share licensing fees and royalties.

Covered Position

Position for which the incumbent must file a Financial Disclosure Report.

D

DAEA

Designated Area Ethics Advisor. Assistant Area Directors, Associate Area Directors, or Area Administrative Officers perform this function in ARS.

Disqualification

A mechanism used to resolve an apparent or actual conflict of interest. A disqualified employee signs a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity. The Reviewing Official monitors compliance with the statement.

E

Ethics in Government

That component of ethics which deals with issues of Federal employee responsibilities and conduct and situations that may involve conflict of interest.

Ethics in Science

That component of ethics which deals with scientific integrity, falsification of data, plagiarism, and scientific misconduct.

Ethics Reform Act

The most recent Ethics Reform Act was enacted in 1989 and is referred to as Public Law 101-194. It includes provisions governing post-employment restrictions on the Executive and Legislative Branch; financial disclosure of federal personnel; restrictions on gifts and travel; as well as amendments to Title 18 of the United States Code.

Exception

A case to which a rule, general principle, etc. does not apply.

Exclusion

Something that is not included.

F**Financial Interest**

Broadly defined, any monetary interest of a Government employee, the spouse, minor child, general partner, or entity the employee serves as officer, director, trustee, general partner, or employee.

Freedom of Information Act (FOIA)

Disclosure statute, 5 U.S.C. 552, designed to allow ease of access to documents held by the administrative agencies of the Executive Branch of the Federal Government.

G**Gift**

Almost anything of monetary value, unless consideration of equal or greater value is received by the donor, including any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value such as services as well as gifts of training, transportation, local travel, lodgings, and meals. The following things are not considered gifts: loans and discounts available to the public or to all Federal employees for their private use; inexpensive refreshments, plaques, certificates, trophies, rewards, prizes, and anything paid for by the Government or secured by the Government under Government contract.

H**Hatch Act**

The Hatch Act, Title 5 U.S. Code Chapter 73, prohibits Federal employees from engaging in certain political activities. See the [Office of Special Counsel Website](#) for more information.

Honoraria Ban of 1991

Special Note: On February 22, 1995, the Supreme Court declared the Honoraria Ban unconstitutional for employees graded GS-15 and below. One year later, on February 26, 1996, the Department of Justice determined prohibitions of the Honoraria Ban could not be enforced against any employee. Regardless of the sunset of the Honoraria Ban two

statutory prohibitions remain. All employees are prohibited from accepting compensation from outside sources for services as employees of the Executive Branch. Except in very specific instances, all employees are prohibited from receiving compensation for teaching, speaking, or writing that relates to their official duties.

Honorarium

Payment of money or anything of value for an **appearance, speech, article, or service**.

I

Imputed Interest

The financial interests of the following persons which could cause a conflict of interest for an employee:

- The employee's spouse;
- The employee's minor child;
- The employee's general partner;
- An organization or entity which the employee serves as an officer, director, trustee, general partner or employee; and
- A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

Interested Party

Less preferred term for a prohibited source.

Invention

Any process, art, method, machine, manufacture, design, composition of matter, or any new and useful improvement thereof, or any variety of plant or other biological entity which is patentable or otherwise protectable under the laws of the U.S.

J

K

L

License

A grant to commercially make, use, and/or sell an invention.

Exclusive License

The licensing of an invention to only one licensee.

Nonexclusive License

The licensing of an invention to more than one licensee.

Partially Exclusive License

A license granted occasionally to a very limited number of licensees, for example, for specific fields of use or in a specific geographic area, or both.

M

N

Nonofficial Information Material

Information on the official work of an Agency employee that was not prepared on official Government time for non-USDA publication or presentation.

O

Official Duty Activity

Any activity that may be performed during work hours, using Government resources and at Government expense.

OGE Form 450

<http://www.usda-ethics.net/forms/index.htm>

Confidential Financial Disclosure Report. Must be filed by employees in certain designated positions in which duties include contracting, procurement, administration of grants and licenses, regulating or auditing of non-Federal entities, or activities having a substantial economic effect on non-Federal entities.

OPM Standards of Conduct Regulations

5 C.F.R. Part 735, a reissue of certain uniform standards of conduct regulations, complementing the uniform standards of ethical conduct issued by the Office of Government Ethics (OGE) (5 C.F.R. Part 2635). The OPM (Office of Personnel Management) regulation provides for restriction on certain gambling activities, conduct prejudicial to the Government, and the special preparation of persons for civil service and foreign service examinations, topics not included in OGE's Standards of Ethical Conduct.

Outside Activity/Employment

Any work, service or activity that is not part of an employee's official duties. It includes, but is not limited to, writing, editing, publishing, teaching, lecturing, consulting services, self-employment, working for another employer, management or operation of a private business, personally-owned business, partnership, or corporation or any work performed **with or without compensation**.

P

Patent

A right that a government grants to a specific person or group to allow the holder to control who makes or sells the product or uses the process covered by the patent and to prosecute anyone doing any of these things without a license.

Post-Employment Restrictions

Regulations that prohibit former Federal employees from communicating with current Federal employees with the intent of influencing their/the Agency's actions in matters in which the former employee participated while working for the Federal Government.

Professional Association

A nonprofit, cooperative, voluntary organization of individuals having a common background in a professional, technical, or managerial field of work, requiring knowledge and skills normally acquired only after extensive training or education. Officer positions include, but

are not limited to: President, vice-president, secretary, treasurer, trustee, board member, committee chairman, and editor-in-chief.

Prohibited Source

Any entity having financial dealings with the USDA, seeking to do business with the USDA, conducting activities regulated by the USDA or having interests that may be "substantially affected" by the performance or nonperformance of a particular employee's assigned duties. A "prohibited source" may also be an organization a majority of whose members fit any of the above categories.

Q

R

Recusal

Less preferred term for a disqualification.

S

SF-278

<http://www.usda-ethics.net/forms/index.htm>

Public Financial Disclosure Report must be filed by employees in certain designated positions such as SES, SL, and ST pay plan employees, or employees paid 120% of the GS-15 level.

Standards of Ethical Conduct for Employees of the Executive Branch

5 C.F.R. Part 2635, ethical conduct standards rule issued by the U.S. Office of Government Ethics with an effective date of February 3, 1993. The regulations provide guidelines by which a reasonable person with knowledge of all of the relevant facts can make an ethical decision.

T

Technology Transfer

The development, utilization, and commercialization of research.

Technology Transfer Act of 1986

Public Law 99-502, promotes technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements with other Federal agencies, units of State or local government, industrial organizations, public and private foundations, or nonprofit organizations and mandates that inventors receive at least 15% of the royalties received by a Federal agency from the licensing or assignment of inventions under cooperative research and development agreements, if the inventor was an employee of the agency at the time the invention was made.

UV

WXYZ

ACCEPTANCE OF AWARDS FROM A NON-FEDERAL SOURCE

All non-Federal awards are subject to a review process contained in P&P ARS 468.5 dated 9/01/88. For further information regarding agency-announced non-Federal awards and recognitions, refer to P&P 468.7.

It is the policy of REE to foster interest in non-Federal awards and recognitions and to recognize those employees who have been rewarded. Supervisors, managers, and employees are encouraged to participate in the non-Federal awards process. Employees, who are recipients of such awards or who are nominated, must avoid even the appearance of conflict of interest in the conduct of official duties.

Employees may accept awards and recognitions, other than cash, with a market value of \$200 or less in certain situations. These situations include presentation as a legitimate award that is given for (a) meritorious public service, (b) achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or (c) by an association or other organization consisting of prohibited sources. Awards given in the above situations **do not require** formal review by an agency ethics official.

However, gifts given in connection with awards and recognitions with a market value in excess of \$200 and awards of cash in any amount **do require** formal review by an agency ethics official.

NOTE: Occasionally, funding for an award is provided by a prohibited source. Acceptance of these awards may meet compliance mandates when the ethics official finds the awardee is selected by an independent panel and the prohibited source relinquishes any authority in the selection process.

- The person receiving the award will prior to acceptance submit a completed Non-Federal Award Recipient Request (SEB-103 – Exhibit 1) to their Manager/Designated Area Ethics Advisor (DAEA) for review and determination for acceptance.
- The immediate supervisor will assure all portions of the form are completed and forward the form to the Area Ethics Advisor with a recommendation for approval or disapproval of award acceptance.
- The Area Ethics Advisor will review the completed form and approve/disapprove award acceptance based on a conflict-of-interest review and then forward to the Science Ethics Branch for their approval
- The Science Ethics Branch will review the form and approve/disapprove and then sign off on the form and return to the Area.

NOTE: Do not accept any cash awards before going through this process first.

REQUEST FOR APPROVAL TO ACCEPT AN AWARD FROM A NON-FEDERAL SOURCE

(Provide all attachments from awarding organization and use supplemental sheets, if necessary)

Name of Awardee	Agency/Area/Region/Division/Location	
Name of Awarding Organization		
Purpose/Mission of Organization		
Name of Award and Value		\$ _____
Is the organization : (circle one)	Profit making	Nonprofit/Professional
Who are the members of the Organization?		
Are they prohibited sources? (Use definition at 5 CFR 2635.203(d)) (circle one)	YES	NO
Is this an established awards program? (circle one)	YES	NO
How is this award funded (where does the money come from)?		
If the award is funded by private industry, do they have authority to approve or disapprove receipt of award?		
Are other than Federal employees eligible? (circle one)	YES	NO
Who is eligible to nominate candidates?		
What are the nominating procedures?		
Are the selection standards in writing? (If so, please provide a copy) (circle one)	YES	NO
Who is on the selection panel, and who appoints them?		
Is the selection panel a one or two-tier system?		
Who makes the final decision?		
ETHICS ADVISOR REVIEW:		
<input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		
Signature of Designated Area/Agency Ethics Advisor:		Date:
CONCURRENCE:		
Signature of Science Ethics Branch Advisor:		Date:

ADJUNCT PROFESSOR

Some Department programs require employees to be stationed at or near universities and to perform official duties at those university locations. Frequently, employees will engage in activities on behalf of the Department that affect or involve those universities. On many occasions, universities will designate Department employees with “adjunct professor” or similar titles.

The definition of “**Adjunct Professor**” is a generic title with no specific meaning. What an “adjunct professor” is depends exclusively upon the rights, privileges, and duties/obligations conveyed with the title from a given university to a given employee. Some universities may vary their terminology, not using “adjunct faculty.” For example, some universities might use the term “Special Membership on the Graduate Faculty,” or “Courtesy Faculty,” or simply “Faculty.” Whether one’s status as an “adjunct professor” creates, or is likely to create, a conflict of interest or other ethical problem will depend upon whether the rights, privileges, duties and obligations bestowed by the university or assumed by the employee create the problem. For purposes of this issuance, the term “adjunct professor” will include any term, except “tenure,” that a university uses to confer status.

Some points to remember when serving as an Adjunct:

- Scientists should assume that interactions with the University are official at the outset to avoid conflicts – in effect, that the offer from the University for the employee to participate in the activity is based either upon his or her official position, or official duties with the University.
- Fill out an SEB-106 as part of your official duties.
- Avoid operations internal to the administration of the University in official capacity.
- If you are engaged in the activity as part of your official duties, you *cannot accept* compensation of any kind.
- You can serve as a guest lecturer in a University course related to your discipline but cannot receive compensation.
- You can serve on graduate student committees **IF** the student’s research topic is related to YOUR research mission.
 - You are strongly advised NOT to chair a student’s committee without a tenure-track faculty member as co-chair. You may provide significant guidance in the research, but leave all academic guidance to the university professor.
- You can accept Library privileges.

You cannot do or accept the following:

- Tuition waivers for you or your family.
- Tickets for sporting events – unless you pay fair market value.
- Special faculty privileges at university facilities.
- Teaching of a course generally requires the adjunct professor to assume full responsibility for all activities connected with the course, including ultimately the grading of students. Also, the adjunct professor becomes subject to the supervision of the dean or administrative leader of the department or academic unit offering the course. In short, such activity could result in the adjunct professor being a University employee.

- In lieu of accepting compensation for a lecture, you cannot designate a donation to a non-profit entity.
- Representing the University at events – acting on behalf of the University at conventions or at other activities or occasions.

Personal Capacity Activities Involving the University (Fill out an USDA OE-101 for any Outside Activities)

To the extent that an activity with the University is not deemed by the Agency to be directly related to the accomplishment of its mission, the Agency may permit the employee to engage in such activities, where appropriate, in his or her personal capacity. “Personal capacity activity,” generally speaking, is one that is conducted (1) when the employee is not on official time; (2) without expenditure of Agency funds; and (3) in a manner that does not otherwise indicate that the employee is participating on behalf of the Agency. One’s “own time” is that time in which the employee is not working for the Government – after hours and on weekends, annual leave, leave without pay, and administrative leave.

Compensated Activity. If compensation is to be received by the employee for providing guest lecture services, the activity must be undertaken in the employee’s personal capacity, as described above. Under such circumstances, if the employee is a financial disclosure filer, the employee is required to request prior approval for outside employment. Agency managers, in considering whether to grant the request must consider the request in light of the following:

Teaching, Speaking, and Writing Restrictions 5 CFR § 2635.807.

RULE: You may not accept compensation from outside sources for teaching, speaking, or writing if it is related to your official duties. Teaching, speaking, and writing are considered “related to your official duties” if:

- the invitation was extended directly or indirectly by someone whose interests may be substantially affected by the performance/nonperformance of your official duties;
- the invitation was extended primarily because of your official position;
- the subject matter deals significantly with an ongoing or announced policy, program, or operation of USDA;
- the information presented draws substantially upon nonpublic information; or
- the activity is undertaken as part of your official duties.

NOTE: Pursuant to the decision in Sanjour vs. EPA, **YOU MAY** accept free travel and accommodations in relation to speaking on matters related to your official duties if done in your **personal capacity**, if you are employed at GS-15 or below.

YOU MAY NOT accept an honorarium for speaking on matters related to your official duties, however.

Example 1:

Harvey wants to write an article to his hometown newspaper criticizing the President. He may write the article and express his personal views. He may not use his official title, reference his position, use any proprietary or nonpublic information.

Example 2:

Marlene has been asked to speak in her official capacity and wants to request an honoraria which she plans to donate to the Red Cross. She may not solicit nor accept the honorarium. Acceptance of the honorarium, even on behalf of another, would violate 18 U.S.C. § 209.

Example 3:

On his own time, Darren, an APHIS inspector, has written an opinion piece for the Christian Science Monitor about the need for improved pepper sprays. He will be paid \$200. As an inspector, Darren has used pepper spray in performing animal health inspections. However, the article will not rely substantially upon information specific to his job. He may accept. The Office of Communications should review it to make sure it that he has not used any non-public information. He may use his official title as part of his biographical background information. However, he should ensure that the article makes clear that these are his views, not those of APHIS.

Honoraria Ban & Statutory Prohibitions

On February 22, 1995, the Supreme Court issued a decision declaring the Honoraria Ban unconstitutional for employees graded GS-15 and below. Later, on February 26, 1996, the Department of Justice, determined that prohibitions of the Honoraria Ban could not be enforced against any employee. (This means that all employees may accept honoraria for outside activities that are not related to their Government work.) Regardless of the sunset of the Honoraria Ban, two statutory prohibitions remain.

