

## Outside Employment/Activities

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An employee may engage in outside activities that require the use of inherent expertise provided his/her work does not create a real or an apparent conflict of interest by interfering with officially assigned duties. On October 2, 2000, the Department of Agriculture published a final rule in the Federal Register that requires all employees who file a public or **confidential financial disclosure report** to **seek and obtain prior approval** to engage in outside employment and activities. The requirement does not prevent employees from seeking outside employment, but helps to prevent employees from avoiding conflicts of interest.

An employee seeking to engage in employment for which advance approval is required must submit form OE-101, Application for Approval to Engage in Non-Federal Employment or Activity, to their supervisor within a reasonable time before the employee proposes to begin the employment. Upon a significant change in the nature of the outside employment or in the employee's official position, the employee must submit a revised request for approval. Prior approval/concurrence must be received by the immediate supervisor and Ethics Advisor. (The OE-101 can be found on our Forms page. REE employees should use [this version of the OE-101](#). Instructions for completion of this form can be [found here](#).)

For purposes of outside positions, "employment" means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses. It also includes, **irrespective of compensation**, the following outside activities:

1. Providing personal services as a consultant or professional, including service as an expert witness or as an attorney; and
2. Providing personal services to a for-profit entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice or counsel.

Approval of form OE-101 does not relieve the employee of the obligation to abide by all applicable laws governing employee conduct nor does approval constitute a sanction of any violation. Approval involves an assessment that the general activity as described on the submission does not appear likely to violate any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approved activity, situations may arise, or actions may be contemplated, that, nevertheless, pose ethical concerns.

When you work for a company, organization, or other employer outside your government job, your relationship with that outside employer has certain legal and ethical consequences. The approval of an outside activity does not mean that you are free of conflicts of interest. You must still follow all substantive ethics requirements after approval is granted.

Employees considering outside employment should carefully review the provisions of 5 C.F.R. Part 2635 - Standards of Ethical Conduct for Employees of the Executive Branch; specifically 5 C.F.R. 2635.802, Conflicting Outside Employment and Activities and USDA Ethics Issuance 00-1, Participation in Non-Federal Organizations. The following provides only general criteria for the consideration of potential conflicts between official duties and outside activities:

1. **Activities Must Not Be Related to Official Duties:** An employee may not receive compensation for outside activities that relate to his/her official duties and responsibilities as a USDA employee. An activity is considered related if it is performed as part of official duties or the employee was invited to perform the activity primarily because of the employee's official position.

2. **Teaching, speaking or writing activities** are considered to be related to the employee's official duties if the activity is undertaken as part of the employee's official duties; the circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of their official position rather than inherent expertise on a particular subject matter; 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; information conveyed through the activity draws substantially on ideas or official data that are nonpublic information; or the activity deals with any matter to which the employee is presently assigned or to which the employee had been assigned during the previous one-year period; or the activity deals with any ongoing or announced policy, program or operation of the USDA.

**Exception:** An employee may teach a course, with or without compensation, on subjects within the employee's discipline or inherent area of expertise based on his/her educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

3. **Compensation:** If no conflict is apparent, an employee may receive compensation for his/her work with outside organizations. Compensation may be in the form of money, stocks, or any other financial instruments that have a monetary value. Compensation also includes travel expenses, whether provided in-kind or reimbursed. An employee may also perform work for an outside organization without pay. There is no limitation on the amount of compensation the career employee can receive. Non-career employees should contact their Agency/Area Ethics Advisor to determine if they are subject to limitations.

4. **Compensation From Federal Agencies:** A USDA employee may not accept compensation for service of any kind that is funded by a USDA contract, grant, cooperative agreement, or other USDA mechanism. Compensation is also prohibited for assisting or preparing a grant application or other document intended for submission to the USDA. Compensation for any kind of unrelated work performed for and paid directly by another Federal agency may be accepted unless prohibited by either the Dual Compensation Clause (5 U.S.C. Section 5533) or the Federal Acquisition Regulations. Compensation from a Federal grant or contract may be accepted for unrelated work performed for a non-USDA organization provided that: (a) the services performed do not involve legal representation, accounting services or public relations services; and (b) the source of the funding is not USDA.

5. **Use of Personal Time:** Generally, an employee must conduct all outside activities on his/her personal time. If outside work is to be performed during an employee's standard tour of duty, the employee must be on approved leave, leave without pay, credit hours, or compensatory time and not be present at his/her duty station. There is no limit on the number of hours an employee can devote to outside activities except when time spent on outside activities interferes with the performance of an employee's official duties.

