

# USDA OFFICE OF ETHICS

## Science Ethics Branch

### Letters of Recommendation/Support

5 C.F.R. § 2635.702, Misuse of Position, Subsection (b), prohibits a Federal employee from creating the appearance of Governmental sanction or endorsement of his or another's personal activities.

Therefore, a Federal employee may sign a letter of recommendation using his/her official title and/or agency letterhead only in response to a request for an employment recommendation or character reference if:

- the individual being recommended is seeking Federal employment, OR
- the USDA employee has dealt with the individual being recommended in the course of Federal employment,

#### **AND**

- the USDA employee has personal knowledge of the ability or character of the individual making the request.

#### **Official Title and Agency Letterhead May Be Used:**

- to write a letter recommending an individual seeking to work for USDA or another Government agency;
- to write a letter recommending USDA colleagues regardless of the colleague's U.S. citizenship status, e.g., a reference letter for employment;
- to write a letter recommending individuals the USDA employee is acquainted with because of Federal liaison activity or other official duty service with outside organizations;

EXAMPLE: An USDA employee served on a planning committee for a scientific conference co-sponsored by USDA. A non-Federal member of this planning committee requests a letter of recommendation from the USDA employee. The employee may write such a letter on official letterhead with official title, **only if**, as a result of the committee work, the USDA employee has personal knowledge of the ability or character of the non-Federal member.

## Official Title and Agency Letterhead May Not Be Used:

- to write a letter recommending a personal friend or relative;
- to write a letter specifically recommending a colleague being considered for academic tenure; (See Tenure Recommendations)
- 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; (See Letters of Intent)
- to write a letter recommending a colleague who is not seeking Federal employment or with whom the USDA employee has not dealt with in the course of Federal employment.

Such letters may violate the anti-representation statutes. USDA employees may write personal letters representing their own opinions regarding an individual only if they are personally familiar with the individual.

Writing letters recommending contractors, vendors or a supplier of a good or service raises issues of endorsement and preferential treatment by the USDA. Such letters are used by these entities to advertise and promote their products and services and to obtain future business. If part of official duties, USDA employees *may* write about a contractor's progress/performance in the course of an official evaluation of the contract, but may not recommend that others use the vendor's services or goods. If part of official duties, 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.

EXAMPLE: Prior to joining USDA, an employee taught at a 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 the USDA employee. The USDA employee may NOT write such a letter on official letterhead with official title. The former student is not seeking Federal employment nor has the USDA employee dealt with the student in the course of Federal employment.

What if during the time the employee is at USDA, the student worked with the employee to edit a manuscript? In this case, assuming the USDA employee worked on the manuscript as part of their official USDA duties, the employee may write a letter recommending the student and may use official letterhead and official title because the USDA employee has dealt with the student during the course of Federal employment.

EXAMPLE: A Research Leader is asked to write a letter recommending a colleague for a fellowship. The Research Leader can do so and use official stationery and official title **only if** the Research Leader dealt with the colleague in the course of Federal employment and the fellowship is from a private (non-Federal) source.

**EXAMPLE:** A contracting officer in attends a course on procurement integrity. USDA contracted for the course with Management Concepts, Inc. The contracting officer really enjoyed the course. The contracting officer may write a letter recommending the course on personal stationery and sign her name "Mary Smith". 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.

In circumstances where official title and letterhead may *not* be used, the USDA employee may refer to their USDA position in the body of a personal letter *as one of several* biographical details so long as it is clear that the employee is writing in their personal capacity. The employee should state that the recommendation reflects his or her personal opinion and is not the opinion of the USDA.

## 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 must avoid language making a tenure recommendation.***

An employee's knowledge of an individual's capabilities may not be limited to the USDA employee's handling of that individual's grant (the USDA employee *may* use official title and letterhead to write a letter which simply details the individual's funding history).

## LETTERS OF INTENT

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.

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 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.

Federal employees are bound by ethical standards which include specific prohibitions against the misuse of their position:

- ***Appearance of governmental sanction.*** An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another.
- ***Endorsements.*** An employee shall not use or permit the use of his Government position or title or any authority associated with his public office 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.

If an Agency has statutory authority to collaborate, sending a letter of intent may be considered part of a scientist's official duties and authorized by the Agency because it is considered to be consistent with and necessary to carry out the mission in the context of cooperative agreements. Therefore, a violation of the Office of Government Ethics (OGE) endorsement rule would not occur. It might be considered an Agency endorsement, and the analysis of the propriety of that isn't an "ethics" issue per se but instead goes back to an internal assessment

of the Agency's mission and authority. A generic letter that describes the information, time and data that a research partner can provide does not constitute a commitment to the effort.

### **Personal Capacity**

If there are circumstances where a scientist would want to send one of these letters and it would not be considered within an official capacity, employees are cautioned that they may run afoul of issues under an ethics criminal statute, 18 U.S.C. 205 - Activities of officers and employees in claims against and other matters affecting the Government.

With some exceptions, 18 U.S.C. § 205 bars Government employees from representing anyone other than themselves on any matter before the executive branch or any court, if the United States is a party or has an interest. This bar extends even to pro bono (uncompensated) representations, unless those representations are within exceptions specified in the law.

## **IMMIGRATION SUPPORT LETTERS**

***18 U.S.C. § 205 - Activities of officers and employees in claims against and other matters affecting the Government*** 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 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 will not typically violate 18 U.S.C. § 205.

OGE interprets section 205 to require the exercise of some control by the principal over the agent. Section 205 does not appear to apply in the case of a Federal employee submitting an immigration support letter. In order to act as another's agent, the principal must exercise at least some control over the agent. In the case of writing an immigration support letter, the author of the letter typically is free to write his personal opinion regarding the alien's abilities and character. Generally, a Federal employee who writes a immigration support letter and submits the letter to an arm of the Federal Government would not normally be "acting as agent or attorney" for another within the meaning of the statute. In the unusual case where the alien did somehow exert control over the Federal employee in drafting and submitting the letter, the Federal employee would be the alien's agent for that purpose, and therefore would violate Section 205. Thus, when determining whether a Federal employee acted as another's agent for purposes of Section 205 by writing and submitting an immigration support letter, the critical factor to consider is whether the Federal employee was under the control of the alien on whose behalf the letter was submitted.

The writing of an immigration support letter may also implicate 5 C.F.R. § 2635.702, Use of Public Office for Private Gain which prohibits a Federal employee from creating the appearance of Governmental sanction or endorsement of his or another's personal activities.

Therefore, a Federal employee may sign a letter of recommendation using his official title and/or agency letterhead only in response to a request for an employment recommendation or character reference, and based upon personal knowledge of the ability or character of an individual with who he has dealt in the course of Federal employment, or whom he is recommending for Federal employment.

For additional information, contact your Ethics Advisor at:

<http://ethics.usda.gov/science/docs/agency-ethics-contacts.pdf>

*June 2014*