

U.S. DEPARTMENT OF AGRICULTURE – OFFICE OF ETHICS

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I. GENERAL

1. Purpose.

This Ethics Issuance establishes guidelines for applying the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635), the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture (5 CFR Part 8301), and Federal conflict of interest statutes (18 U.S.C. §§ 202–209) to personnel of the Department of Agriculture (Department or USDA) who are employed as scientists. That said, the rules discussed herein are applicable to all employees, irrespective of whether they serve in specific science-based job series, perform managerial duties, or perform non-scientific duties related to, or in direct support of, USDA scientists. While guidance found in Part II of this issuance is focused upon USDA research scientists co-located at universities, guidance found in Parts III through VIII are applicable to USDA scientists, as a whole. Ethics Issuance 04-2, Adjunct Professors, is hereby abolished and superseded.

2. Authority.

Titles II and IV of the Ethics in Government Act of 1978, as amended, direct Executive branch departments and Federal agencies to administer an effective ethics program that must include training, counseling, financial disclosure reporting, and other related responsibilities. The program requirements for the ethics programs of executive departments or executive agencies are set out in 5 CFR Part 2638.

3. General.

Science is a key component to the overall mission of USDA. The Department utilizes the services of scientific personnel in the following six of its seventeen agencies: Agricultural Research Service (ARS), U.S. Forest Service (FS), Cooperative State Research, Education, and Extension Service (CSREES), Natural Resources Conservation Service (NRCS), Food Safety and Inspection Service (FSIS), and Animal and Plant Health Inspection Service (APHIS). USDA scientists are at the forefront of scientific developments in numerous fields.

At the same time, science is a collaborative profession. Hence, science, as both a profession of the employee and as a mission of an agency, often requires close interaction with non-Federal individuals and entities. Our scientists must interact closely with other members of the scientific community, both inside and outside the Federal Government, in order to attain and maintain their professional standing and reputation as scientists. At the same time, Federal budgetary limitations necessitate that agencies seek opportunities to partner with non-Federal entities in order to accomplish Agency scientific projects and goals. Often, in this environment, the lines between public and private interests become blurred.

Federal scientists clearly have a professional obligation to improve the level of science in their chosen field and, in doing so, bring credit not only upon themselves, but also upon their Agency and upon the Federal Government as a whole. At the same time, their scientific efforts are not undertaken in a vacuum. Rather, the Federal scientist must undertake his/her work mindful not only of the dangers that conflicts of interest and ethical risks pose to him/her personally, but also of the dangers that the very appearance of conflict and loss of impartiality pose to the public's perception of the overall integrity of the Agency's programs.

In this vein, a major area of concern involves USDA scientists who are co-located at universities and who are assigned to perform duties at Federal laboratories located on university campuses. Some Agency 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 Agency that affect or involve those universities. On many occasions, universities will designate Agency employees with "adjunct professor" or similar titles. Beyond this, numerous other issues affect most, if not all, USDA scientists who work in association with academia and industry. Participation in peer review activities is essential for the professional growth of scientists. However, whether, and to what extent, a scientist may participate in such activities as a Federal employee is affected not only by a variety of Federal ethics restrictions and appropriations issues not faced by their private sector counterparts, but also by the very nature of their duties. Furthermore, whereas close collaboration with non-Federal scientists may be essential to some USDA scientists performing research, such close cooperation may well pose an unacceptable level of ethical risk for other scientists, such as those who are responsible for the award and administration of Federal grant programs.

4. Definitions.

4.1. General. Definitions for the following terms are found in Section 4 of Ethics Issuance Number 02-2, "Delegations of Authority and Responsibility," dated November 5, 2002.