- **ALL EMPLOYEES ARE PROHIBITED FROM ACCEPTING COMPENSATION FROM OUTSIDE SOURCES FOR SERVICES AS EMPLOYEES OF THE EXECUTIVE BRANCH.**
- **EXCEPT IN VERY SPECIFIC INSTANCES, ALL EMPLOYEES ARE PROHIBITED FROM RECEIVING COMPENSATION FOR TEACHING, SPEAKING, OR WRITING THAT RELATES TO THEIR OFFICIAL DUTIES.**

ADJUNCT PROFESSORS – DO’S AND DON’TS

DO:	DO NOT:
Contact Agency management who has discretion in determining which activities are official and represent the interests and mission of the Agency.	Presume that all activities undertaken with a university are conducted in your official capacity.
Seek prior written approval for outside activities if you are subject to confidential or public financial disclosure reporting requirements.	Conduct outside activities in your personal capacity with a university that may be in conflict with your officially assigned duties.
Serve in an appropriate advisory, liaison, or consultative role to represent your Agency for the official purpose of exchanging comments, views, or opinions regarding those matters in which your Agency has an interest.	Represent or defend a university in matters before the Federal government, such as representing a university as a Auniversity@ Principal Investigator on a grant application. Always identify and represent yourself as a federal employee.
Collaborate as appropriate, always representing yourself as a Federal employee on behalf of your Agency.	Participate in your official capacity in university matters that are internal to the administration of the university and not related to the collaborative mission of your Agency.
Seek guidance from your Ethics Advisor regarding impartiality concerns and conflicts of interest. Consider the potential for conflict where an individual might question the impartiality of, or misuse of, your official position.	Take or recommend official action concerning a matter involving a university that is likely to affect your financial interests, the financial interests of a member of your household, or the financial interests of someone with which you have a covered relationship.
	Solicit or accept gifts, compensation, or supplementation of your salary from a university based on your official cooperative efforts with the university.
	Sign any document originating from an outside entity that addresses Intellectual Property or Intellectual Property Rights, including the assignment of Patent Rights, without having the Office of Technology Transfer review the document for conformity with law and ARS policy.

Adjunct Questionnaire

This appendix should be used by an employee as an aid in determining whether his/her appointment by the university as adjunct professor constitutes outside employment. If the employee is required to request prior approval for outside employment, he/she should forward the completed appendix with his/her request for approval. All questions on the form should be addressed.

- 1. Name: _____
- 2. Position Title: _____
- 3. Agency: _____
- 4. Grade: _____
- 5. Office Location: _____
- 6. University/College extending "adjunct professor" title: _____
- 7. Position Title (i.e., "adjunct professor," or other): _____
- 8. Summary of Duties on behalf of the university: _____

Answer the following with regard to the position described in lines 6-8, above. **If you answer "yes" or "unsure" to any question, please add a sheet of paper giving an explanation for your answer.** Please answer every question.

NATURE OF ADJUNCT PROFESSOR ACTIVITY:

- Was this activity assigned by your Federal supervisor?
- Will your activity occur during your Federal working hours?
- Will any costs associated with your activity (e.g., travel costs) be paid by your Federal agency?
- Had you been involved with this University in the last 2 years?
If so, was your involvement part of your Federal duties? Please explain.
- Will you use Federal equipment, time, or resources to perform your activity?
- Will you be likely to use agency information to perform your activity?

Yes	No	Unsure

COMPENSATION FOR ADJUNCT PROFESSOR ACTIVITY:

- Will the University pay you for your service?
- Will you receive payment-in-kind from the University in the form of:
 - Residence/housing assistance (in part or whole)?
 - Additional outside employment/positions?
 - Employment for spouse or close family member?
 - Educational benefits for you, spouse or close family member?
 - Travel costs and subsistence?
- Will you receive any privileges (e.g., parking, library) due to your position? (List)

Will you receive any perquisites due to your position (e.g., reduced tickets to events, or seating reserved for faculty).

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DO YOUR DUTIES REQUIRE THAT YOU:

- Apply for Federal grants on behalf of the University.
- Serve as Principal Investigator on Federal grant applications on behalf of the University?
- Be responsible for University funds?
- Represent the University before others?
- Participate in University administration/management?
- Vote on tenure?
- Participate in doctorate candidate reviews?

CONSULTING

Outside Employment Not Part of Official Duties. Agency managers should first determine whether the proposed consulting activities actually are more appropriately performed, if at all, as part of the scientist's official duties. Any compensation received or accepted by the Agency scientist from a non-Federal entity for the performance of official duties could violate 18 U.S.C. § 209. In making the determination as to whether to permit an Agency scientist to engage in outside employment as a consultant, Agency managers should consider whether the proposed consulting:

- Involves matters currently under the official responsibility of the Agency scientist, or which was under his or her responsibility within the past year;
- Is otherwise likely to have been offered based solely upon the scientist's official duties and position;
- Is likely to involve the non-public Agency information; and
- Is likely to involve compensation offered to, or received by, the Agency scientist in return for his or her services.

Since we do not have specific guidance within the Standards regarding consulting activities, we rely on the teaching-speaking-writing regulations to determine if an activity is related to an employee's official position and thus prohibited as an outside activity. Please include the invitation/request letter for the consulting activity. An activity is considered to be official and prohibited as an outside activity if:

- 1. The activity is undertaken as part of the employee's official duties;
Question: *Please describe how this consulting activity is not related to Dr. X's current assignment.*
- 2. The circumstances indicate that the invitation to engage in the activity was extended to the employee based on his position rather than his expertise on the particular subject matter?
Question: *Please describe how the ability to conduct this activity is based on Dr. X's inherent expertise versus ARS research.*
- 3. The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties.
Question: *Does Dr. X have any official duties that involve any of the entities for which he has served as a consultant?*
- *The majority of the USDA OE-101's submitted for these activities note that usually the employee has some contact with the prospective employers in his official capacity (if he has checked yes).*
Question: *How does Dr. X obtain these consulting opportunities?*

- 4. The information conveyed through the consulting activity draws substantially on ideas or official data that is nonpublic information.
Question: *Please explain.*
- 5. The subject of the activity deals in significant part with:
 - A. Any matter to which Dr. X is presently assigned or had been assigned during the previous one-year period;
 - B. Any ongoing policy, program or operation of ARS.

Question: *Please explain.*

Giving detailed answers to the above questions as they apply to the consulting request will enable the Area and the Science Ethics Branch in determining whether you can accept the consulting position.

EDITING JOURNALS / EDITOR-IN-CHIEF

The following information issued by the USDA Office of Ethics, Science Ethics Branch, was copied from Ethics Issues Related to USDA Scientists found at <http://www.usda-ethics.net/science/index.htm>

11. Editing Scientific Journals.

11.1. General. Serving in an editorial role may involve a more significant relationship with and investment of time to the scientific journal, compared with manuscript writing and peer-review activities. Considerations, such as time expended may be a factor. Agency managers, in considering authorizing such activities, either as official activities or as personal activities, should look closely at the nature of the position involved.

11.2. Official Capacity. Agency managers should **presume** that a Federal scientist performing editorial duties for a scientific journal that publishes articles related to the field of science for which the Agency has hired the scientist does so as part of his or her **official duties (SEB-106)**. Accordingly, Agency managers may assign a Federal scientist to perform editorial duties subject to the following rules:

- The scientist may not serve in an official capacity in any editorial or other established position with an organization's scientific journal if the scientist also serves, in his or her personal capacity, as an officer, director, trustee, or employee of that scientific or professional organization;
- The scientist may not serve in an official capacity in any editorial or other established position with an organization's scientific journal if service in such role also makes the scientist an officer, director, trustee, or employee of the organization (e.g., the organization's editor-in-chief is an officer of the organization or has a seat on the organization's Board of Directors) (see [18 U.S.C. § 208](#));

- **NOTE:** Even where service as **Editor-in-Chief** does not result in the scientist becoming an officer, director, trustee, or employee of the organization, **the Federal scientist is in a decision-making role with regard to the publication of a non-Federal entity**. As with serving on a University's tenure or faculty committee, this is essentially Federal participation in the internal business of the organization and, as such, is likely not part of the mission of the Agency as authorized by Congress. This could well subject the Federal government and/or the participating employee to liability, particularly where the Federal scientist is in the position to decide on which articles the journal shall publish. (Always use a USDA OE-101)
- The scientist, where appropriate under 5 CFR part 8301, will obtain prior Agency approval, pursuant to the procedures set forth in that part, for serving in an editorial role;
- The Agency and the scientific journal will document the conditions of the editorial service relationship in an appropriate written agreement; and;
- The scientist may not accept any form of compensation for performing the editing duties or serving in an editorial role. The scientist also may not designate donation of offered compensation to a non-profit entity in lieu of acceptance.

11.3. Personal Capacity. To the extent that a scientist is authorized to perform editorial duties or serve in an established position with a scientific journal in his or her personal capacity, the following rules apply:

- **Compensated Activity.** Treat as outside employment with the publishing journal or entity. The scientist must then reclude himself or herself from performing official duties that affect the financial interests of the society or entity. See 7.3, above.
- **Uncompensated Activity.** The only management concern should be whether there is any appearance of Agency sanction. To this end, the scientist must ensure that his or her official position or title does not appear in the scientific journal.

Example 1: At the time that a scientist is being considered for employment by APHIS, she is serving as an Associate Editor of a scientific journal. She is paid for her editorial services. Prior to hiring her, the Agency advises her that it deems her service with the journal to be related to her official duties with APHIS. Accordingly, she is advised that she can no longer accept compensation from the journal for her services. However, since she has been a paid employee of the journal, even after terminating her employment relationship with the journal, under 5 CFR § 2635.502, she still would be unable to participate as Associate Editor in an official capacity for a period of one year after the end of her employment relationship with the journal unless she gets specific permission to do so from the Agency under 5 CFR § 2635.502(d).

Example 2: An FS scientist has served on the journal editorial staff for two years in his official capacity. The Agency considers this service to be intrinsically related to his official duties. The scientific society that publishes the journal now wants to appoint him to serve as Editor-in-Chief of the journal. The society, which is incorporated, wants to offer him compensation for his services. Moreover, as Editor-in-Chief, he also becomes a corporate

officer. Since that will involve attending society meetings, several of which are across the country, the scientist wants to continue to perform these duties as part of his official duties. He can do neither in his [official capacity](#). First, if he performs editorial services of any sort as part of his official duties, he would violate the dual compensation prohibition ([18 U.S.C. § 209](#)), were he to accept compensation from the society. More importantly, irrespective of compensation, the scientist may not serve as Editor-in-Chief since he would be serving as an officer of a non-Federal entity in his official capacity. Absent explicit statutory authority to do so, or an agency waiver, his service would violate 18 U.S.C. § 208. While the scientist could seek Agency approval of such service as outside employment [he could then accept compensation and serve on the board, but would do so at his own expense and on his own time], given the Agency's position concerning the relationship between editorial services for the journal and the scientist's official duties, the Agency would be justified in turning down his request.

ENDORSEMENT, FUNDRAISING, AND SOLICITATION

As a general rule, employees of the Federal Government cannot participate in endorsement, fundraising, and solicitation on Federal property during regular working hours. The table below lists which activities you cannot participate in. Please note that the Combined Federal Campaign is the only approved official fundraiser. Other exceptions are noted.

Source	Ethics-related Issue
USDA Employee Responsibilities and Conduct, Departmental Regulation 4070-735-001	Conduct and Responsibilities of Employees - Canvassing for sales, or selling, any article (including, but not limited to, candy or other items for schools or charities; kitchenware or other home furnishings; paper products; cosmetics; cleaning products; or any other items whatsoever) in person, or by distributing or posting literature, advertising matter, or any other graphic matter, in or on Government-owned or leased property, or property occupied by the Department, is prohibited.
5 CFR § 2635.702(c)	Endorsements - Employees may not use or permit the use of their Government position or title or any authority associated with their public office to endorse any product, service or enterprise. Exceptions - Employee endorsements may be permitted when they are: (1) authorized by law; or (2) as a result of documentation of compliance with agency requirements or standards or as a result of recognition for achievement given under an agency program of recognition for accomplishment in support of the Agency's mission.
5 CFR § 2635.808 5 CFR Part 950	Fundraising Activities - Unless permitted by law, Federal employees may not engage in any form of fundraising activities. This includes, but is not limited to, conducting raffles, lotteries, bake sales, carnivals, athletic events, etc. Employees may engage in fundraising activities as a private citizen, provided they do not use their official title or position while participating in the activities. Unless permitted by law, fundraising activities may not be conducted in facilities or property administered or leased by the Government. Absent statute, Executive Order, regulation, or Office of Personnel Management (OPM) approval, you may not engage in official fundraising outside the Combined Federal Campaign (CFC). No other fundraising drive may be conducted without the authority of the Director, Office of Personnel Management (OPM) through your personnel office. Exclusions - Fundraising may be conducted outside the CFC in the following

	instances: (1) Emergencies & Disasters (with OPM approval); (2) Solicitation of Employees for the Benefit of Employees (through agency approved employee organizations); or (3) Child Care Centers located at Federal installations (without prior authorization from OPM).
REE P&P 240.3, Physical Protection, Security, and Conduct while on REE Facilities	Conduct on Federal Property - Soliciting money for charity, commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on REE controlled property is prohibited. Exceptions are listed in the P&P.
If you have any questions, please contact your Ethics Advisor.	

FINANCIAL DISCLOSURE OGE-450

The Office of Government Ethics (OGE) has modified and improved the OGE Form 450, Executive Branch Confidential Financial Disclosure Report.

You will receive a specific notice of this requirement as the due date approaches.

Mailing Address: USDA Office of Ethics - Science Ethics Branch, 5601 Sunnyside Avenue, Room 2-2290, Beltsville, MD 20705-5620.

All financial disclosure filers must also receive prior approval before engaging in any non-Federal employment or activity. Please complete form USDA OE-101, Request for Approval of Outside Activity.

Please retain a photocopy of your completed form for your personal records. Should you have any questions regarding the completion of the OGE-450, please contact your appropriate Ethics Advisor or Ethics Assistant, or read the Tips for Completing the OGE-450, listed below:

OGE-450 -- Confidential Financial Disclosure Report -- to be used by anyone in a covered position, either designated by their position description or is responsible for making financial decisions which may impact contractors or non-Federal interests that are regulated by the Department or is a warranted Purchase Card Holder.

OGE-450A - Confidential Certificate of No New Interests -- to be used only when there have been no changes from filing your last 450. This form may not be used by SGEs (Collaborators, Consultants, Experts, or Panel Managers) or by first time filers.

OGE-450 Do's and Don'ts

OGE Form 450 - CONFIDENTIAL FINANCIAL DISCLOSURE REPORT	
DO REPORT	DO NOT REPORT
Part I: Assets and Income	
<ul style="list-style-type: none"> Spouses' income(s) Rental property managed by you or spouse Complete names of Sector Mutual funds and stocks (include a parent company name & ticker symbol, if known) 	<ul style="list-style-type: none"> Checking and savings accounts Treasury bonds, bills, notes and savings bonds Life insurance policy Government securities Money market mutual funds and accounts from banks (not self-directed)

<ul style="list-style-type: none"> Income from interest-bearing loans 	<ul style="list-style-type: none"> Mutual funds – (only Sector funds need to be reported) Your own Federal income Rental property managed by a third party Social security benefits
Part II: Liabilities	
<ul style="list-style-type: none"> Mortgage on rental property Business loans Single debt over \$10,000 	<ul style="list-style-type: none"> Mortgage on primary residence Automobile loans Loans owed by family members
Part III: Outside Positions	
<ul style="list-style-type: none"> Adjunct Professor position Board of Director position Landlord Farm Manager Paid position outside of USDA position 	<ul style="list-style-type: none"> Positions with religious, political, fraternal or honorary nature Position held by spouse or dependent child
Part IV: Agreements or Arrangements	
<ul style="list-style-type: none"> Post-employment plans Severance pay 	<ul style="list-style-type: none"> Activities for spouse and dependent children
Part V: Gifts and Travel	
<ul style="list-style-type: none"> Travel paid by another organization that is not official travel (such as Board of Director's meeting not connected with official duties) Anything valued at \$305 or more 	<ul style="list-style-type: none"> Official travel (including in-kind travel) Anything received from relatives, U.S. Government, DC, State or local governments Bequest's & other forms of inheritance If you are a first-time filer or an SGE, you do not need to complete this section of the 450

TIPS FOR COMPLETING THE OGE-450

- Only original copies completed and signed in pen and ink will be accepted; no pencil copies. Please type or write legibly.
- Please read the instructions. All the blanks on the form must be completed. If you don't check off the box marked "NONE," which indicates there is nothing to report, then someone from the USDA Office of Ethics will have to call you for an answer.
- Be specific -- put the exact sector fund name. For example, "Fidelity Select Biotechnology" instead of just "Fidelity." All fund names are checked against financial industry listings, and if you did not specifically name the fund, someone from the USDA Office of Ethics - Science Ethics Branch will have to call and ask you to supply the information. Please include the ticker symbol if you know it.
- DO NOT list regular mutual funds – only sector funds

- Show all changes from your last filing. If you had an income-producing source listed on last year's filing that you no longer hold, or from which you are no longer receiving income, then you must show this by marking "X" in the box "No longer held." Otherwise, if you have it listed in last year's filing and it does not appear on this year's filing, we must call you to determine whether or not you still have the asset. Do not report mortgage debt, except for investment property (e.g., rental units).
- Special Government Employees (SGE) must complete an OGE Form 450 upon appointment or reappointment. We can never accept the OGE Form 450A for any SGE appointment.
- Employees must sign their forms and include all necessary pages. Supervisory review and/or signature are not necessary.
- Employees are responsible for returning the completed form in an envelope marked "To be Opened by Addressee Only" to the USDA Office of Ethics – Science Ethics Branch NO LATER THAN February 15.
- Once a record has been established by completing an OGE Form 450, and there are no changes from the previous year's confidential financial disclosure report, filers may complete the OGE Form 450A, other than this year or years divisible by 4. One cannot file the OGE Form 450A for more than 3 consecutive years. During a Presidential Election year (2008, 2012, etc.), only form OGE-450 can be accepted.

