

## INSTRUCTIONS FOR COMPLETION OF REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY

An employee who is required to file either a public or confidential disclosure report (OGE-278 or OGE Form 450), or an alternative form of reporting approved by the Office of Government Ethics, is **required** to seek prior approval for outside activities before engaging in the outside activity (5 CFR 8301.101-102). This prior approval is sought by submitting the OE-101.

The OE-101, Request for Approval of Outside Activity, is divided into 6 parts. The employee is responsible for completing Parts I-III; the Immediate Supervisor must complete Part IV and the Agency Ethics Official completes Part V. Incomplete packages may be returned without action. It is the employee's responsibility to ensure that all required information is provided and that the request form is complete.

### EMPLOYEE RESPONSIBILITY

#### GETTING STARTED

Gather information about the proposed Outside Activity, including any documents that must be submitted, i.e., invitation letter, syllabus, agenda or outline. You are also required to submit a copy of your official position description.

#### COMPLETING THE FORM

Indicate whether this is the Initial Request, Revised Request, or a Renewal by checking the appropriate block.

**Note:** Renewals must be submitted within 30 days prior to the expiration of the period authorized.

#### *Part I – EMPLOYEE INFORMATION*

Items 1-7 are self explanatory. Item #6 requires that you indicate which financial disclosure form you file (OGE 278 or OGE 450) or Other if you are not required to file either report but are using this form to document outside activities.

#### *Part II – OUTSIDE ACTIVITY INFORMATION*

Provide the information requested about the proposed Outside Activity.

**1. Nature of Outside Activity.** Mark the block which best describes the type of activity you are requesting.

**Describe.** Thoroughly describe the activity, using non-scientific terms when possible.

*Example: "Teaching":* The proposed activity involves teaching a basic biology course at the University of Maryland, University College. The course, entitled Basic Biology (BIO 101), is an introductory, undergraduate level course covering basic biological terminology, basic biological functions, and basic laboratory experiments. No specific research information from my current or unpublished government research is expected to be part of the class. The syllabus is attached. The course is regularly scheduled during the fall and spring semesters, and occasionally during a summer session.

**Self-Employed Activity.** If you plan to be self-employed as described on the form, mark this box. Describe your service or product, your intended clients, i.e., specify the type of business, industry, or economic section.

**Teaching, Speaking or Writing.** If a written invitation was received for this activity, attach a copy. For activities involving teaching, speaking, or writing, provide a syllabus, outline, summary, synopsis, draft, or similar description of the content and subject matter involved in the course, speech or written product (including, if available, a copy of the text of any speech) and the proposed text of any disclaimer that indicates the views expressed do not necessarily represent the views of USDA or the United States. Check the applicable boxes, indicating that these materials are attached. If you are unable to provide this information or will be delayed in submitting the attachments, please explain.

**Text of Disclaimer.** If your activity requires a disclaimer, mark the box to indicate that you have attached the disclaimer.

*Example Disclaimer Text: "This commentary was written by Dr. John Doe in his private capacity. The views expressed in this article/speech do not represent the views of or endorsement by the United States Government or the United States Department of Agriculture."*

- 2. Outside Employer or Other Entity:** Provide the full name of the outside entity with which you propose to engage in an Outside Activity. Also provide the full name and title of your contact person at that organization. If you are requesting approval of self-employment, indicate "self-employment" and continue to question #3.
- 3. Outside Employer or Entity Address and Phone Number:** Provide the full address of the outside entity, as indicated. If you are requesting approval of self-employment, enter the address of your proposed outside office.
- 4. Location:** Provide the location from where the activity will be conducted. If you are requesting approval of self-employment, enter the address of your proposed outside office.
- 5. Travel:** Indicate the location where the activity or services will be performed. Indicate whether travel is involved by checking yes or no. If yes, indicate whether travel-related expenses will be at your own (personal) expense, or if the outside entity will provide in kind expenses (ticket, hotels, and/or meals paid directly by the entity), or will reimburse you. Include the estimated amount and describe what that entails. Do **not** report the honorarium, fee, or other payment for services here.

*Example:* Round trip coach class airfare (approximately \$700); 7 days lodging (approximately \$1200); per diem (approximately \$600); incidental expenses (approximately \$500).

**6. Time:** Indicate fully the time frame involved.

**a. Period covered:** Indicate the proposed start date and end date, using the format indicated, including travel time. If there is a significant change in the nature of the outside activity or in your position, another request must be submitted.