Many non-Federal organizations schedule internal business or administrative meetings of the organization in conjunction with their conferences and seminars. This often occurs in relation to scientific and professional associations. Agencies often send their professional employees, at government expense and as part of their official duties, to attend and/or to participate in such conferences or seminars. A USDA employee may attend the business meeting of the organization in his or her personal capacity, provided that such attendance occurs outside normal work hours and incurs no incremental travel costs to the government. For example, the business meeting may be held in the evening. Alternatively, the business meeting may be scheduled for the day before or the day after the conference, in which case management may approve annual or administrative leave for the day in question. In these instances the employee would be expected to cover his or her own lodging and subsistence for that extra day at the conference site.

6. **Use of Government Resources:** An employee normally may not use government resources (e.g., equipment, services, supplies or staff) in the performance of outside activities. There are some instances where minimal use of government resources may be permitted (REE Policy & Procedure 253.4, Use of Information Technology Resources).
7. **Use of USDA Space:** An employee may not normally use federal facility meeting rooms for outside activities. Occasionally, activities may be authorized if they are a part of a USDA event that has been approved for the use of USDA space. However, exceptions will be approved only if it is determined that the activities will meet the mission objectives of USDA.
8. **Use of Official Titles:** Both the employee and an outside organization are prohibited from referencing the title of an employee in connection with any outside activity or employment except as follows: An employee may include or permit the inclusion of his/her title or position as one of several biographical details when such information is used to introduce and identify the employee with the outside activity, provided the title or position is given no more prominence than other significant biographical details. An employee may NOT be listed in the written program using title and official affiliation. If employees see an improper listing, it is advised that they notify the organization in writing and reference appropriate ethics regulations (contact your Area/Agency Ethics Advisor for assistance). This will help protect the employee and avoid any future conflicts. In addition, when giving oral presentations, employees should inform their audience that they are speaking in a personal capacity and the opinions expressed are their own and do not represent the views of USDA. When a title or position is used in connection with articles published in a scientific or professional journal, or other publication where the topics relate to research, the title or position may be used but must be accompanied by a reasonably prominent disclaimer that the views expressed in the articles do not necessarily represent the views of USDA.
9. **Use of Information on Current and Ongoing Agency Research:** In the context of an outside activity, only information that is in the public domain may be used and that information must not derive from work an employee has done within the last year. An employee may provide information on previous work (i.e., performed prior to the last 12-month period) which has been publicly disclosed, provided such information does not deal in significant part with ongoing research, programs, or policies. The employee may also provide information that is based on his/her general scientific or professional knowledge and expertise and not derived specifically from his/her employment within a USDA agency.
10. **Advance Approval Required:** All outside activities must be requested and approved in advance by an employee's supervisor with concurrence from an Agency/Area Ethics Advisor if the USDA employee is subject to submission of a public or confidential financial disclosure report. However, personal activities which are not covered by the USDA outside employment/activity definition do not require submission of form OE-101 nor approval for participation.
11. **Participation in the Business Affairs of Outside Organizations:** An employee may participate in the internal and external business operations of an outside organization as an outside activity in their personal capacity, if no conflict is apparent; including involvement in the human resources, financial or fund-raising activities to the extent permitted by these organizations. Such involvement usually occurs when an employee serves as an officer or member of a Board of Directors of an outside organization. However, such service requires that the employee disqualify him/herself from taking official actions that involve the outside organization if the organization has any official dealings involving the employee in their official capacity. This type of arrangement may not be possible based on the officially assigned duties of an employee and must be examined on an individual basis.

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 himself or herself to potential criminal penalties should he or she 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. Under these circumstances, 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. For specific guidance, review [USDA Ethics Issuance 00-1](#), Participation in Non-Federal Organizations.

12. **Other Considerations Associated With Working for an Outside Organization:** There is no limit on the amount of money an employee may earn from outside work activities, nor on the amount of time an employee can spend performing outside activities. However, outside activities may not interfere or impair the ability of an employee to perform his/her officially assigned Government duties. Approval to engage in outside work activities will be denied or withdrawn if the activities conflict or interfere with the performance of the employee's duties at USDA.
  
13. **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 that is owned or operated by the foreign government, which may include public research institutions or universities. This prohibition is found in the "Emoluments Clause" of the U.S. Constitution. 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. The FGDA also permits official travel, lodging and meal expenses when it occurs totally outside of the United States. Outside activities with privately funded foreign universities and other non-government foreign entities may be permitted with prior approval, check with your Ethics Advisor regarding the applicability of the Emoluments Clause.