- Agency
- Alternate DAEO
- Confidential Filer
- Deputy Ethics Officials (DEOs)
- Designated Agency Ethics Official (DAEO)
- Director, OE
- Ethics Advisors
- Ethics Assistants
- Office of Ethics (OE)
- Public Filer
- Senior Ethics Specialist
- U.S. Office of Government Ethics (OGE)

4.2. “Authorized Departmental Officer's Designated Representative (ADODR),” in connection with extramural agreements involving grants and cooperative agreements entered into by agencies within the Research, Education & Economics (REE) mission area, the ADODR is responsible for directing technical performance, providing oversight of the project, and assuring fiscal accountability for extramural agreements delegated to his or her authority. As set out in REE Policies and Procedures 701.1, the authority of the Administrator, ARS to sign these agreements is delegated to an Authorized Departmental Officer (ADO). The ADODR is responsible to the ADO. The titles ADO and ADODR are basically synonymous with the more commonly known titles “Contracting Officer” and “Contracting Officer’s Technical Representative” which are terms used in the procurement arena.

4.3. “Adjunct Professor,” is a generic title with no specific meaning. What an “adjunct professor” is contextually depends upon the rights, privileges, duties and obligations conveyed with the title from a given university to a specific employee for an indeterminable or specified period of time. Some universities may vary their terminology. For example, some universities might use the term "Special Membership on the Graduate Faculty," "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 the rights, privileges, duties and obligations bestowed by the University or assumed by the employee. For purposes of this issuance, the term "adjunct professor" will include any term, except “tenure,” that a university uses to confer status.

4.4. “Consultant,” means one who provides “consultative services,” as defined at 5 CFR § 5501.106(b)(2). “Consultative services,” under this section, means “the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or other similar facility.”

4.5. “Official Capacity,” means that the employee’s activities are deemed by the Agency to be in furtherance of an Agency mission and can reasonably be considered as being part of that employee’s official duties. “Official Capacity” generally refers to an activity that is conducted (1) when the employee is on official time; (2) through the expenditure of Agency funds; or (3) in a manner that otherwise indicates that the employee is participating on behalf of the Agency. Simply put, a Federal employee is required to use official time, official facilities, and official services, solely for the official work of the Federal Government (see 5 CFR §§ 2635.704-705).

4.6. “Outside Employment,” under 5 CFR part 8301, includes: (1) “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;” and (2) irrespective of compensation, the providing of “personal services as a consultant or professional, including service as an expert witness or as an attorney[.]”

4.7. “Personal Capacity,” means any activity that is not accomplished in the employee’s official capacity (see 4.5, above). To the extent that an activity with a partner or 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, or, in other words, generally on one’s own time and at one’s own cost. 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 (i.e., authorized absence without charge to leave).

NOTE: Management should use discretion when approving administrative leave and consider circumstances on a case-by-case basis.

4.8. “Prior Agency Approval for Outside Employment,” under 5 CFR § 8301.102(a), means that an “employee, other than a special Government employee, who is required to file either a public or confidential financial disclosure report (OGE-278 or OGE Form 450), or an alternative form of reporting approved by OGE, shall, before engaging in outside employment, obtain written approval” from his or her Agency to engage in such employment.

4.9. “Professional,” in the context of the services provided by an individual, is defined, consistent with 5 CFR § 2636.305(b)(1), as one who pursues, as a means of livelihood, a calling requiring specialized knowledge, often requiring long and intensive preparation, including instruction, in skills and methods, as well as in the scientific, historical or scholarly principles underlying such skills and methods. “It is characteristic of a profession that those in the profession, through force of organization or concerted opinion, establish and maintain high standards of achievement and conduct, and commit its practitioners to continued study of the field.”

4.10. “Science Ethics Advisor,” refers to any ethics advisor within OE with either general or specific responsibility for providing ethics advice and guidance on ethics issues related to scientists. The OE Director, Deputy Director, and Senior Ethics Specialists have a general responsibility for providing such ethics advice; ethics advisors assigned to the Science Ethics Branch within OE have the specific responsibility for providing such advice.

4.11. “Science Ethics Branch,” refers to a subordinate component of OE charged with providing ethics services to: All employees of the Research, Education and Economics mission area; and employees specifically-designated by FS, NRCS, and APHIS to receive such services from this branch.