**b. Estimated Total Time Devoted to the Proposed Activity:** Indicate the total number of hours per day, the number of days per week, and the number of weeks in the year during which you plan to engage in the proposed activity. For partial hours/days/weeks, round up to the nearest hour/day/week.

**c. Will work be performed entirely outside of usual working hours?** Check either yes or no. If your answer is no, indicate the anticipated amount and type of leave you will use (i.e., approved annual leave or approved leave without pay).

**7. Compensation:** Indicate whether the activity is compensated, and if yes, answer the remainder of the question. Exclude travel expenses reported above, in #5.

**a. Method or Basis of Compensation.** Check each type of compensation that applies. If any non-travel related expenses will be reimbursed, describe that here. For example, indicate if you will receive reimbursement for expenses incurred in preparing for the activity, such as copying handouts.

**b. Compensation Amount:** Indicate the total amount of compensation, excluding the travel-related expenses already included in #5.

**c. Payor:** If the entity which pays you is someone other than the entity to which you are providing services under this request (e.g., different than the entity listed in Part II), provide the full name of the entity who will pay you and explain why, e.g., check issued by logistics or marketing firm hired by the outside entity to organize the meeting.

**d. Funding Source:** If your answer is "Yes" that funds will come from USDA, explain fully.

*Example 2:* You are presenting a talk at a conference which is receiving partial support from the USDA. Your compensation must be paid from the portion of funds derived from other than USDA funds. You may need to

explain that in writing to the entity which invites you, and the entity must certify that no USDA funds are being used to compensate you.

**e. Grantee, Contractor, or Other Status.** Complete this section only for consultative or other professional services. Indicate whether the outside entity is a current grantee, contractor, or in another way will receive or intends to seek USDA funds, separate from your proposed Outside Activity. If your answer is “Yes”, explain fully. Seek information from the proposed outside employer, if necessary, to adequately respond.

### **PART III - OFFICIAL DUTY INFORMATION**

This section requests information about your current official duties and responsibilities to permit an adequate conflict analysis between the proposed activity and your current official work.

1. **Nature of Official Duties:** Either attach a Position Description that **accurately** describes your current duties or describe your main duties and responsibilities here. Include the topic and substance of your research; the specifics about your administrative duties; the types of outside entities with which you routinely interact; and what that interaction involves. You may use official descriptions of your office, but you must also include a description of the *substance* of what you do officially, e.g., research in what specific areas; or manage grants in what program area.
2. **Relationship of Official Duties to Outside Activity:** Describe any of your official duties which relate in any way to the proposed activity. If there is no relatedness, explain why there is none.
3. **Effect of Official Duties on Outside Employer or Entity:** In performing your official duties, are there any matters which would affect the interests of the proposed outside employer? Explain why or why not.
4. **Assignments Involving Outside Employer or Entity:** Describe any official interactions or matters involving the outside entity in which you were involved during the past year, for example, grant applications you reviewed, pending decisions, or any other particular matters involving the proposed outside organization. Include all facts about the situation to permit a full and complete analysis. The following examples are illustrative only, and are not meant to imply that such activities would always be approved.

*Example 1:* Approximately 3 months ago, I reviewed a grant application from this university. The application was not funded and there has been no further interaction with the university.

*Example 2:* I am working on a Cooperative Research and Development Agreement (CRADA) involving the outside organization, but I have no decision making responsibilities and have no contact with the CRADA partner in my official capacity. My official work is purely technical assistance behind the scenes, a function I may do for any number of CRADAs and other projects being undertaken in the lab.

**Certification:** Sign and date, certifying that the responses are true and complete to the best of your knowledge. Note that you need to **read the notices in Part VII** of the form prior to signing. Your signature certifies that you have read the notices and will abide by the requirements therein.

### **Part IV – IMMEDIATE SUPERVISOR RECOMMENDATION**

This section must be reviewed and completed by your immediate supervisor, paying particular attention to completion of Item #2 Immediate Supervisor’s Statement.

## **ADDITIONAL INFORMATION MAY BE REQUIRED**

Review the following questions. Do not hesitate to contact the Science Ethics Branch for additional guidance prior to submission of your request.