ACTIVITIES WITH FOREIGN ENTITIES

There are some issues to keep in mind when considering an activity with a foreign entity. Generally, an employee of the Federal Government may not accept employment, gifts or compensation from any foreign government, including any entity which is owned or operated by the foreign government, which may include public research institutions or universities. The Constitution specifically states that "with the consent of Congress", certain activities, gifts, and honors are permissible. Congress; consent is found in the Foreign Gifts and Decorations Act (FGDA) which permits gifts up to the minimal value (as of 2008, that value is \$335). The FGDA also permits travel, lodging and meal expenses when it occurs totally outside of the United States. This means that travel expenses may be paid only for that travel which originates and ends outside of the United States.

Emoluments Clause

If you are dealing with a foreign university, more than likely you will run into issues with the Emoluments Clause. There are some issues to keep in mind when considering an activity with a foreign entity.

This provision prohibits anyone who is employed by the Government from accepting a position with a foreign state, whether compensated or uncompensated, or from accepting any compensation or other items of value, including salary, honoraria, and **travel expenses**, from a foreign state, except as authorized by Congress. For purposes of the Emoluments Clause; a "foreign state" is deemed to include an international organization in which the United States is NOT a member. In addition, a foreign public university is

presumed to be part of the foreign state, unless the university is independent of the foreign government with respect to decisions regarding the terms and conditions of faculty appointment.

Official Duty Activities

Federal employees may conduct activities with foreign entities, including foreign governments, as part of their official duties when such activities are required and approved. If travel is necessary, the employee travels on a travel order just like any other official duty activity and travel is regulated by GSA Travel Regulations. Offers of travel payment from a non-Federal source must be reviewed for conflicts of interest prior to acceptance.

Outside Activities Not Part of Official Duties

Outside activities with foreign entities may be permitted as long as the foreign entity is not owned or operated by the foreign government. Professional societies typically are not related to the government.

Please contact your Ethics Advisor for specific guidance concerning activities with foreign entities. Determinations have been made regarding various foreign entities some of which clearly are considered part of the foreign government. Some entities are funded by the foreign government but are considered independent so that the Emoluments Clause would not apply.

FULBRIGHT PROGRAM

Recently, Maureen O'Brien, USDA Office of General Counsel provided an opinion regarding the need to document a federal employee's participation in the Fulbright program. Because funding is typically awarded to a foreign university, our agency has a past practice of entering into some type of agreement (usually a reimbursable) with the sponsoring university in order to accept in-kind funds. This is not necessary.

The Fulbright Program is in a unique position because it is a statutorily authorized Federal government-run program (22 U.S.C. 2451 et seq.). Federal employees are statutorily authorized to participate in the program (22 U.S.C. 2458a) and can accept grants and other forms of assistance provided by a foreign government for this purpose. Thus, Federal employee participants are both authorized to be Fulbright Specialists and to accept the grant that accompanies such participation, which consists of the travel expenses paid by the State Department directly, and the in-kind expenses, such as lodging, food, and in country travel, provided by the host university. Participants enter into grant agreements with the State Dept. which details these arrangements and the program requirements. The only distinguishing factor for Federal employee is that if they are participating in their official capacity, they are unable to accept the daily nominal honorarium typically provided by the State Dept. to participants. This is due to the government prohibition on dual compensation. If an employee is participating in their personal capacity and are using LWOP during their fellowship, they are not restricted in this manner. Agencies still need to make a determination as to whether the fellowship is related to the employee's official duties and whether participation can be reasonably considered to be in their official capacity.

As outlined above, the employee's participation is already authorized by the Fulbright Program statutory authority and no independent authority is needed, even if the employee is attending in their official capacity. Therefore, we see no need to enter into an agreement with the host university. The hosts have already entered into the appropriate agreements with the State Dept. which runs the entire program and the employee will also enter into an agreement with the State Dept. It would also make sense for the agency internally to document the employee's participation as a Fulbright Scholar but there is no need for anything more than that.

OTHER FELLOWSHIP PROGRAMS

It is becoming common in ARS for a scientist to have his/her official research recognized by the scientific community in the form of a fellowship. Often, these fellowships are awarded by foreign universities. In those rare situations where a determination is made that the fellowship is not related to official duties, nor would acceptance benefit the mission of ARS, we typically run into prohibitions applicable under the Emoluments Clause of the U.S. Constitution which prohibits employees from accepting outside "employment" and gifts of compensation from any foreign government, which includes public research institutions and universities funded by foreign governments. Also, when in a personal capacity, we have to consider gift acceptance restrictions, dual compensation, etc.

When considering whether a fellowship award should be accepted on behalf of the agency, the following should be considered:

Nature of the donor:

- Research or educational institutions whose interests may be directly affected by the performance or non-performance of official duties (e.g., a university where the scientist is co-located);
- For-profit entities. Fellowships from for-profit entities are always subject to greater scrutiny, particularly where they have interests affected by USDA; and,
- Foreign Governments and foreign government owned entities, as stated above we must determine whether acceptance is proper in light of the Emoluments Clause.

Funds Awarded:

Where a monetary award is offered based upon official research, the funds essentially belong to the Agency and are to be used directly in furtherance of the official research. Accordingly, where the Agency seeks or accepts award monies on behalf of a university or other third party, the Agency should document this acceptance through an appropriate written agreement (usually a reimbursable agreement). Funds cannot be used to pay the Agency scientist for his/her work as this would constitute dual compensation.

Travel Funds:

Travel funds are typically included in these fellowships; however these funds **cannot be accepted under the authorities of 31 U.S.C. 1353** - Acceptance of Non-Federal Travel Funds, implemented by 41 CFR 302-1. This authority is used to accept funds from outside sources for a limited period of time (cannot exceed three week's duration) and more

importantly that meet a specific definition of meeting or similar function. It is not intended to cover long term TDY or travel related to training.

Agreements:

The Agency needs to enter into some type of agreement (Reimbursable) in order to be able to access travel funds and document the terms of these fellowships.

GIFTS FROM OUTSIDE SOURCES

Reference: **Standards of Ethical Conduct for Employees of the Executive Branch** (5 C.F.R. 2635, Subpart B – Gifts From Outside Sources):

The **Standards of Ethical Conduct for Employees of the Executive Branch** state that an employee, whether on or off duty, may not solicit or accept, directly or indirectly, any gift, favor, gratuity, entertainment, or loan, regardless of value, from a prohibited source, nor may an employee accept a gift, or thing of value, given because of the employee's official position. The following definitions will clarify what is considered a gift, and from who gifts are permitted. The exceptions to the gift acceptance prohibition are also described below.

Definitions

A **gift** is a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, and lodgings and meals. Travel related gifts are covered whether provided in-kind (that is, the donor just gives you a plane ticket, or hotel room key), payment in advance, or reimbursement after the expense has been incurred.

A gift is **NOT**:

- Food or refreshment which is not in conjunction with a meal, such as coffee, donuts, punch and cookies - in other words, snacks, are not considered gifts.
- Greeting cards and items of little intrinsic value (e.g., plaques, certificates and trophies which are solely for presentation.)
- Rewards and prizes given in contests which are open to the public or to a broadly defined class of government employees.
- Loans from banks and other financial institutions at rates available to the general public.
- Opportunities and benefits generally available to the public, or to all government employees.
- Anything that the government pays for or anything for which you pay the fair market price.

A **Prohibited Source** may be:

- Any person, or entity, who has, or is, seeking to do business with USDA, or is seeking official action by USDA,
- Anyone who conducts operations which are regulated by USDA,
- Anyone with interests which may be substantially affected by the performance or non-performance of an employee's official duties, or,
- Any professional, technical or trade association, the majority of whose members represent prohibited sources.

A gift is ***solicited or accepted because of the employee's official position*** if it is offered by a non-employee and would not have otherwise been offered, had the employee not held the Federal position.

Solicited or accepted indirectly means that the gift was given with the employee's knowledge and acquiescence to a parent, sibling, spouse, child, or dependent relative because of the relationship to the employee; or given to any charitable organization because the employee designated that particular charitable organization.

Exceptions to the Gift Rules (Gifts Which May Be Accepted)

Even though acceptance of a gift may be permitted by the exceptions outlined in the regulation, it is sometimes advisable and prudent for an employee to decline a gift offered by a prohibited source or because of his/her official position. Gifts may generally be accepted from individuals/entities outside the Government in the following situations. These descriptions are quite general.

- Gifts of **\$20 or less** per occasion may be accepted from a single source. However, you may not accept more than \$50 from any one source in any one calendar year. Multiple representatives of the same outside entity constitute the same source. This exception DOES NOT apply to gifts of cash or investment interests, which are not permitted.
- Gifts which are offered because of a **personal relationship** are also OK, even though your friend or relative works for a prohibited source. However, you must be careful that the gifts do indeed come from your friend or relative and are not being paid for by your friend's company.
- **Discounts and similar benefits**, including favorable rates and commercial discounts, are acceptable even when they are offered to a limited class of employees, provided that the class is defined so as not to discriminate among Government employees on the basis of employment, rank, rate of pay, or type of official responsibility.
- **Gifts based on outside relationships** may also be accepted. When we speak of outside relationships, we are talking about gifts which are offered to you because of your outside employment or activities, or because of your spouse.
- There are also exceptions for free attendance, including waived registration or free attendance at dinners or receptions. If you are speaking in your official capacity, at a conference, seminar, or training session, conference fees may be waived on the day(s) of

your presentation(s) without further approval. If you are going to be a luncheon or dinner speaker, you may sit at the head table and eat the meal along with the rest of the dignitaries. Free attendance on days other than when you speak, or attendance at other dinners or receptions, requires separate advance approval.

HOLIDAY GUIDANCE – RECEPTIONS, PARTIES, AND GIFT EXCHANGES INVOLVING CO-WORKERS, CONTRACTORS, AND SUPERVISORS

The holiday season is traditionally a time of parties, receptions, and exchanging of gifts. However, even during the Holiday Season, the Standards of Conduct apply. To ensure you don't unwittingly violate the standards, a brief summary of the applicable rules is set out below. If you have any questions, please contact your ethics advisor:

General Rule:

Federal personnel may not accept gifts offered because of their official positions or offered by a "prohibited source" including contractors and contractor personnel.

Parties, Open-Houses, and Receptions Hosted by Non-Prohibited Sources:

Federal personnel may attend social events sponsored by non-prohibited sources if no one is charged admission. (e.g. most holiday receptions and open-houses). Federal personnel may also attend events permitted by the exceptions in the next section.

Parties, Open-Houses, and Receptions Hosted by Prohibited Sources Including Contractors:

The following are exceptions to the general rule:

- Federal personnel may accept gifts (other than cash) not exceeding \$20, as long as the total amount of gifts that the employee accepts from that source does not exceed \$50 for the year.
- If based on a bona fide personal relationship. (Such personal gifts are actually paid for by the contractor employee rather than the company.)
- Can attend an open-house or reception, and accept any gift of refreshments if it is a widely-attended gathering, and the employee's supervisor determines that it is in the agency's interest that the employee attends.
- Can accept invitations (even from contractors) when the function is open to the public and all Government employees.
- Invitations offered to a group or class that is not related to Government employment. (For example, if the building owner where your office is located throws a reception for all of the tenants of the building.)
- Refreshments consisting of soft drinks, coffee, pastries, or similar refreshments not constituting a meal may be accepted since they are not considered to be a gift.

- Outside business or other relationship results in attendance at an event. For example, a Federal employee's spouse works at Monsanto. The Federal employee may accompany the spouse to the Monsanto employee's holiday party since the invitation is to the spouse as an employee, and not to the Federal employee because of his or her position.

Parties, Open-Houses, and Receptions Hosted by Other Federal Personnel:

You may accept personal hospitality at the residence of a subordinate that is customarily provided on the occasion. Invitations from your boss or a co-worker: No restrictions. Enjoy!

Gifts and Gift Exchanges between Federal Personnel:

General Rule: Supervisors may **not** accept gifts from subordinates or Federal personnel who receive less pay. Exceptions:

- During holidays, which occur on an occasional basis, supervisors may accept gifts (other than cash) of \$10 or less from a subordinate.
- Supervisors may accept food and refreshments shared in the office and may share in the expenses of an office party.
- If a subordinate is invited to a social event at the supervisor's residence, the subordinate may give the supervisor a hospitality gift of the type and value customarily given on such an occasion.

Other Important Information:

- You may not solicit outside sources for contributions for your party. This includes funds, food, and items.
- Generally office parties are unofficial events, and you may not use appropriated funds to pay for them.
- Beware that door prizes or drawings could involve gambling, which would require compliance with state statutes and Federal regulations. GSA regulations ban gambling in GSA owned or controlled buildings.
- You may not use appropriated funds to purchase and send Greeting cards.
- As a general rule, participation at holiday social events is personal, not official, and therefore use of government vehicles to/from such events would not be authorized.

THE HATCH ACT

The political activity of government employees has been a concern of government officials since the earliest days of the Republic. All civilian employees in the executive branch of the federal government are covered by the provisions of the Hatch Act.

You Can	You Can Not
Be a candidate for public office in non-partisan elections	Use your official authority or influence to interfere with an election
Register to vote as you chose	Solicit, accept or receive political contributions unless both individuals are members of the same federal labor organization or employee organization and the one solicited is not a subordinate employee
Assist in voter registration	Knowing solicit or discourage the political activity of any person who has business before the agency
Express opinions about candidates and issues	Engage in political activity while on duty
Attend political fundraising functions	Engage in political activity in any government office
Attend and be active at political rallies	Engage in political activity while wearing a government uniform
Join and be an active member of a political party or club	Engage in political activity while using a government vehicle
Sign nominating petitions	Be a candidate for public office in a partisan election
Campaign for or against referendum questions, constitutional amendments, municipal ordinances	Wear political buttons or clothing while on duty <u>during an active</u> campaign
Campaign for a or against candidates in partisan elections	
Make campaign speeches for candidates in partisan elections	
Distribute campaign literature in partisan elections	
Hold office in political clubs or parties including serving as a delegate to a convention	
Wear political clothing after an election is over and winners are sworn into office	

Non-partisan - Based on, influenced by, affiliated with, or supporting the interests or policies of no single political party

Additional information regarding the Hatch Act can be found on the Office of Special Counsel website at: <http://www.osc.gov/hatchact.htm>

General information and FAQs regarding social media in relation to the Hatch Act can be found at: <http://www.osc.gov/haFederalfaz.htm>

Letters of Recommendation/Support

Official Title and Agency Letterhead May Not Be Used:

- to write a letter recommending a personal friend or relative;
- to write a letter recommending a colleague being considered for tenure;
- to write a letter recommending a contractor, vendor, or supplier of goods or services;
- to write a letter recommending a grant applicant in support of a grant application to the USDA or another Federal agency;

Such a letter may violate the anti-representation statutes. USDA employees may write letters representing their own opinions regarding an individual only if they are personally familiar with the applicant. This means that the knowledge gained about the individual must not have been gained through Federal employment.

Employees may provide a factual letter that simply verifies that a contract or project was completed and that the individual or organization accomplished objectives agreed upon under the terms of the contract or project in a successful manner. However, in order to avoid accusations of favoritism, agencies choosing to issue these types of letters must be consistent and prepared to issue such letters in response to every request.