4.12. “Scientist,” for purposes of this issuance, is considered a professional, or person with expert knowledge learned in one or more areas of organized knowledge and who uses the scientific method to conduct research, or creates theories, hypotheses, or models to explain observable phenomena, or who creates processes and procedures by which scientific knowledge is applied to real-world situations, or establishes protocols based on

natural or physical sciences that evaluate and strengthen policy and programs. The term includes persons in non-research capacities whose work is primarily engaged with the management of a natural or social science discipline within an agency of USDA.

4.13. “Tenure,” is a **permanent** appointment of a university faculty member. A tenured appointment normally may not be terminated except for cause, for reasons of financial emergency, by resignation, or by retirement. It normally is granted only by specific faculty and administrative action. Tenure at a university usually implies a commitment by the faculty member to participate in professional faculty activities, and the commitment continues for as long as the appointment continues.

NOTE: Because of the professional obligations on tenured faculty, any tenure appointment – with or without pay -- held by an Agency employee should be presumed to constitute outside employment with the University and, hence, a financial interest which can conflict with the employee’s subsequent involvement in official duties with or affecting the University, including research science accomplished in conjunction with the University (see sections 6.1 and 7.5).

4.14. “University,” means an institution of higher learning authorized and generally recognized by competent crediting authority to issue bachelors or higher degrees to students after a period of study and after meeting the requirements for the degree. For purposes of this issuance, a “college” that grants bachelor or higher degrees is considered the same as a “university.” The term includes all parts of a university or college, including all institutions in a multi-institution State or city system.

4.15. “University Employee,” means generally a relationship recognized in law between the individual and the University wherein the University has the right to control and direct the individual in the performance of services for the University. Whether a USDA employee is, in fact, an employee of the University is determined under the governing state statutes and case law. Thus, it is not unusual for an employment relationship to exist under one statute (e.g., a tort claims statute), but not for another (e.g., a worker’s compensation statute). Payment or receipt of [*compensation*](#) for services is an indication of an employment relationship with the University; however, the fact that services are provided without compensation does not mean that an employment relationship does not exist.

NOTE: While a Federal scientist who seeks outside employment with the University, usually will be required to seek prior Agency approval for outside employment under 5 CFR § 8301.102, one can be or become a “University employee” even if not required to seek prior approval. For example, in situations where an individual provides uncompensated services to the University, the individual could be deemed a University employee even where possibly not required to seek prior Agency approval.

4.16. “Written Agreement,” as used in this issuance, means an appropriate document authorized by law between an Agency and a non-Federal entity setting out the terms and conditions of the relationship between the two entities. This phrase includes a

Cooperative Research and Development Agreement (CRADA) or other cooperative agreement (CA), or a memorandum of understanding (MOU), as well as, where appropriate, a contract, loan, or grant. If an Agency intends to rely upon a written agreement in order to justify actions taken by its employees that are addressed in this issuance, the written agreement must: (1) contain specific language addressing the issue; and (2) the language must either have been reviewed and approved by the Office of the General Counsel (OGC) and OE, or be consistent with language previously approved by the Office of the General Counsel (OGC) and OE.

II. GUIDANCE RELATED TO CO-LOCATED SCIENTISTS

5. Official Versus Personal Capacity.

The first issue a Government manager or employee must consider in engaging in activities with the University is whether the activities are properly undertaken in the employee's *official capacity* (as part of his or her official duties), or whether those activities are more appropriately undertaken (if at all) in one's *personal capacity*.

5.1. Presumption of Official Capacity. Given the high degree of interaction between co-located Agency scientists and the University, as well as the fact that the Agency scientist's very presence at the University is the direct result of his or her Federal employment, *Agency managers and supervisors should presume*, in absence of a conclusive showing otherwise, that activities undertaken by Agency scientists with the University are undertaken in the employee's *official capacity* – that the offer from the University for the employee to participate in the activity 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 conclusively to Agency management 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.