**IS THE OUTSIDE ENTITY A FOREIGN ORGANIZATION?** The Emoluments Clause of the US Constitution prohibits a federal employee from accepting employment, gifts, or compensation from any foreign government, including any entity which is owned or operated by the foreign government, unless Congress gives its consent. Congress gave consent for some activities in the Foreign Gifts and Decorations Act (FGDA). If your proposed activity is with a foreign entity, please provide the following information:

- 1) What is the funding source – government or private sector?
- 2) Is the foreign entity an educational institution? Does the educational institution operate autonomously? For purposes of the Emoluments Clause, operating autonomously means that the institution establishes its own rules, appoints board members, and makes all hiring decisions, all without intervention or approval by the government. In addition, its employees are NOT considered Government employees.
- 3) Does the educational institution establish its own constitution, bylaws, and operating rules without a government official reviewing and approving them? If the government official must approve them, then the government runs the university.
- 4) Who appoints the Board? If the government appoints any board members, what percentage are appointed by the government? If the government appoints the majority of the board members, that means the government runs the university.
- 5) Are the employees of the educational institution considered government workers? If yes, then it is an entity of the foreign government.
- 6) Does a government official or agency oversee the institution and approve or disapprove the decisions? This means operational decisions, not the general government oversight of all universities to ensure they are compliant with the laws of the nation.

**Submit request to your immediate supervisor for signature, and then to the appropriate Agency Ethics Advisor for review. The appropriate Agency Ethics Advisor will forward the request to the Science Ethics Branch. Once the review has been completed, you will receive a copy of the final determination. A list of Agency Ethics contacts can be found at: <http://ethics.usda.gov/science/docs/agency-ethics-contact.pdf>**

## NOTICES

APPROVAL OF AN OUTSIDE ACTIVITY DOES NOT RELEASE YOU FROM A CONTINUING LEGAL OBLIGATION TO DISQUALIFY YOURSELF FROM OFFICIAL ASSIGNMENTS AFFECTING YOUR OUTSIDE EMPLOYER OR THE ENTITY TO WHICH YOU ARE PROVIDING PERSONAL SERVICES. WHILE PERFORMING AN APPROVED OUTSIDE ACTIVITY, ANY ACTIONS TAKEN IN CONFLICT WITH APPLICABLE ETHICS LAWS MAY SUBJECT YOU TO CRIMINAL PROSECUTION OR DISCIPLINARY PROCEEDINGS.

**Conflict Resolution.** An approved OE-101 form does not signify that you need not be concerned about conflicts of interest. Under the law, conflicts of interest arising out of outside employment or service in a fiduciary position can be resolved in advance in only three ways: (1) you can inform your supervisor and disqualify yourself from participating in a conflicting government matter (recusal); (2) you can seek, only if certain legal requirements are satisfied, a separate legal document from your agency designee that specifically permits you to work on the government matter (waiver), or (3) you can resign from either your government or outside position. Outside relationships that fall short of actual employment or a fiduciary role also pose similar appearance concerns.

**Effect of Prior Approval.** The outside activities prior approval process has very limited purposes. When a reviewer approves a OE-101 for your outside activity, two fundamental assessments are being made, which are discussed below. You reasonably may rely on these specific determinations only if you provided all relevant information on the form and the circumstances under review do not change. You remain responsible for the legal and ethical consequences of any change in personal or business affairs or a change in your government duties.

First, based on the information which you provide, the reviewer determines whether your proposed activity is prohibited by applicable statutes or regulations, including the provisions of ethical standards governing appearances of impropriety. For example, if you want to lobby Federal agencies on behalf of a non-profit organization that employs you, prior approval will be denied because a criminal statute prohibits such representational activities.

Second, assuming your proposed activity is not specifically prohibited, the reviewer determines whether, under the circumstances, approval should be denied for other reasons specified under the law. For example, the reviewer may deny approval if the facts show that you used your government position to obtain an outside compensated business opportunity or if the activity would create the appearance that you are violating the law or ethical standards. Another common reason for denying approval is that the outside activity may prevent you from handling work that is expected of you. Because the outside activity may cause you to have to disqualify yourself from a broad range of job assignments, or even a few crucial projects, that will affect your outside employer or the entity to which you provide personal services, it may be impossible for you to fully discharge your government duties.

If, however, your outside activity is approved, the reviewer has determined that the matters in which you will not be allowed to participate are not "so central or critical to the performance of [your] official duties" that your ability to perform the duties of your position would be materially impaired. In other words, you cannot work on a government matter affecting your outside employer, but the reviewer expects that you will be able to stay away from these assignments and still do your job.