**The National Institute of Food & Agriculture (NIFA) provides funding opportunities: competitive, formula-funded and special line-item grants. NIFA maintains an internal policy of prohibiting employees from writing letters to support grant applications. Please check with your Ethics Advisor for additional guidance.*

TENURE RECOMMENDATIONS

An employee may not participate in internal University deliberations or decisions concerning tenure, including service as a member of a tenure committee. Given that the granting of tenure falls within the internal business of the University and given the importance which tenure status has upon the financial interests of the candidate and the University, Agency managers should presume that the University, in asking the employee to participate in its tenure deliberations, seeks the employee's involvement in his/her official capacity and the Agency manager must then ensure that any such involvement be limited in a manner that best protects the interests of the Federal Government.

When authorized in advance by the Agency, an employee may provide the University with an appropriate statement concerning that employee's evaluation of the professional

qualifications of a University tenure candidate. Factors to consider in determining whether an evaluation is appropriate may include the following:

- The University sends a request directly to the Agency for the employee's statement;
- The employee's statement expresses a factual evaluation of the candidate's credentials based on official collaborations;
- The evaluation would be based upon observations that the Agency employee made during his/her official duties as a Federal employee; and
- ***The statement avoids language making a tenure recommendation***, i.e. "I support", "I recommend", or "I nominate", etc.

IMMIGRATION SUPPORT LETTERS

18 U.S.C. § 205 prohibits Federal employees from acting as an agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest.

The Office of Government Ethics (OGE) has recently clarified that Federal employees who write and submit letters to the Federal Government in support of an alien applying for a change in immigration status does not typically violate 18 U.S.C. § 205.

A Federal employee is not generally considered the agent of the alien for purposes of 18 U.S.C. § 205 when drafting and submitting such support letters. The opinion emphasizes that there must be the exercise of some control by the principal over the agent for the statute to apply.

If, however, the alien exerts control over the employee in drafting and submitting the letter (e.g., controlling the content of the letter), the employee would be considered the alien's agent for that purpose and would violate 18 U.S.C. § 205.

The writing of an immigration support letter implicates 5 C.F.R. § 2635.702, in that the Federal employee may only sign a letter of recommendation using his/her official title and/or agency letterhead in response to a request for a character reference based upon the Federal employee's *personal (official) knowledge* of the ability or character of an individual with whom he has dealt in the course of Federal employment.

If an employee has no official dealings with the individual seeking a letter, the author of the letter is typically free to write his/her personal opinion on personal letterhead regarding the alien's abilities and character.

Science Ethics Branch - September 2009

SUPPORT LETTERS FOR GRANT PROPOSALS

IV. PARTICIPATION IN GRANTS ON BEHALF OF UNIVERSITIES AND OTHER NON-FEDERAL ENTITIES

12. Official Capacity Participation.

12.1. General. A Federal employee who seeks to assist a non-Federal entity, such as a University, in securing a grant (or other formal relationship, such as a loan or contract) can encounter several unexpected legal and ethical issues. First, whether an employee's participation may properly be undertaken as part of his or her official duties hinges on such considerations as: (1) whether the Agency may provide such support (*i.e.*, whether Congress has authorized the Agency through its appropriation to engage in seeking funds on behalf of this or any other non-Federal entity); and (2) whether seeking such funding, even if properly an Agency activity, is within the scope of employment of the employee seeking to participate in that activity. At the same time, close cooperation may well pose an unacceptable level of ethical risk for those who are responsible for the award and administration of Federal grant programs. Accordingly, employees seeking to participate in grant applications on behalf of non-Federal entities, either as part of their official duties, or on behalf of non-Federal entities that have interests affected by USDA or its Agencies, should inform Agency managers before participating. Agency managers, in turn, should consult with their Agency ethics advisor or with the Office of the General Counsel where necessary.

12.2. Presumption of Official Capacity. Where an employee performs official duties in close cooperation with the non-Federal entity, or where the interests of the non-Federal entity could be substantially affected by the performance or nonperformance of the employee's official duties, Agency managers should **presume** that the employee's intended participation is in his or her official capacity.

12.3. Official Capacity Participation: Requirements. An Agency employee may assist or participate, to the extent provided in 12.4 and 12.5, below, in a grant application on behalf of a non-Federal entity, such as a University [including a grant application to be submitted to a Federal agency] under the following circumstances:

- The Agency specifically permits, or assigns, its employees to perform such duties;
- The Agency determines that the grant relates to scientific research or education that furthers the mission of the Agency in relation to the non-Federal entity;
- Provision of assistance in relation to grant applications is explicitly provided for in an appropriate, pre-existing written agreement between the Agency and the University [thus avoiding issues under 18 U.S.C. § 205];
- The non-Federal entity does not compensate the employee or provide any benefits to the employee related to grant assistance [thus avoiding issues under 18 U.S.C. § 209];
- The research or education underlying the grant is within the official duties and expertise of the Agency scientist providing the assistance; **and**

- The proposed research or education, if the grant application is successful, will be documented in an appropriate [written agreement](#) (e.g., a cooperative agreement) that meets the legal tests of mutuality of interest in the research or education to be supported and mutual contributions between the Agency and the University.

12.4. Permissible Assistance. Only where properly authorized to assist or participate above, an Agency employee may assist in the following ways:

- Preparing the grant application;
- Where the grant application is a joint effort of the University and USDA via a cooperative agreement, signing the grant application as Co-Principal Investigator identifying himself or herself as a Federal employee; and
- Serving as Program Director.

12.5. Impermissible Assistance. Except as specifically permitted above, an Agency employee MAY NOT:

- Assist or participate in a grant application in which he or she has a personal [financial interest](#) other than through their Federal employment [e.g., patent rights or licenses, other than royalties paid through the Federal Technology Transfer Act, see [Part IX](#), below]. This could violate [18 U.S.C. § 208](#);
- Serve as Principal Investigator (PI), Co-PI, [ADODR](#), or otherwise in a capacity with responsibility for managing the grant funds. This could violate 18 U.S.C. § 205;
- Represent himself or herself in any way as an employee or member of the non-Federal entity;
- Where the grantor is a Federal Agency, provide any statement in writing to, engage in any further oral or written defense of or advocacy in favor of the application, or otherwise engage in [representing](#) the non-Federal entity's interests before, the grantor Agency or its employees. This also could violate 18 U.S.C. § 205 [see 12.6 below]; or
- Make any decisions concerning the non-Federal entity's assets or personnel to be utilized in carrying out the research or education underlying the grant.

12.6. Official Letters of Support. Federal scientists are often asked by universities, organizations, and individuals, to write [official](#) letters supporting grant applications, including grant applications to Federal Agencies (including USDA). By agreeing to write letters of support for grant applications, the Federal scientist can, unwittingly, cause himself/herself and his/her Agency ethical concerns.

- **Generally. Letters of Support.** A letter provided by an Agency scientist, using agency letterhead or otherwise giving the appearance that the scientist is responding in an official capacity, that endorses, advocates, or otherwise supports the efforts of a non-Federal source to obtain a grant, can create a host of ethical problems for the scientist. At a minimum, such a letter can create an appearance of USDA sanction or endorsement, either

of the activities of a particular organization, the organization itself, or both. Equally problematic is the perception of a lack of USDA support where the scientist fails to provide a letter to another applicant. This appearance becomes even more complex where USDA sponsors joint programs with other Federal agencies. So that granting agencies are neither influenced nor confused by these types of letters, USDA employees generally should not write letters to support a grant application without prior approval by Agency managers. The same holds true with regard to writing a letter agreeing to work with an applicant if they receive the grant: By writing such a letter, again there is a strong perception that USDA is endorsing the grant. Moreover, issuing such a letter places Agency managers (and perhaps the scientist, as well) in the difficult position of potentially having to justify a subsequent refusal to provide such a letter to another grant applicant.

***NOTE:** The above guidance does not preclude a scientist from writing what is strictly a Letter of Collaboration where we offer to provide the same data that the Agency would provide to any member of the public. The simple purpose of the letter is to confirm to reviewers that the data is available and will be provided. Such a letter also confirms that USDA is not considering duplicating the effort.*

- **Letters in Support of Grant Applications Submitted to Federal Agencies.** Unless all of the conditions set forth in [12.3](#) are present, a scientist issuing a letter of support on behalf of a non-Federal entity seeking a grant from a Federal Agency could violate 18 U.S.C. § 205 if he or she knows, or reasonably should know, that the letter of support will be provided to the Federal Agency.

OFFICIAL DUTY ACTIVITIES WITH OUTSIDE ORGANIZATIONS (SEB-106)

Official Duty Activities are those activities performed by an employee as part of, or an extension of, **officially assigned** duties and responsibilities with an outside organization. An employee may participate in such activities only with advance approval from their supervisor with concurrence from their Agency/Area Ethics Advisor by completion of form [SEB-106](#), **REQUEST FOR APPROVAL OF OFFICIAL DUTY ACTIVITY**.

Basic Guidelines for Official Duty Activities with Outside Organizations

1. **Activities Related to Official Duties:** Any official work performed with an outside organization must also be consistent with the authority and mission of USDA. There should be compelling agency policy for official duty activities with outside organizations. Such activity should be avoided if the outside organization engages in lobbying or otherwise takes public positions on matters of significant controversy involving USDA. Such activity should be limited where it is likely that the outside organization may become involved in legal disputes or other actions that could subject it to liability.
2. **Compensation:** An employee is compensated by the Federal government for performing his/her official duties. Therefore, an employee may not accept any form of compensation from an outside organization or source for performing his/her official

duties. This does not include travel or per diem expenses which may be accepted by the agency; allowable with prior approval through the sponsored travel process (REE P&P 341.2, Acceptance of Travel Funds from Non-Federal Sources). Under appropriate circumstances, acceptance of monetary awards may be permissible (REE P&P 468.5, Acceptance of Non-Federal Awards and Recognition).

3. **Official Time:** An employee who performs his/her officially assigned duties and responsibilities with outside organizations is working on official time and therefore he/she is not required to take annual leave or leave without pay.
4. **Use of Government Resources:** An employee may use Government equipment, supplies, services, and staff to carry out his/her officially assigned duties with outside organizations.
5. **Use of Agency Space:** An employee may use USDA space and facilities when needed to accomplish official duty work with an outside organization. Meeting rooms and other space must be requested in the same manner as for any internal USDA agency function.
6. **Use of Official Titles:** Outside organizations may use the official titles of an employee as a reference, identifier, or to promote attendance at public meetings or presentations, when the employee is participating in an official capacity.
7. **Official Duty and Outside Activities with the Same Organization:** An employee usually may not engage in official duty activities while, at the same time, engaging in personal outside activities with the same organization.
8. **Participation in the Business Affairs of Outside Organizations:** An employee performing an **official duty** activity **may not** participate in making decisions or taking actions that affect the internal business affairs of the organization, including:
 - o personnel actions regarding the staff of the organization and/or establishing their compensation and benefits;
 - o the financial management of the organization, including sources and disposition of the income of the organization, management of investment portfolios, or other related matters; or,
 - o fund-raising activities.

Types of Official Duty Activities

The following activities are examples of acceptable official duty activities within USDA:

Service on Technical/Scientific Advisory or Editorial Review Boards: An employee may serve without compensation on technical/scientific advisory and editorial review boards with outside organizations to render advice on technical/scientific or educational matters. For advisory board service, an employee's participation must involve only providing advice and/or making non-binding recommendations. If the advisory board actually makes binding decisions on whether policy will be implemented, then membership on the board must be performed as an outside activity.

This activity may also be performed as a Federal Liaison. An employee may perform peer review, select articles for final publication, and determine which peer reviewers are appropriate. If participation entails management activities, then the employee must serve in a personal capacity (i.e., approved outside activity).

Writing and Editing: An employee may write books, chapters, forewords, articles, or edit articles and journals in his or her area of professional or scientific expertise for outside organizations without compensation.

Publishing in Non-USDA Media – Copyrights: The Science Ethics Branch worked with the ARS Information Staff in an effort to develop a format to be used when employees are asked to sign a variety of publishing agreements. This “form” would supersede any conflicting provisions that are in a Publisher’s standard copyright agreement. Copyright protection under U.S. copyright law is not available for any work prepared by a Federal employee as part of their official duties. Therefore, neither ARS nor an ARS employee has a copyright in such a work, which may be freely reproduced by the public. In responding to a publisher's request to sign a transfer of copyright, an ARS employee should return the form unsigned with a transmittal letter containing the following statement:

The article cited was prepared by a USDA employee as part of his/her official duties. Copyright protection under U.S. copyright law is not available for such works. Accordingly, there is no copyright to transfer. The fact that the private publication in which the article appears is itself copyrighted does not affect the material of the U.S. Government, which can be freely reproduced by the public.

Note that even if such a copyright were to exist, an ARS employee cannot transfer the ownership of the copyright without authority to do so.

More information can be found in REE P&P 152.1, Procedures for Publishing in Non-USDA Media.



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Agricultural Research Service (ARS)**

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Signature

Date

Printed Name

(Rev. 9/30/09)

Speaking and Lecturing: An employee may give uncompensated speeches or lectures at meetings, seminars, and other gatherings open to the public. The topics may come from the employee's general scientific or professional expertise or past or present work within a USDA agency. With appropriate impact on USDA's mission and approval, some uncompensated lecturing may be performed as an official duty activity.

LIAISON – Part of Official Duties

Where a non-Federal organization is closely aligned with a USDA program, it may be in the agency's interest to have an employee participate in a liaison capacity with the Governing board of that organization. In such a capacity, the employee is present as a USDA representative. Ethics problems concerning service in that position normally do not arise because the employee is performing an assigned duty and is not legally responsible for the management of the organization. In such a role, the employee must confine actions to advice, liaison, or consultation so that it is clear that they are representing USDA and have not taken on a fiduciary obligation to the non-Federal organization. To retain the clarity of the advisory, liaison or consultative nature of this role, an employee must not take on decision-making or administrative responsibility in the non-Federal organization. However, service as the chair or a member of a working committee or subcommittee that imposes no managerial/fiduciary duty to the organization, creates no employment relationship, and deals with technical or professional matters and not with internal administrative matters in the organization, is permissible as part of an advisory, liaison or consultative role. An employee may also communicate USDA's interests and policies to the governing body of the organization and inform USDA of the organization's positions. Travel and expenses for fulfilling this liaison role can and should be covered by USDA.

USE THE SAMPLE BELOW TO REQUEST LIAISON STATUS:

DATE:

FROM: Appointing Official

TO: Subordinate Official

THROUGH:

SUBJECT: Appointment as Agency Liaison with _____ Association

By this memorandum, you are hereby designated to serve as Agency Liaison with the _____ Association (Association). Your designation as Agency Liaison is for the purpose(s) of _____

During your service as Agency Liaison, you are, at all times, to act as a representative solely of the interests of the Agency and the United States: you shall not (1) serve as an officer, board member, or employee, or (2) act as agent or representative, of the Association. Your service as Agency Liaison is to conform to the requirements of 18 U.S.C. 201-209 and to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635. Specifically, during your tenure as Agency Liaison with the Association, you shall not:

- Vote on matters before the Association Board of Directors;
- Serve on committees or task groups unrelated to the above-state purpose for your service as Agency Liaison;
- Participate in issues related solely to the business or internal interests of the Association (e.g., finances, fundraising, membership, etc.);
- Engage in lobbying effort or representation of the Association's interests before the Federal Government [NOTE: This does not preclude you from presenting to the Agency the positions or views of the Association on matters directly related to the interests of the Agency being served through your service as Agency Liaison];
- Actively participate in Association activities in your personal capacity unless you receive written clearance from me to do so [NOTE: If you are a member, you may retain your membership; you must, however, refrain from active participation (e.g., fundraising, holding office or board membership, employment, committee activities, lobbying, etc.)].

I, _____, certify that I have read and understand the foregoing and that I agree to abide by the aforementioned requirements and conditions.

Date Signature of Appointed Agency Liaison

USE OF OFFICIAL TITLE IN CONNECTION WITH ACTIVITIES OF NON-FEDERAL ORGANIZATIONS

The Standards of Ethical Conduct for Employees of the Executive Branch provide guidance on use of official title and position for different types of non-Federal activities. The requirements are slightly different as explained, below:

Official Capacity

If an Agency scientist is approved to participate with a non-Federal organization in his or her official capacity, then the scientist may use his or her official title or position in connection with his or her name.

For example, if the Forest Service approves Dr. Smith to serve as an associate editor of a scientific journal in her official capacity, then the Forest Service has determined that it (the Agency) has an official interest in the publication of that journal.

Example: *Dr. Smith may be listed as Dr. Jane Smith, Deputy Chief for Research, U.S. Forest Service.*

Personal Capacity

Where an Agency scientist participates in an outside activity not as part of his or her official duties, he or she generally **may not use** their official title or authority. However, as Federal scientists are expected, as part of their career development, to participate in peer review, scientific writing, and scientific associations, it is appropriate for an Agency scientist to use his or her official title and name of Agency in situations where other Federal or non-Federal participants are also described by title and employer.

Example: *If a journal lists all contributing writers and associate editors and most of those listed are also identified in connection with their titles and/or employers, Dr. Smith could be listed as "Dr. Jane Smith, Botanist, U.S. Forest Service." She should not, however, use her position title as "Deputy Chief for Research," or list a specific duty location such as "Headquarters," or "Region 5." **Employees must use their personal contact information such as mailing address, e-mail or phone number. Agency contact information should not be used or posted on the organization's website.***

Teaching, Speaking, Writing Activities: The Standards of Ethical Conduct for Employees of the Executive Branch permit a Government employee to use his/her official Government title in connection with the outside activity in limited situations [see 5 CFR 2635.807(b)]:

- An employee may include or permit the inclusion of his/her title or position as **one of several biographical details** when such information is given to identify him/her in connection with the teaching, speaking, or writing activity, provided that his/her title or position is given **no more prominence** than other significant biographical details.

Example: *Dr. Steven Kelley, from above, is teaching a research course at a local university, and is introduced as follows: Dr. Steven Kelley graduated cum laude from the Massachusetts Institute of Technology with a degree in biochemistry, and completed Medical School at McGill University in Canada. Following four years in the military, he*

began his career as a research biochemist at the Agricultural Research Service, currently working in the National Chemical and Biotechnology Lab. He has taught several courses in basic research methods and chemistry.

- An employee may use, or permit the use of, his/her title in connection with an **article published in a scientific or professional journal**, provided that the title or position is accompanied by a reasonably **prominent disclaimer** stating that the views expressed in the article are the employee's and do not represent the Government.

Example of Disclaimer: Dr. Steven Kelley works with another faculty member as part of his teaching at the local university (see above example). He and the other faculty member jointly prepare an article for publication in a scientific journal. He may use his official Government title as in the example for an Official Duty Activity, but it must be accompanied by the following disclaimer, prominently placed so readers see it: ***Dr. Kelley contributed to this article in his personal capacity. The views expressed are his own and do not necessarily represent the views of the Agricultural Research Service or the United States Government.***

Other Outside Activities (e.g., service on an advisory board or awards committee): The Standards of Ethical Conduct for Employees of the Executive Branch also permit a Government employee to use his/her official Government title in connection with other types of outside activities (see 5 CFR 2635.702(b)). This part of the regulation does not impose the stringent biographical detail requirements which are imposed above. This rule focuses on whether an employee's title or position is used in a manner that could reasonably be construed to imply that the employee's agency or the Government sanctions or endorses the employee's activities. Therefore, employees may use their official government title in connection with an outside activity (other than teaching, speaking, or writing), only as follows:

- An employee may permit his/her name and official title in connection with an outside activity (other than teaching, speaking, or writing) as long as there is a **prominent disclaimer** indicating that the employee is serving in a *personal capacity*, (e.g., the name and official title may be listed on the letterhead or other program provided that the listing contains an asterisk with an explanatory side or footnote stating that the individual serves in his/her personal capacity.)

Example 1: *As a member of an award committee for a professional association in a personal capacity, Dr. Smith helps the association review award nominations and determines the winner. Her name and title are listed on the award nomination form as follows: **Dr. Ann Smith, Agricultural Research Service*** and at the bottom of the list is the following: ***Dr. Smith is serving in her personal capacity.*** **Example 2:** *Dr. Jill Anderson, a Research Wildlife Biologist, serves on an **editorial board** for a professional journal to review articles, suggest revisions, and recommend suitability for publication in the journal. On the page of Editorial Board Members, the following listing is permitted: **Dr. Jill Anderson, U.S. Forest Service***, and the following note at the bottom of that page: ***Dr. Anderson is serving in her personal capacity.*** **Example 3:** *Dr. Michael Davis, a National Program Leader in the National Institute of Food and Agriculture is serving on the Board of Directors for a professional association. Dr. Anderson can be listed on the **letterhead** with an asterisk, as follows: **Dr. Michael Davis, National Institute of Food and Agriculture*** with the following note at the bottom of the page: ***Dr. Davis is serving in a personal capacity.***

Use of Official Title in Conjunction with Other Types of Activities

Fundraising: An employee may engage in fundraising in the Federal workplace only in accordance with 5 CFR Section 950, which designates the annual Combined Federal Campaign as the only permissible fundraiser in the Federal workplace. As part of such official fundraising activities, an employee may use his/her official title, position, and authority. Personal fundraising activities, such as for religious organizations, schools, clubs, and other organizations are not permitted during official work time, nor can an employee use his/her official title, position, or authority to encourage participation or seek contributions. Even though these fundraisers may be for very good causes, Federal rules prohibit use of Government resources to conduct such fundraisers.

Example: *An employee may engage in personal fundraising on personal time and outside of the workplace, but may not use Government resources (phone, fax, time, copier, computer, etc.) in support of that activity.*

Fundraising may be conducted outside the CFC only in the following instances: (1) Emergencies & Disasters (with OPM approval); (2) Solicitation of Employees for the Benefit of Employees (through agency approved employee organizations); or (3) Child Care Centers located at Federal installations (without prior authorization from OPM).

Employment Recommendations: In accordance with 5 CFR § 2635.702(b), an employee may write a recommendation using official title and/or official letterhead only in response to a request for an employment recommendation or character reference which is either:

- Based upon personal knowledge of the ability and character of an individual with whom the employee has dealt in the course of Federal employment; or
- For an individual whom the employee is recommending for Federal employment.

Example 1: *Prior to coming to USDA, Bill taught at State University. A former student has just graduated and is seeking a job with the University. The former student asks for a letter of recommendation from Bill. Bill may NOT write such a letter on official stationery or use his official title. The former student is not seeking Federal employment nor has Bill dealt with the former student in the course of Federal employment. Bill will have to use his own stationary and may not use his official title. He may, however, use his prior status as professor.*

Example 2: *Same facts as in Example 1, above, except that after Bill became a Federal employee, the former student came to work for him as a Federal summer intern. In this case, Bill may write a letter recommending the student and may use official stationery and the USDA employee's official title because the USDA employee has dealt with the student during the course of Federal employment.*

Official Endorsements: In addition to grant applicants (<http://www.usda-ethics.net/rules/rule38.htm#grants>), other non-Federal persons and entities seek the official endorsement of their products, services, and purposes. Pursuant to 5 CFR § 2635.702(c), employees *may not* use their official title or authority to endorse any product, service or enterprise, except:

- In furtherance of statutory authority to promote products, services or enterprises; or
- As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the Agency's mission.

Example 1: *Harriet, an Agency manager, is asked by Good Deed Doers (GDD), a non-Federal organization seeking grant money from a Foundation, for a letter recommending the grant. Harriet oversaw a successful project with GDD last year. Harriet should not issue the letter as it would be an endorsement of GDD. However, as Harriet was in a position of responsibility with respect to the project with GDD, she could issue a factual letter that simply verifies that the project involving GDD and the Agency had been completed successfully.*

Note: *In order to avoid accusations of favoritism, Agencies choosing to issue these types of letters must be prepared to either issue such letters in response to every request, or justify their decisions in issuing some letters and not others.*

Example 2: Mary, an Agency contracting officer, attends a course on procurement integrity. USDA contracted for the course with Management Concepts, Inc. Mary enjoyed the course and wants to write a letter recommending the course. *She can do so only on personal stationery.* She may only refer to her USDA position as one of several biographical details in the body of her personal letter and make it clear that she is writing in her *personal capacity*. For example, she may say "As a government contracting officer, I found the course very accurate and presented in a useable manner." This gives Mary Smith the credibility to make the recommendation without endorsing the course officially

PARTICIPATION IN NON-FEDERAL ORGANIZATIONS – NOT PART OF OFFICIAL DUTIES – USDA OE 101

SERVING ON A BOARD

The Department of Justice, Office of Legal Counsel (OLC), issued an opinion on November 19, 1996, concerning the participation of Federal employees on the Board of Directors of non-Federal entities in an official capacity. That opinion was binding on all executive branch agencies, *18 U.S.C. § 208*. Service as members of Boards of Directors based on rulings by the Department of Justice and the Office of Government Ethics, employees incur a fiduciary responsibility when they serve as a member of a Board of Directors for an outside organization or professional association as part of his/her official duties. This presents a conflict of interest, and as such, it prohibits a federal employee from serving in an official capacity as an officer, director, board member, or trustee of an outside organization unless the employee fits one of the following:

The opinion states: Section 208 prohibits any officer or employee of the executive branch from participating as a Government official in any "particular matter" in which an "organization in which he/she is serving as an officer, director, trustee, general partner or employee ... has a financial interest." *18 U.S.C. § 208(a)*. We conclude that this broad prohibition against conflicts of interest within the Federal Government would prevent a government employee from serving on the board of directors of an outside organization in his or her official capacity, in the absence of: (1) statutory

authority or a release of fiduciary obligations by the organization that might eliminate the conflict of interest, or (2) a waiver of the requirements of *18 U.S.C. § 208*, pursuant to *18 U.S.C. § 208(b)*.

There are two primary bases, one explicit and one implicit, for the OLC finding that a conflict exists in board membership. The first is based on a straight forward application of the statute to the situation. Because service is in an official capacity, it follows that any action in furtherance of the employee's responsibilities as a board member is also an official act of the Government. Since *18 U.S.C. § 208* expressly prohibits taking official action with respect to an organization of which the employee is an officer, the prohibited conflict is automatic and unavoidable whenever the employee acts as an officer. The second basis is implicit, but based on similar logic. Service on a board of directors or similar body imposes fiduciary responsibilities by the participant on behalf of the organization. Since a Federal employee owes full allegiance to the Federal government, acceptance of such fiduciary responsibilities in an official capacity is inconsistent with the basic duty of a Federal government employee. In either case, an impermissible conflict of interest is created. While conflict concerns may arise based on what actions an employee takes while participating in an outside organization, typically only service in the following positions in outside organizations automatically raises potential conflict concerns based on official participation: Officer [including, but not limited to: President and Vice President]; Chief Officers [Executive; Administrative; Operations; Information; Finance, etc.]; Secretary; Treasurer; Counsel; Director, or member of a board of directors; Trustee; General partner; or employee. Often, the by-laws of the outside organization are reviewed to determine if significant participation is apparent.

Official participation by Federal employees in other than capacities will not, by itself, result in a statutory violation. For example, *18 U.S.C. § 208* would not prohibit an employee from participating officially in outside organizations through attendance for training, making an agency presentation, serving as an agency representative on a panel, or providing agency technical expertise to a committee of the organization. Assuming that "significant participation" is involved and the employee also seeks to participate in an official capacity, the following factors must be considered:

1. Whether there is **express statutory authority** for the employee to serve ex officio on a board (e.g., the Chief of the Forest Service is required by statute to serve on the National Forest Foundation Board of Directors);
2. Whether there is clearly an **absence of fiduciary obligations** to the organization as determined under State law (e.g., evidence of non-voting or advisory status and a letter from the organization counsel addressing applicable State law); or
3. Whether the organization is engaged in activities clearly **related to statutory directives** requiring the agency to participate with other entities, such as State governments, local groups, and/or private industry, in accomplishing the statutory goals (e.g., some standard setting organizations).

Absent statutory authority, a legal release of fiduciary obligations or specific directives, employees may not serve in their official capacities when participating "significantly", (i.e., position imputes the financial interests of the organization to them; they are involved in the internal administration of the organization, etc.) "Significant participation" in one's official capacity in an outside organization may place the agency in the position of directing and administering the affairs and operations of a non-Federal entity while using appropriated funds intended for specific mission (use of salary, time). This may expose the agency and/or the employee, to the same potential liability faced by other

organization members in similar positions for actions taken or decisions made by the outside organization. Unless "significant participation" in an official capacity is required expressly by statute, the agency must then consider whether there is a legitimate agency need to have an employee participate in any form with the organization which would benefit the agency and to what extent...in the accomplishment of its mission.

Lesser forms of participation that can achieve the same goals may include: membership - if the agency interest is simply to educate its employees; agency liaison - where the agency interest is in presenting the agency's perspective; or agency advisor to the board -where the agency provides expert technical advice that it would provide to any similarly-situated member of the public. When considering these options, the agency must be prepared to treat requests for official participation in the same manner for all similarly situated organizations.

Finally, if there is no clear authority for "significant participation" in an official capacity, and the employee and his or her agency still seeks to engage in such participation in an official capacity, he or she may request an individual waiver, under *18 U.S.C. § 208(b)*, permitting the participation. The test for approving a waiver request is that a conflicting financial interest (in this case, "significant participation" in an outside organization) is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Federal Government. USDA has not approved requests for waivers for official service in these roles.

PERSONAL CAPACITY – (Use form USDA OE-101)

In a personal capacity, a Federal employee may serve in a managerial/fiduciary or employment role (officer, director, trustee, general partner or employee) with a non-Federal organization. However, a Federal employee who serves in such a role subjects themselves to potential criminal penalties **should they take official action on matters involving the non-Federal organization**. If you serve as a fiduciary or an employee in a non-Federal organization, then you are considered, for purposes of 18 U.S.C. § 208, to possess the financial interests of the organization. In this light, it should be remembered that USDA may not pay for travel, expenses, official time, supplies, and equipment use that is for conducting the administrative purposes of the organization, as that could convert the participation from personal to official. Service in a personal capacity refers to one's participation in their private capacity...meaning the participation is not derived from your Federal position, title, authority; does not entail official positions or policies of USDA; does not occur on official time; and does not involve the expenditure of appropriated funds. This includes reference/links to official titles and affiliations on the organization's website.

FUNDRAISING for an ORGANIZATION

While a USDA employee who is a member of a non-Federal organization may participate in fundraising on behalf of the organization, there are limits on the extent of such participation. You can fundraise in your personal capacity if you do so in such a fashion that it is totally divorced from your Federal job. Accordingly, you may fundraise on your own time using non-Federal resources provided that you adhere to the following guidelines: the Combined Federal Campaign (CFC) is the only generally authorized fundraising permitted in the Federal workplace. Other than as part of CFC, you may not solicit donations on behalf of a

non-Federal organization inside a Federal workplace (this prohibition also would preclude mailing solicitations to Federal employees at their official addresses, or targeting Federal employees for solicitation). You may not personally solicit funds or donations from either: (1) official subordinates; or (2) persons whom you know to be “prohibited sources” to USDA.

SOLICITATION OF FUNDS FOR AN ORGANIZATION

A scientist cannot solicit funds in his/her official capacity for an organization. This means that use of the scientist’s official title and association with USDA ARS cannot be referenced in a solicitation per 5 CFR 2635.809. Also, if you are serving on an organizing committee for a meeting or workshop in your official capacity, then the fundraising is not permissible. You may not fundraise in a personal capacity if you know the firm/person(s) being solicited is(are) a prohibited source under the definition of 5 CFR 2635.203 (d). It is advised that the scientist not allow their name to be used in a solicitation letter nor their affiliation with USDA ARS.

LOBBYING FOR THE ORGANIZATION

In your *personal capacity*, you may advocate public pressure on the Congress or directly promote policy positions on behalf of non-Federal organizations to the Congress provided that such lobbying is not paid for with appropriated funds (e.g., official travel, time, etc.); and you do not identify yourself as a USDA employee.