**Recusal Obligations.** When performing your Government duties, you must not participate in any government matter that will affect your own self-interest in continuing your outside activity. For example, you would have to disqualify yourself from participating in any official matter that might put your outside employer out of business or seriously affect its finances, either positively or negatively, so that the odds of your remaining employed are also affected. In addition, when you work for an outside employer or serve in a fiduciary role with an organization, the financial interests of that company or organization are considered to be your own. As a result, if the company or organization has a financial interest in how a government matter will be resolved, you cannot work on that matter. This means that you cannot work on a government matter that involves or affects your outside employer as a specific party, such as a contract, grant, audit, investigation or litigation. The law also requires you to stay away from government matters that are larger in scope, such as deliberations and decisions on developing, implementing, or enforcing statutes, regulations, policies, studies, or proposals, that will have an effect on a large class of employers like the one for which you work on the outside. For example, if you were permitted to have an outside position as an employee of a nonprofit organization, you could not participate personally in any significant way in a policy decision that affects the financial interests of the organizational sector in which these employers operate.

**Scope of Recusal.** Although many employees understand the need to disqualify themselves from participating in an official matter that affects their outside employer, they often believe erroneously that they can pick and choose among the various aspects of a particular matter and stay away only from the important decisions. Such incomplete recusals will not protect you from a criminal conflict of interest violation. You must refrain entirely and absolutely from participating personally and substantially in a government matter that affects your own financial interest or that of an outside employer. When you are involved significantly in proposing, planning, advising, deciding, or implementing some official action, and you do so individually or by actively directing subordinates, your participation is personal and substantial. Contact your Agency Ethics Official concerning recusal procedures.

## PRIVACY ACT STATEMENT

The Ethics in Government Act, 5 U.S.C. App. § 101, *et. seq.*, Executive Order 12674, as amended by Executive Order 12731, Sections 301 and 7301 of Title 5 of the U.S. Code, and Sections 2635.803 and 8301.101 - 102 of Title 5 of the Code of Federal Regulations authorize the collection of this information. Disclosure of this information is mandatory for employees seeking prior authorization from an agency designee to pursue outside employment or activities. Failure to provide all or part of the requested information may result in denial of the request for approval of the outside employment or activity. Falsification of information or failure to file or report information required to be reported may subject the employee to disciplinary action. Knowing and willful falsification of information required to be reported may subject the employee to criminal prosecution. The primary use of this information is to allow USDA supervisors and agency ethics officials to make necessary determinations concerning employee requests for prior approval of outside employment or activities in order to prevent a conflict of interest or other violations of the statutes, regulations, and executive orders governing employee conduct. The information is also requested for the purpose of evaluating ethics program administration, as well as the Department's supplemental ethics regulations, to determine their continued adequacy and effectiveness in relation to current agency responsibilities and to ensure that prompt and effective action is taken to remedy violations or potential violations, or appearances thereof, of conflict of interest and related ethics provisions. Additionally, this information may be disclosed to: (1) the Office of Personnel Management, Office of Government Ethics, Merit Systems Protection Board, Office of the Special Counsel, Equal Employment Opportunity Commission, Federal Labor Relations Authority, Federal Service Impasses Panel, Federal Mediation and Conciliation Service, and an arbitrator, in carrying out their functions; (2) a Federal, State, or local agency charged with investigating or prosecuting violations of, or implementing, the law, in the event there is an indication of a violation or potential violation of civil, criminal or regulatory law; (3) a Federal, State, or local agency maintaining enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit; (4) the National Archives and Records Administration or the General Services Administration in records management inspections; (5) the Office of Management and Budget during legislative coordination on privacy relief legislation; (6) Federal agencies with power to subpoena other Federal agencies' records; (7) a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (8) private firms with which the Department may contract for the purpose of collating, analyzing, aggregating or otherwise refining records; (9) a Member of Congress or a Congressional office, pursuant to an inquiry made at the request of the individual who is a subject of the record; (10) the Department of Justice in defense of litigation; and (11) contractors and other non-Government employees working for the Federal Government to accomplish a function related to an Office of Government Ethics Government-wide system of records. This request will not be disclosed to any requesting person unless authorized by law.

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**Original requests will be maintained in the USDA Office of Ethics – Science Ethics Branch.**