REPRESENTATION OF ORGANIZATION TO FEDERAL GOVERNMENT

Since many non-Federal organizations interact closely with the Federal government, members who are Federal employees face a risk of violating criminal prohibitions if they "represent on behalf of a non-Federal organization" before the executive or judicial branches of the Federal government. These rules are two-fold: even in your personal capacity and irrespective of whether or not you are compensated for your efforts, you may not represent the interests of the non-Federal organization before USDA or before any other Federal department or agency, any Federal court, or any officer of same, on any matter of Federal interest (e.g., a grant application, claim against the government, or contract proposal); and you may not accept or seek compensation for providing “behind-the-scenes” assistance to another who is making such a representation. If you participate in your personal capacity in a non-Federal organization, you must avoid taking official action on matters that could predictably affect the financial interests of that organization. You must avoid even the appearance of impartiality or favoritism.

WRITING A BOOK AS AN OUTSIDE ACTIVITY

An ARS scientist can be paid to write a general textbook in their research discipline. Once criteria in [Section 2635.807(a)(2)(i) is cleared, it does not preclude an employee from receiving compensation for writing on a subject within the employees discipline or inherent area of expertise based on his educational background or experience even though the writing deals generally with a subject within the agency’s areas of responsibility. Within the same regulation, reference is made to use of official position... employees who are engaged in writing activities as outside employment should not use his official title or position to

identify him in connection with his writing activity or to promote any book, etc. The exception is:

- An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his writing provided that this title or position is given no more prominence than other significant biographical details.
- An employee may use, or permit the use of his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States.

Typically, with regard to outside activities, it is advised that the scientist list his name as Dr. John Doe, Soil Scientist....

Example : A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.

PARTICIPATION IN OUTSIDE ORGANIZATIONS AND RGEV EVALUATION

Bottom line--there is no validity to the argument that holding managerial/fiduciary positions in outside organizations is essential for promotion under the RGEV.

The Department of Justice has determined that service by a Federal official in his or her official capacity on the board of directors of an outside organization may, under certain circumstances, constitute a conflict of interest under 18 U.S.C. § 208(a). While conflict concerns may arise based on what actions an employee takes while participating in an outside organization, only service in the following positions ("significant participation") in outside organizations automatically raises potential conflict concerns based merely on official participation in a managerial/fiduciary role:

Officer, including but not limited to: President and Vice President; Chief Officers (Executive; Administrative; Operations; Information; Finance); Secretary; Treasurer; Counsel; Director, or member of a board of directors; Trustee; General partner; or Employee.

Official participation by Federal employees in other than "significant" capacities ("non-significant" participation) will not, by itself, result in a statutory violation. For example, 18 U.S.C. § 208 would not prohibit an employee from participating officially in outside

organizations through attendance for training, making an agency presentation, serving as an agency representative on a panel, or providing agency technical expertise to a committee of the organization.

If a non-Federal organization is so closely involved with the Agency that a continuing but distinct presence in an environment free of conflict is warranted, the respective Agency may assign the employee to serve in his or her official capacity in an advisory, liaison or consultative role to the non-Federal organization.

Employees may choose to serve an organization in their personal capacity. However, personal participation means that an employee's participation in the organization is not derived from their Federal position, title or authority; does not entail official positions or policies of USDA; does not occur on official time; and does not involve the expenditure of appropriated funds. An employee who serves in a managerial/fiduciary role with a non-Federal organization in their personal capacity is required to avoid conducting official USDA work on a particular matter in which that non-Federal organization is a party or has an interest (5C.F.R.2635 Subparts D & E). Consider the following when making a decision to serve in a personal capacity...participation in an outside organization may be considered "official" when the employee was invited to participate primarily based on their official position and duties; personal capacity would likely be prohibited.

Questions concerning potential statutory violations should be addressed to your Ethics Advisor.

The fact that the prohibition is based on a Department of Justice ruling basically means there is little point in entertaining debate on the issue. There are, however, some elements of practical reality that are worth mentioning:

1. Leading national professional organizations is only one among a plethora of activities cited as evidence of scientific stature in the Research Grade Evaluation Guide (RGEG), and is clearly not a "make-or-break" grading criterion.
2. A high percentage of ARS researchers are nonsupervisory GS-15's, and even the supervisors got there via the RGEG (not based on their supervisory responsibilities). Obviously they don't all hold managerial/fiduciary positions with outside organizations.
3. RGEG Factor 4 criteria assess a wide variety of possible contributions and activities. A scientist receives maximum Factor 4 credit by virtue of extensive scientific contributions and peer recognition, not by business acumen in running or helping run a society.
4. Serving as an officer in an outside organization has never been a "make-or-break" fact in deciding a panel's decision (UPG vs. RIG). Panels just don't focus on managerial/fiduciary (or even society) roles... or they do so only after assessing Demonstrated Accomplishments and other forms of recognition.
5. There have been instances where panels chided scientists for neglecting their personal research by over involvement in society activity.

POST-EMPLOYMENT RESTRICTIONS

References :

Post-Employment Restrictions

<http://www.usda-ethics.net/rules/rule10.htm>

OGE Summary of Post Employment Restrictions

http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2004/do04023a.pdf

OGE Publication, “ *Understanding the Revolving Door: How Ethics Rules Apply to Your Job Seeking and Post-Government Employment*”

http://www.usoge.gov/training/training_materials/pamphlets/phrevdoor_07.pdf

Background

All separating employees are subject to certain post-employment restrictions. The following is a **brief overview** of restrictions faced by Agency employees.

Definitions

PARTICULAR MATTER (for individuals currently employed by the Government): work related to, or stemming from, the employee's Government job (i.e. any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding).

PARTICULAR MATTER (for purposes of post-employment considerations): work related to, or stemming from, the former employee's Government job (i.e. any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding involving a specific party).

PROCUREMENT-RELATED WORK: the official work of any present or former employee who, by virtue of his/her position, has or had access to contract bid or proposal information or source selection information.

REPRESENTATION: knowingly communicating with, or appearing before, a current employee of the United States, on behalf of another person/organization with the intent to influence the Federal employee's/agency's actions in a specific matter.

SENIOR PERSONNEL: employees paid at or above Executive Schedule Level V.

SUBSTANTIAL PARTICIPATION: personal and significant involvement with a particular matter involving the following processes: decision, approval, disapproval, recommendation, the rendering of advice, investigation, etc. Significant involvement requires more than official responsibility over a particular matter. (For determinations of substantial participation, call your Ethics Advisor.)

Seeking Future Employment Prohibition

Employees may not take official action on a particular matter affecting the financial interests of an organization with which they are seeking or have an arrangement for a job. (Employees should review the [Standards of Ethical Conduct, Section 2635.604, Disqualification While Seeking Employment](#), prior to negotiating prospective employment with any organization dealt with in their official capacity.)

Restrictions *After Leaving the Government*

The following statutory prohibitions prevent Government employees from "switching sides" after leaving the Government.

LIFETIME BAN: prohibits an employee from representing anyone before the Government on a particular matter involving specific parties in which the employee participated personally and substantially while with the Government.

ONE-YEAR BAN: prohibits senior personnel (employees paid at or above Executive Schedule Level V) from making a communication with the intent to influence any office or employee of the Department on a Government matter.

TWO-YEAR BAN: prohibits an employee from representing another person on a particular matter involving specific parties which was pending under the employee's supervision/responsibility for the last year of the employee's Government service.

Procurement Related Restrictions

Separated employees are prohibited from participating on behalf of a contractor in negotiations that they participated in personally and substantially, or personally approved and reviewed for the Government as follows:

IF FEDERAL EMPLOYMENT ENDED:	THEN THE EMPLOYEE IS PROHIBITED FROM CONTRACT PARTICIPATION FOR A PERIOD OF:
before January 1, 1997	2 years
on or after January 1, 1997, and the contract is in excess of \$10,000,000	1 year

Penalties

A former employee who violates the post-employment restrictions is subject to the following penalties.

NUMBER	PENALTY
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1	Imprisonment not to exceed 5 years/or a fine not to exceed \$50,000 for each violation, or the amount the person received for the prohibited conduct, whichever is greater.
2	Injunction prohibiting a former employee from engaging in conduct that violates the post-employment restrictions.

THIS INFORMATION SERVES AS A GUIDE ONLY.

For informal assistance in interpreting and applying [post-employment restrictions](#), call your individual Agency/Area Ethics Advisor or the Science Ethics Branch. For information regarding procurement-related restrictions, see the [Federal Acquisition Regulation, Part 3 - Improper Business Practices and Personal Conflicts of Interest](#).

BEFORE LEAVING GOVERNMENT

IN GENERAL, AN EXECUTIVE BRANCH EMPLOYEE IS FREE TO SEEK POST-GOVERNMENT EMPLOYMENT, BUT THE EMPLOYEE MAY NEED TO BE DISQUALIFIED FROM WORKING ON SOME GOVERNMENT MATTERS WHILE DOING SO.

Disqualification While “Seeking Employment”

A criminal conflict of interest statute, [18 U.S.C. § 208](#), prohibits an employee from participating personally and substantially, in an official capacity, in any “particular matter” that would have a direct and predictable effect on the employee’s financial interests or on the financial interests of a person or organization with whom the employee is negotiating or has an arrangement concerning prospective employment. A related executive branch-wide regulation, Subpart F of [5 C.F.R. part 2635](#), prohibits an employee from working on a particular matter if the employee is “seeking employment” with a person or organization affected by that matter, even though the employee’s job search has not progressed to actual negotiations. An employee who complies with the disqualification requirements in Subpart F will ensure compliance with the conflict of interest statute.

An employee is “seeking employment” as defined in Subpart F, and the disqualification (“recusal”) requirement applies, if:

- the employee is engaged in actual negotiations for employment;
- a prospective employer has contacted the employee about possible employment and the employee makes a response other than rejection; or
- the employee has contacted a prospective employer about possible employment, unless the sole purpose of the contact is to request a job application. (An employee is seeking employment with any person to whom he sends an unsolicited resume, regardless of how many resumes the employee sends to other employers at the same time.)

If a search firm or other intermediary is involved, disqualification is not triggered unless the intermediary identifies the prospective employer to the employee.

If the disqualification requirement applies, it extends to any particular matter (virtually any Government matter) that would have a direct and predictable effect on the financial interests of the prospective employer. However, if an employee has thus far acted only unilaterally, a narrow exception permits the employee to work on particular matters that affect the prospective employer only “as part of an industry or other discrete class.” Under the exception, work on this category of matters is permissible until the employee receives an expression of interest from the employer.

An employee is no longer seeking employment if:

- Two months have elapsed since the employee’s dispatch of an unsolicited resume and the employee has received no expression of interest from the prospective employer; or
- Either the employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have ended. A response that merely defers discussion until the foreseeable future does not constitute rejection.

Example: Ted has met with representatives of several companies while working on a rulemaking that will affect the financial interests of those companies. One of the representatives asks Ted if he would be interested in discussing a job opening. If Ted responds that he “would like to discuss the opening, but not until the rulemaking is final,” he has not rejected the possibility of employment.

Notification and Documentation of Disqualification

When an employee becomes aware of the need to be disqualified from a particular matter, the employee should notify the person responsible for his or her assignments, and may choose to document the disqualification in writing. Notification permits a supervisor to minimize any disruption of the agency’s mission by arranging assignments accordingly. Moreover, as a practical matter, an employee may need to explain the lack of progress on an assignment.

Any employee who is a public financial disclosure report filer *must* file a signed notification statement with his or her agency ethics official within three business days after commencing negotiations or entering into an agreement with a non-Federal entity to accept post-Government employment or compensation. The statement must identify the entity and specify the date the negotiations or agreement commenced. A public filer must also document his or her disqualification from any particular matter that would have a direct and predictable effect on the financial interests of the entity and submit that signed disqualification document to his or her agency ethics official. The notification statement and written disqualification may be combined in a single submission.

Some agencies may have established additional requirements concerning notification or the documentation of disqualifications (and see below concerning additional requirements for some procurement officials).

Interview Expenses

If disqualified as necessary in accordance with Subpart F, an employee may accept gifts of meals, lodging, transportation, and other benefits customarily provided by a prospective employer in connection with bona fide employment discussions. This gift provision is published at [5 C.F.R. § 2635.204\(e\)\(3\)](#).

Possible Disqualification After Employment Search

If an employee accepts an offer of post-Government employment, the period of disqualification must continue until the end of Government service. If an employee's search for other employment proves unsuccessful, the disqualification requirement ends, unless the agency imposes an additional period of disqualification.

Additional Requirements for Some Procurement Officials

If an employee is working "personally and substantially" on a procurement for a contract worth more than the simplified acquisition threshold, 41 U.S.C. § 2103 (formerly 41 U.S.C. § 423) requires that the employee provide written notice of a contact with an offeror about prospective employment, even if the employee or contractor immediately rejects the possibility of employment. This "procurement integrity" provision also requires the employee to file a written disqualification memorandum if the employee commences to seek employment. Guidance concerning the particular requirements of this provision is published in the Federal Acquisition Regulation (FAR), at 48 C.F.R. part 3.

AFTER LEAVING GOVERNMENT

An executive branch employee may be affected by conflict of interest restrictions after leaving Government service (or after leaving certain high-level positions). As highlighted in the bullet points below, there are several legal authorities that address post-Government employment, and certain authorities contain more than one restriction. A particular former employee can be affected by more than one post-Government restriction.

Caveat: The bullet points are not comprehensive. Ethics officials and others should consult the legal authorities, regulatory guidance, and relevant legal opinions. In general, former executive branch employees should seek advice from the Designated Agency Ethics Official or another ethics official at the agency in which the individual formerly served.

Restrictions on Contacts with the Government on Behalf of Others

- A former employee may be prohibited from having contact with an employee of any Federal agency or court, on behalf of another person or entity, concerning an official matter with which the former employee was involved as a Government employee. [18 U.S.C. § 207](#).
- A former high-level employee or former political appointee may be prohibited from having contact with an employee of his or her former Federal agency (and perhaps certain officials at other agencies), on behalf of another person or entity, concerning any official matter. [18 U.S.C. § 207](#); [Executive Order 13490 \(the Ethics Pledge\)](#).

- A former political appointee may be prohibited from lobbying a Government official on behalf of a client for whom he is registered as a lobbyist. [Executive Order 13490 \(the Ethics Pledge\)](#).

Restrictions on Providing Assistance to Others

- A former employee may be prohibited from providing certain assistance to another person or entity concerning an ongoing trade or treaty negotiation (even though the assistance does not involve contact with a Government employee). [18 U.S.C. § 207](#).
- A former high-level employee may be prohibited from providing certain assistance to a foreign government or foreign political party (even though the assistance does not involve contact with a Government employee). [18 U.S.C. § 207](#).

Restrictions on Accepting Compensation or Employment

- A former employee may be prohibited from sharing in profits earned by others if the money was earned from having contact with the Government on behalf of third parties (e.g., clients) while the former employee was still in Government. [18 U.S.C. § 203](#).
- A former employee may be prohibited from accepting compensation from a contractor if the former employee served in a Government position or made a Government decision involving more than \$10,000,000 given to that contractor. 41 U.S.C. § 2104 (formerly 41 U.S.C. § 423).
- A retired member of the uniformed services may not accept employment (or compensation for that employment) from a foreign government unless he or she first obtains approval from the Department of State. The Emoluments Clause of the U.S. Constitution.

Other Restrictions

A former executive branch employee may be subject to additional restrictions imposed by agency-specific laws. Also, every former employee must ensure that his or her post-Government activities are in compliance with other requirements that may apply without regard to the individual's employment by the Government. For example, if a former employee will serve as the agent of a foreign principal, the individual must comply with the Foreign Agents Registration Act.

TEACHING, SPEAKING & WRITING

Policy

Generally, employees may not receive compensation from any source other than the Federal Government for a teaching, speaking or writing activity that relates to the employee's official duties.

Definition

Teaching, speaking or writing activities relate to official duties if any of the following apply:

- The activity is undertaken as part of the employee's official duties;
- The invitation to engage in the activity was extended to the employee primarily because of an official position rather than expertise in a particular subject matter;
- The invitation to engage in the activity, with or without compensation, was extended, directly or indirectly, by a person who has interests that may be affected substantially by the performance or nonperformance of the employee's official duties;
- The information conveyed through the activity addresses ideas or official data that are non-public information;

The subject of the activity deals in significant part with:

- Any matter to which the employee presently is assigned or to which the employee has been assigned during the previous one-year period;
- Any ongoing or announced policy, program or operation of the agency; or
- In the case of a non-career employee (as defined in 5 CFR 2636.303(a)), the general subject matter, area, industry, or economic sector primarily affected by the programs and operation of his/her agency.

Exceptions for Teaching Certain Courses

With agency approval, an employee may accept compensation for teaching a course requiring multiple presentations by the employee if the course is offered as part of the regularly established curriculum of:

- An institution of higher education as defined at 20 U.S.C. 1001(a);
- An elementary school;
- A secondary school; or
- A program of education or training sponsored and funded by the Federal Government or by a state or local government which is not offered by an entity described above.

Acceptance of Travel Expenses

Although employees **may not** accept compensation in connection with a teaching, speaking or writing activity that relates to their official duties, they may in such cases accept travel expenses paid for by a non-Federal source if they are **not** "covered non-career employees." This provision is a direct result of a recent District Court decision on the Sanjour case.

Reference to Official Position

An employee may not use or permit the use of their official title or position to identify themselves in connection with the teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking. However, an employee may:

- § Include title or position as one of several biographical details when such information is given to identify them in connection with teaching, speaking or writing, provided that the title or position is given no more prominence than other significant biographical details;
- § Use title or position in connection with an article published in a scientific or professional journal, provided the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the Agency or the United States;
- § If ordinarily addressed using a general term of address, such as “The Honorable,” or a rank, such as a military or ambassador rank, the employee may use that term of address or rank in connection with teaching, speaking or writing.

Important Note

Due to the complexity of this subject matter, this section only provides general policy information on the rules governing teaching, speaking and writing activities. If you have a complex issue, you are strongly encouraged to seek the assistance of your Agency or Area Ethics Advisor, or refer to the regulations and examples governing teaching, speaking and writing activities at [5 C.F.R. 2635.807](#).

Before a request can be approved, a determination must be made that the above criteria were met. Employees who are required to submit financial disclosure reports must seek prior approval by submission of form USDA OE-101, Request for Approval of Outside Activity. Employees can expedite their requests by including the following statements or attached information:

- state that the course involves multiple presentations;
- include a page from the catalog showing the course you wish to teach;
- indicate the location of where you will be teaching, e.g., university classroom; and
- indicate the hours the course will be taught, e.g., evenings or weekends.

As with any outside activity, other Government-wide Standards apply. For example, an employee conducting an outside activity generally must do so after hours or take leave. There are restrictions on the use of USDA title and affiliation by an employee conducting an outside activity. An employee must be disqualified from any official dealings with the entity that the employee has an outside activity with and may also be subject to cooling-off periods after the end of the activity before official dealings can resume.

TESTIMONY AND CONSULTING

Non-Federal parties often seek Federal scientists and other experts to provide expert testimony (opinion testimony; not factual testimony) and consulting services for [compensation](#). Underlying these offers often are two factors: (1) the Federal scientist either currently is engaged officially in performing the relevant scientific work or research, or was so engaged in the recent past; and (2) the scientific work or research for which the scientist's expertise is being sought also involves the Federal Government. Initial issues that

must be addressed are whether the Federal scientist may testify/consult at all and, if so, whether such testimony/consultation will be in the scientist's [official capacity](#).

- **Agency Administrative Clearance Procedures for Testimony.** If the Federal employee's testimony (whether factual or expert) or appearance on behalf of a non-Federal party involves or relates to the employee's performance of official duties or is related to the employee's official duties at USDA, or seeks Agency documents, the non-Federal party seeking the employee's testimony or appearance must request Agency approval under 7 CFR part 1, subpart K. No USDA employee may provide testimony or produce documents in a judicial or administrative proceeding unless authorized under this regulation.
- **Ethics Implications for Testimony in One's Official Capacity.** Where a non-Federal entity is offering to compensate an Agency scientist for providing testimony that relates to the scientist's official duties, the scientist could violate the dual compensation prohibition under [18 U.S.C. § 209](#). In order to be able to address this issue before the activity has occurred, Agency managers should presume that all testimony to be provided by Agency scientists that relates to their official duties constitutes official duties. With regard to testimony (fact or expert), Agencies should follow the procedures set forth in 7 CFR part 1, subpart K. See above. If the Agency determines that testimony does not relate to the scientist's official duties, such services should be treated as [outside employment](#). Irrespective of whether the testimony is provided for compensation, under [5 CFR § 8301.102\(b\)\(1\)](#), the Agency scientist must seek prior approval to engage in the activity. Upon receiving the scientist's request to participate in such activities, the Agency manager can then determine whether (1) the activity, if done at all, should be done in official capacity; and, if not part of the scientist's official duties, then (2) whether the activity should be approved as outside employment.

Expert Testimony

Normally, when a non-Federal entity seeks to employ an Agency scientist or expert to provide expert testimony, it is either in connection with litigation between two non-Federal parties: (1) concerning research, work, or area of expertise in which a Federal agency was engaged (e.g., a patent dispute involving an agricultural product); or (2) in which the United States is a named party. In either case, the United States usually has an interest in either the litigation or the information that a party seeks through the expert testimony of a USDA scientist or expert. In any case, in addition to 7 CFR 1.216, the following ethical rules must be considered when such a request is made.

Under [5 CFR § 2635.805\(a\)](#), the general rule is that a Federal employee shall not, other than on behalf of the United States, serve as an expert witness, irrespective of compensation, in any proceeding before any court or agency of the United States in which the United States is a party or has a direct and substantial interest.

Non-Federal parties also seek USDA scientists to provide behind-the-scenes scientific expertise in their personal capacity. Often, the non-Federal entity seeks the expertise of Dr. A, who was head of a research project, to counter unfavorable results achieved by Dr. B,

who is now in charge of that research. Sometimes this will lead to Dr. A also serving as an expert witness (see above). In either case, this activity implicates a number of ethics rules.

Note: Subpoena requests will remain in the Labor and Employee Relations Branch.

ACCEPTANCE OF TRAVEL FOR OFFICIAL DUTY ACTIVITIES WITH OUTSIDE ORGANIZATIONS UNDER TITLE 31 U.S.C. §1353

AUTHORITY

The authority (*31 U.S.C. 1353 and 5 U.S.C. 5707*) to accept travel expenses from non-Federal sources permits Federal agencies to accept the gift of financial support for travel of its employees to attend meetings or similar functions that employees have been authorized to attend in an official capacity, provided the value to the agency offsets any possible appearance problem that may attach to the acceptance. The approving official must be able to justify the need for participation in an event and the benefit gained by the agency. The agency official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event. ***Employees may not directly accept reimbursement.***

Acceptance of travel funds under this authority should not be utilized in connection with an event required to carry out an agency's statutory and regulatory functions. This is intended to minimize the perception that programs and services mandated as part of an agency's mission would be made available only to those who could afford to pay. The term "statutory or regulatory functions" is intended to encompass a broader variety of essential functions than those specific only to an agency with regulatory responsibilities. While the purpose of the trip must be related to the official duties of the employee, the trip must not be for the purpose of performing one's line responsibilities. [**NOTE:** A cooperative agreement should be executed in accordance with Agency policy to substantiate repetitive travel or travel of more than 3 weeks in duration.]

Under this authority, you may accept payment of travel expenses from a non-Federal source **on behalf of your agency**, but **not on behalf of yourself**, when specifically authorized to do so by your agency and only for official travel to a meeting or similar function. Your agency must authorize acceptance of such payments in advance of your travel. Employees may not solicit payment for travel expenses but may inform the non-Federal source of the agency's authority to accept payment for travel expenses.

In order to accept travel funds under this authority, the event must meet the definition of a "meeting or similar function." ***Meeting or similar function*** means a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station. **"Meeting or similar function" does not include** a meeting or other event required to carry out an agency's statutory or regulatory functions (i.e., a function that is essential to an agency's mission) such as investigations, inspections, audits, site visits, collection of research data, negotiations or litigation. **"Meeting" also does not include** promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal sources products or services, or long term TDY or training travel. **Also excludes** travel for which specific provisions are made within cooperative agreements

and temporary duty assignments such as details, fellowships and Intergovernmental Personnel Act (IPA) agreements.

A meeting or similar function includes but is not limited to the following:

- An event where the employee will participate as a speaker or panel participant focusing on his/her official duties or on the policies, programs or operations of the agency;
- A conference, convention, seminar, symposium or similar event where the primary purpose is to receive training other than promotional vendor training, or to present or exchange substantive information of mutual interest to a number of parties;
- An event where the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulations.

Non-Federal source means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, international or multinational organization, or foreign, State or local government.

Payment means a monetary payment from a non-Federal source to a Federal agency for travel, subsistence, related expenses by check or other monetary instrument payable to the Federal agency or payment in-kind.

Payment in kind means transportation, food, lodging or other travel-related services provided by a non-Federal source instead of monetary payments to the Federal agency for these services. Payment in kind also includes waiver of any fees that a non-Federal source normally collects from meeting attendees (e.g., registration fees).

Travel, subsistence, and related expenses means the same types of expenses payable under the Joint Travel Regulations (JTR) and Foreign Affairs Manual (FAM).

Your request should support how your participation relates to the mission of USDA. You must provide additional information if any of the following apply:

- The sponsoring organization is using Federal funds to defray the costs of this trip (i.e., Federal grant or contract funds);
- You serve as an officer, director, trustee, partner or an employee of the sponsoring organization;
- The sponsor is offering to pay amounts which are in excess of those ordinarily allowed by applicable Federal Travel Regulations;
- This request for acceptance of payment includes travel expenses of a spouse.

PENALTIES

Employees must never directly accept reimbursement (cash, check, etc.) there are no exceptions. If an employee accepts payment from a non-Federal source in violation of these regulations, the employee may be required, in addition to any other penalty provided by law and applicable regulation, to pay the general fund of the Treasury, an amount equal to any payment accepted. If you violate these regulations, you may not be entitled to any reimbursement from the Government for your travel expenses that the payment was intended to cover. Employees may also be subject to appropriate disciplinary action.

PROCEDURE FOR APPROVAL

Prior approval must be sought no less than 30 days before domestic travel and 60 days in advance of international travel. No exceptions will be made to these required timelines.

In order to accept funds under this authority, the event must meet the definition of “meeting or similar function” (see above). When seeking approval for acceptance of travel in-kind, the employee must discuss the nature of the event with their supervisor who is responsible for determining whether such participation is in the interest of USDA and of mutual benefit. The supervisor and employee should also consider whether acceptance of travel funds would cause a reasonable person with knowledge of all facts relevant to a particular case to question the integrity of agency programs or operations if payment is accepted. Once approval is granted by the supervisor, the employee should complete and submit the following documentation:

1. Obtain a copy of the written invitation.
2. **Complete form AD-1101-SEB**, Approval and Report of Travel Funds Received from Non Federal Sources; sign/date as Traveler, obtain supervisor’s signature as Approving Official. The AD-1101-SEB can be found at: <http://www.usda-ethics.net/science/forms/index.htm>
3. Prepare a draft acceptance letter (see example on the last page). This letter should not be signed or dated until after all appropriate approvals/reviews have been completed.
4. Submit a copy of the **written invitation, AD-1101-SEB** and **draft letter of acceptance** to your appropriate ethics official for review. Handwritten signatures must appear on the AD-1101-SEB. At this time, electronic and/or digital signatures cannot be accepted.
5. Once the conflict of interest review has been completed by an agency ethics official, the travel request will be returned to the traveler.

ACCEPTANCE OF ADDITIONAL IN-KIND EXPENSES

An offer to pay additional travel expenses while in travel status may occasionally occur; guidance should be sought from your Agency/Area Ethics advisor. Prior approval for acceptance of travel expenses in kind is standard policy for USDA agencies.

If your agency has already authorized acceptance of payment for some of your travel expenses for a meeting or similar function from a non-Federal source, then you may accept on behalf of your agency, payment for any of your additional travel expenses from the same non-Federal source as long as:

- The expenses paid or provided are comparable in value to those offered to or purchased by other similarly situated meeting attendees; and
- Your agency did not decline to accept payment for those particular expenses in advance of your travel.

If your agency did not authorize acceptance of any payment from a non-Federal source prior to your travel, then:

- You may accept, on behalf of your agency only the types of travel expenses that are authorized by your travel authorization (i.e., meals, lodging, transportation, but not recreation or other personal expenses); and

Only travel expenses that are within the maximum allowances stated on your travel authorization (e.g., if your travel authorization states that you are authorized to incur lodging expenses up to \$100 per night, you may not accept

IMPORTANT: You must then request your agency's authorization for acceptance from the non-Federal source within 7 working days after your trip ends and if your agency does not authorize acceptance from the non-Federal source, your agency must either:

- Reimburse the non-Federal source for the reasonable approximation of the market value of the benefit provided, not to exceed the maximum allowance stated on your travel authorization; or
- Require you to reimburse the non-Federal source that amount and allow you to claim that amount on your travel claim for the trip.

If you accept payment from a non-Federal source for travel expenses in violation of these regulations, you will be subject to the penalties mentioned above.

NOTE: The criminal conflict of interest statute, 18 U.S.C. § 208, Acts affecting a personal financial interest, requires that an employee refrain from participating personally and substantially in an official capacity in any particular matter that will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee, or employee. If you serve as an officer or employee of an organization the interests of that organization are likely assigned to you and thus prohibit you from taking any official action that would impact the interests of that same organization.

For purposes deemed official matters to which 18 U.S.C. § 208(a) would apply, such actions may include: (1) requesting that official travel funds be spent; accepting travel funds in kind or approving other Government resources be utilized for conducting or participating in the affairs of the organization; (2) signing a training or travel authorization to use appropriated

funds to pay for yourself or a subordinate to attend a conference or other meeting of the organization; (3) speaking as an official duty activity, or directing a subordinate to speak, at any conference or other meeting of the organization where attendance fees are charged. While the financial impact may be insignificant, under well settled precedent, Section 208(a) has no *de minimis* aspect.

RECORDS MAINTENANCE

Each Area is responsible for maintaining form SF-326, Semiannual Expense Report for Non-Federally Funded Travel. Reporting periods of travel cover October 1 – March 31 (report due May 31) and April 1 - September 30 (report due November 30). These reports are submitted to the USDA Office of Ethics, Science Ethics Branch (SEB) semiannually. The SEB will submit these reports to the Office of Government Ethics (OGE) for review. This information is available to the public and it is each agency's responsibility to file accurate and complete reports and to conduct a conflict of interest analysis. Each Area is responsible for maintaining statements, forms (AD-1101-SEB), and other records used to seek prior approval for acceptance of travel funds for one year after the SF-326 has been submitted to OGE.

USDA OFFICE OF ETHICS – SCIENCE ETHICS BRANCH

APPROVAL AND REPORT OF TRAVEL FUNDS RECEIVED FROM NON-FEDERAL SOURCES

This form must be completed in its entirety or it will be returned. 31 U.S.C.1353, subsequently printed in Chapter 304, Part 1, of the Federal Travel Regulations, governs the acceptance of payment for travel, subsistence, and related expenses from a non-Federal source, but not from a prohibited source, in connection with the attendance of an employee and/or accompanying spouse when applicable, at certain meetings and similar functions. Agencies are also required to submit semiannual reports of payments which total more than **\$250** per event, and which have been accepted under this authority. The report is based on when payment is received rather than when travel is performed. All offices must maintain form SF-326 and submit these forms to the USDA Office of Ethics for the periods of October 1 through March 31 (due May 15th) and April 1 through September 30 (due November 15th). Offices must maintain records for six years. **All requests should include: 1) letter of invitation; 2) conflict of interest analysis and 3) draft letter of acceptance.**

EMPLOYEE

Name: E-mail:	Position Title:	Agency/Duty Station/Location:
Telephone #:	Beginning Date of Travel:	Ending Date of Travel:

SPOUSE (If applicable)

Name:	Reason for Spouse's Travel:
Beginning Date of Travel:	Ending Date of Travel:

EVENT INFORMATION

<input type="checkbox"/> Meeting <input type="checkbox"/> Speaking Engagement <input type="checkbox"/> Conference <input type="checkbox"/> Seminar			
Location of Event (City/State & Country):	Title of Event: Date(s) of Event:		
Name of Event Sponsor:	Sponsor's Address:		

ACCEPTANCE INFORMATION

What expenses are being paid for by the non-Federal source? <input type="checkbox"/> Common Carrier <input type="checkbox"/> Lodging <input type="checkbox"/> Meals <input type="checkbox"/> Other (Itemize)	
Value (in U.S. Dollars) received from non-Federal source: <input type="checkbox"/> In-Kind \$ _____ <input type="checkbox"/> Other (Explain) \$ _____	<input type="checkbox"/> Paid to Agency \$ _____

Non-Federal Source Assisting with Travel (include address):

CERTIFICATION (Original signatures are required)

I certify that the information provided on this form and all attached documents are true, complete, correct, and comply with the guidelines of 41 CFR Part 304-1, Federal Travel Regulations, Acceptance of Payment From a Non-Federal Source, for travel expenses, to the best of my knowledge.

Traveler's Signature _____ Date _____

I certify that I approved acceptance of the above travel, subsistence and related expenses from the non-Federal source in advance of the proposed travel being accomplished by the employee and after having reviewed the conflict of interest analysis on the reverse of this sheet.

Approving Official's Signature _____ Date _____

Traveler's Name: _____

CONFLICT OF INTEREST ANALYSIS UNDER 41 C.F.R. § 304-1.5

ACCEPTANCE OF PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES requires in all cases that a conflict of interest analysis be performed by an authorized agency official. The "authorized official" is a designated Agency Ethics Advisor. To ease administration of the requirement for a conflict of interest analysis, this outline tracks the elements of the regulation. The analysis should be accomplished on this page. **A letter of acceptance may not be signed/dated until the conflict of interest analysis is complete.**

IMPORTANT: Payment from a non-Federal source will not be accepted if the authorized agency official determines that acceptance under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations.

PART I: TO BE COMPLETED BY THE TRAVELER

THE TRAVELER MUST PROVIDE INFORMATION FOR ITEMS #1-6 and Analysis/explanation section. Additional sheets may be attached, if needed. In making this determination, an authorized agency ethics official shall be guided by all relevant considerations, including, but not limited to:

- (1) The identity of the non-Federal source:
- (2) The purpose of the meeting or similar function:
- (3) The identity of other expected participants:
- (4) The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source:
- (5) The significance of the employee's role in any such matter specified in (4) above:
- (6) The monetary value and character of the travel benefits offered by the non-Federal source:

Analysis: Would acceptance of the travel cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations? **Yes** **No**

Explain your response to the above question:

PART 2: TO BE COMPLETED BY THE AGENCY ETHICS OFFICIAL

NOTE: The authorized agency ethics official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.

The qualifications on acceptance, if any, are:

Recommendation of Agency Ethics Official: **Accept** **Do Not Accept**

Signature/Date: _____

SAMPLE LETTER OF ACCEPTANCE

*(To be prepared on Agency letterhead with the signature block of the traveler's supervisor. **Note:** This letter may not be signed or dated and sent to the sponsor of travel until the Conflict of Analysis has been completed by an Agency Ethics Official.)*

Dr. I. M. Smith
Chairman, Organizing Committee
CNMPS/ENA
Williamsport, Pennsylvania 17707

Dear Dr. Smith:

I am pleased to learn the work of Dr. Jones has been found to be of a level of significance and quality to warrant your invitation to *present (must specify reason for attendance)* at the 5th National Symposium on Plant Soil Interactions at Low pH to be held in South Williamsport, Pennsylvania, August 21 - 23, 2011.

I understand that your organization has had significant findings in the pH balance levels required for a variety of plant growth which would complement our recent Agency studies in soil and plant sciences. I'm confident that you will find Dr. Jones' research in pH balance quite beneficial to your ongoing work. In view of the mutual benefits to be gained from this meeting, *(Agency)* accepts your invitation on behalf of Dr. Jones.

Thank you for your offer to finance the registration fee, hotel costs, round trip travel, and per diem for Dr. Jones' participation. *(Agency)* will finance Dr. Jones' salary while participating in the symposium. Please understand that as a Federal employee Dr. Jones must adhere to certain administrative procedures related to the travel arrangements and attendance at the symposium. I would like to communicate several of those procedures as follows:

- Since Dr. Jones will participate in the activity as a Federal employee, no honoraria may be accepted. Dr. Jones may not accept any form of direct payment (cash or check) to defray the cost of travel and trip expenses.
- You may provide "in kind" assistance, whereby you furnish airline tickets or pay vendors directly for lodging, meals, local transportation, etc.
- If "in-kind" assistance cannot be provided, Dr. XXX will travel on *(Agency)* funds and upon completion of his/her travel; *(Agency)* will submit receipts for travel expenses incurred directly to your organization for reimbursement. Should you have any questions regarding these arrangements, please contact XXX – *(provide administrative contact at your location)*.

Please contact (Name, title, and address), on (telephone number) for questions pertaining to financing arrangements.

Sincerely,

Approving Official's

Below are two scenarios relating to the acceptance of outside funds. The first deals with employees serving as officers and acceptance of in-kind funds. I provided the following scenario:

SENARIO 1

An ARS scientist serves as the President of the Entomological Society of America (ESA) as an outside activity. The ESA is holding an annual conference and would like the ARS scientist to speak at the conference in his official capacity. The Vice-President of the ESA sends a letter to the ARS scientist extending an invitation to him to speak on behalf of ARS and offers to pay travel in-kind. The ARS scientist's name is also included on the ESA letterhead as President.

For purposes of 18 USC § 208, the financial interests of the ESA are imputed to this ARS scientist who serves as an officer, prohibiting him from participating "personally and substantially" in an official capacity in any "particular matter" in which he, or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. An Agency should not accept travel funds in-kind for an employee's travel if that employee serves as an officer in the sponsoring organization.

With regard to the term "negotiations", which are excluded under this authority...basically a negotiation is a discussion intended to produce an agreement; interested parties agree upon courses of action or craft outcomes which serve mutual interests. If an outside entity extends an invitation to an employee to visit their company to discuss possible future collaboration, i.e. agreements; acceptance of travel funds under this authority is not appropriate.

Payment from any non-Federal source shall not be accepted if a determination is made that acceptance would cause the public, with knowledge of all the facts, to question the integrity of USDA programs or operations.

SENARIO 2

You have an SCA through USDA and a foreign university. The university is offering funds for you to work with a graduate student in conducting research that is directly related to your CRIS. They will cover all travel costs and expenses while there but will not be paying either directly to you. Can you accept the funds?

Unless you are going to the foreign country for the following; ***a conference, seminar, speaking engagement, symposium, training course, or similar off site even***, you cannot acceptance their offer to pay for your travel, it would have to come from your unit. Exclusions include ***meetings or events required to carry out an agency's statutory or regulatory functions, such as: investigations, inspections, audits, site visits, negotiations, or litigation.***

Since you are going to conduct research with a graduate student, this would not fall under the conference/seminar definition. There is one option which is a Reimbursable Agreement but a lot of information would need to be gathered to determine whether that would be

viable. You would have to initiate the Reimbursable agreement, go through the Area Budget office and then send to the Science Ethics Branch (they handle all foreign travel). You would take the trip and then we would bill the foreign university through the Reimbursable agreement. This type of agreement is not highly recommended because of the time involved in preparing one but it is an option.

Miscellaneous Questions & Answers

Question: If a SEB 101 is submitted and a scientist is approved to participate in an organization in their personal capacity, can they accept funding for official travel offered by the association to the agency? ***No, where a scientist serves as an officer and has the interests of that association imputed to them under 18 USC 208, he or she has a financial interest in that association. The scientist who serves in this role could be subject to conflicts/penalties should they take official action on any particular matter affecting or involving the association. OGE has ruled that requesting approval of acceptance of travel funds for official travel offered by the association to the Agency under 31 USC 1353 is a particular matter, they should not do this. A scientist who is serving in their personal capacity as an officer can instead accept travel funds directly from the association for travel...if an activity is an outside activity, it should have no affiliation with official duties.***

Question: I am a member of an organization and am serving on the organizing committee for a workshop. My committee is organizing the local hosting, registration, the financial side of things, and will also organize the fundraising. Our committee is sending out letters requesting sponsorship for the event. My name and ARS affiliation are listed on the sponsorship letter, is this OK? ***No, the scientist cannot solicit the funds in his/her official capacity. This means that use of the scientist's official title and association with USDA ARS cannot be referenced in the solicitation per 5 CFR 2635.809. Also, if the scientist serving on the organizing committee in his/her official capacity, then the fundraising is not permissible. Even if the scientist is serving in his/her personal capacity, there would be a concern that some of the organizations being solicited are prohibited sources for the USDA as they may be regulated by or seek to do business with the USDA (not limited to just ARS). The scientist may not do fundraising in a personal capacity if the employee knows the firm/person(s) being solicited is (are) a prohibited source under the definition of 5 CFR 2635.203 (d). It is advised the scientist to not allow his/her name to be used in the letter, and definitely not allow use of his/her name and affiliation with USDA ARS.***

Question: My research unit is co-located within a University. The University is hosting an International Symposium that aligns with our research mission and has asked us to be a co-host. Letters are going out to solicit sponsorships for the symposium and the University is listing USDA-ARS as a co-host, is there a problem with this? ***Yes, no reference can be made in this letter to ARS; this letter should come from the University only.***

Question: Can I serve in my personal capacity as Treasurer of a society? (The answer would also apply to any office held in a society or organization, i.e. President, Board member, etc.) ***Yes, however he/she needs to understand that they will hold the interests of this organization under 18 USC 208 and to take any official action that might impact those interests implicates a violation of this criminal statute.***

Question: Can I serve in my official capacity as an officer of a society or organization? **No, Employees may not serve in their official capacities as officers, directors, trustees, (i.e., as "fiduciaries") with a non-Federal entity unless the employee receives an individual waiver under 18 U.S.C. 208 (the Agency must be able to articulate a need for USDA to be managing a non-Federal entity that overrides any ethics or legal concerns) or the employee participates in an official liaison capacity with the governing board of the association.**

Question: Can I attend a meeting in my official capacity when I am an officer of the same organization in my personal capacity? **When an employee serves as a fiduciary or employee of a society, they may still attend a conference held by the society in order to obtain professional training in their official capacity. If the employee performs no other duties other than to attend the conference, there is no conflict of interest.**

Question: What if the organization is holding a business meeting along with the conference? **When a society schedules a conference in connection with an internal business or administrative meeting of the society, an Agency may still permit an employee, who is approved to attend the conference for training on official travel and who is also a member of the society in a personal capacity, to also participate in some administrative functions of the society. The Agency, in permitting such participation, should consider such factors as the type of function and the amount of time to be spent on society administrative functions. While USDA may pay for the travel costs for the performance of the employee's official attendance at the conference, attendance and participation in such adjunct meetings must be done on personal or administrative leave; and at no additional cost to USDA. Also, the Agency, as it is providing funding to accomplish the official travel to the conference, may place reasonable restrictions upon what association administrative functions the employee may perform. For instance, the employee could participate in: the successful organization and management of the meeting or conference (e.g., picking up a guest speaker at the airport; helping at the registration desk; copying materials for general distribution); or the planning of future meetings or conferences to which the agency is likely to send employees.**

Not permissible functions would include fundraising, representing and lobbying efforts before the Federal Government, and, at the option of the Agency, working on position papers or organization policy statements that relate to USDA policies, or that concern matters pending before or involving USDA. (The latter restriction could be placed on the employee as a condition for approval of travel costs and official time to attend, rather than through ethics laws and regulations).

Question: Am I required to fill out an SEB 106 for activities as part of my official duties? What about an SEB 101 for activities in a personal capacity? **Although not required, MSA has asked that everyone fill out an SEB 106 and/or an SEB 101 for our records. It should be approved by your supervisor and forwarded to the Area Office. If you are an OGE-450 filer, you are required to fill out an USDA OE-101 or an SEB-106 for outside activities and after approval will be forwarded to the Science Ethics Branch.**

Question: Can I use my official title if I am engaged in teaching, speaking or writing in a personal capacity? **With regard to section 807(b)(1), an employee teaching, speaking, or writing in his personal capacity may include his official position and title only as**

one of several pertinent biographical details. With regard to publishing in a personal capacity in a scientific and professional journal, any reference to the employee's position or title must also be accompanied by a disclaimer that the views expressed do not necessarily reflect those of the agency or the United States. Recognizing that an employee may not have the final word as to what is ultimately published in either journals or the more popular press, it is essential to evaluate the totality of the circumstances in view of the overarching purposes of section 702(b).

Question: Can I write a Letter of Recommendation for a Grant proposal? *This is what you can and cannot do:*

- You can write a letter of support for a Grant applicant in support of a grant application in your personal capacity – you cannot use ARS Letterhead*
- You can describe how it would benefit research and should be written in a non-personal manner: Do not use words like, "I recommend..." ; "I feel this would be a good project....", etc. You should state the facts. If the scientist writing the letter has collaborated with the person(s) applying for the grant in the past he/she could discuss the success of previous collaboration. In addition, the letter of support could discuss the proposed project in terms of its significance and impact it would have on furthering the mission of the Agency.*
- Support Letters should be approved through Ethics before being sent out.*

Question: Can I write a Letter of Recommendation for someone outside ARS receiving an award, employment recommendation, etc. *You can use ARS Letterhead but the letter should be written in a non-personal manner: Do not use words like, "I recommend..." ; "I feel they deserve this award....", etc. You should only state facts as they pertain to your knowledge of the individual in an official capacity. If you do not have a working knowledge, then the letter should be on personal stationary. Official Support Letters should be approved through Ethics before being sent out.*

Question: Can an ARS Scientist located at a University teach a course. *Scientists may not "teach" in their official capacities, instead scientists can participate as guest lecturers discussing matters related to the employee's official duties. ARS presumes that activities undertaken by Agency scientists with the University are undertaken in the employee's official capacity – that the offer is based either upon his or her official position, or upon official duties with the University. To the extent that an employee seeks to justify participation in an activity with the University that otherwise is properly undertaken in his/her personal capacity, the employee must prove that the activity with the University is completely unrelated to the employee's official duties with the University and that the activity poses no additional conflict of interest or other ethical concern.*

Where assigned or performed as part of one's official duties, the following rules apply:

-The scientist may not accept any form of compensation for the lecture. The scientist also may not designate donation of offered compensation to a non-profit entity in lieu of acceptance

-The scientist must ensure that he or she does not use any non-public USDA

information without getting proper Agency clearance to do so; and, where necessary, the scientist will provide all proper disclaimers.

Personal Capacity: *If not assigned as, performed as part of, or directly related to, the employee's official duties, an employee may serve as a guest lecturer in his or her personal capacity subject to the following ethics considerations:*

-Compensated Activity: This is to be treated as outside employment with the University. The scientist must then reclude himself or herself from performing any official duties that affect the financial interests of the University. NOTE: While it may not be impossible for the scientist to still perform his/her official duties despite being a University employee, it may be very difficult to do so. A very careful ethics assessment will have to be made.

-Uncompensated Activity: The only management concern should be whether there is any appearance of Agency sanction or use of non-public information. To that end:
(1) The scientist must ensure that he or she does not use any non- public USDA information without obtaining in writing proper Agency clearance to do so;
(2) The scientist must ensure that his or her official title is not displayed prominently on any materials related to the lecture, or used prominently in the lecture;
(3) The scientist must not convey or give the impression that USDA endorses or sanctions his or her activities or the contents of his or her lecture; and
(4) Where necessary, the scientist must provide all proper disclaimers.

Helpful Websites – Ethics

Ethics Issues Related to USDA Scientists

<http://www.usda-ethics.net/science/oe-09-1.pdf>

Ethics Advisor's Desk Reference

http://www.usda-ethics.net/rules/rule18.htm#2_1d

Science Ethics Branch

<http://www.usda-ethics.net/science/index.htm>

Ethics Topical Index

<http://www.usda-ethics.net/science/topic-index/index.htm>

Ethics Training Modules Page

<http://www.usda-ethics.net/training/index.htm>

Office of Government Ethics (OGE) Homepage

http://www.usoqe.gov/site_index.aspx

OGE Publications and Forms

http://www.usoqe.gov/other_docs/forms_pubs_otherdocs.aspx