5.2. Agency Discretion. While Agency management has wide discretion in determining what activities are in furtherance of the Agency mission, the manager must be able to describe how authorized activities fall within the intended purposes of the Agency appropriation from which the employee is paid. In this context, a Federal employee may be assigned to perform services in connection with the University if there is a *direct tie to the accomplishment of the Agency mission*. Official participation in activities that have little or no direct relationship to the accomplishment of the Agency mission can place employees in jeopardy of, amongst other concerns: being outside the scope of their employment and, thereby, subject to personal liability for their actions; and violating the Federal Anti-Deficiency Act, 31 U.S.C. §1341. That said, where an employee's performance of official duties could present ethical concerns if performed other than properly within the scope of his or her official duties, the Agency should consider incorporating the performance of such duties into a *written agreement*.

5.3. Employee Responsibility. Where authorized to participate in an official capacity, the employee should participate in the duty solely to represent the interests of his or her Agency. In such capacity, an Agency employee owes his or her first duty as an employee to the Federal Government and is bound, at all times, by statute, executive order, and regulation of the Federal Government. *Where conflict exists between one's status as a scientist and one's status as a Federal employee, by statute and regulation, the employee's obligations as a Federal employee take precedence.*

5.4. Accepting Compensation From the University. The Agency scientist may not accept any form of [compensation](#) from the University, or from other non-Federal sources, for the performance of official duties related to the University. Acceptance of compensation from a non-Federal source for the performance of official duties could violate [18 U.S.C. § 209](#). [See specific application to teaching and lecturing activities under 6.3 and 6.4, and to compensation discussions in 7.2 and 9.3, below.] Acceptance of compensation from the University may only be done, if at all, as Agency-approved outside employment and only where such outside employment does not conflict with the employee's ability to lawfully perform his or her official duties [For conflict issues concerning outside employment, see section 7, below.].

NOTE: The scientist may not circumvent this prohibition by designating donation of offered compensation to a nonprofit entity, or other recipient, in lieu of acceptance.

6. Specific Duties and Activities Involving the University.

6.1. Acceptance of Tenure. Given the degree of close interaction between the Agency and the University, Agency managers should *presume* that an offer of [tenure](#) from the University to an Agency scientist who is co-located at that University is related to the scientist's *official duties* with the University or based upon his or her Federal status.

- **Official Capacity.** Tenure constitutes an *employer-employee relationship* with the University. Acceptance of such creates a conflicting [financial interest](#) under [18 U.S.C. § 208](#) with any official duties that the scientist performs in connection with the University. Accordingly, an **Agency scientist may not accept tenure** from a University that is in any way related to his or her official duties with the University.
- **Personal Capacity.** In very rare cases, where tenured status may be offered wholly unrelated to official duties or status (e.g., where based upon the scientist's prior non-Federal faculty service with the University), acceptance must be treated as a request to engage in [outside employment](#) with the University. However, in approving such a request, Agency managers must consider the fact that University employment creates a financial interest in the University and that, as a result, the scientist must recuse himself or herself from performing official duties (including scientific research) that affect the financial interests of the University. See 7.3, below.

6.2. Participation in Tenure Decisions. 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 tenure candidate and the University, Agency managers should *presume* that the University, in asking the scientist to participate in its tenure deliberations, seeks the scientist's involvement in his or her official capacity and the Agency manager should then ensure that any such involvement be limited in a manner that best protects the interests of the Federal Government.

- **Permitted: Tenure Evaluations.** *Where authorized in advance by the Agency*, including where provided for pursuant to a written agreement, a scientist may provide the University with an appropriate written statement concerning that scientist's evaluation of the professional qualifications of a University tenure candidate. Factors to consider in determining whether an evaluation is appropriate may include (but need not be limited to) the following:

- The University submits a request to the Agency for the scientist's statement;
- The scientist's statement expresses the scientist's evaluation of the candidate's scientific credentials;
- The evaluation will be based upon observations that the Agency scientist made during performance of his or her official duties as a Federal employee; and
- The statement avoids making a tenure recommendation.

NOTE: For Letters of Recommendation requested of an Agency scientist other than in connection with tenure, see Section 21, below.

- **Not Permitted.** Other than as set forth above, an Agency scientist **may not** participate in internal University deliberations or decisions concerning tenure, including serving as a member of a tenure committee.

6.3. Teaching Courses.

- **Official Capacity.** *Where authorized by statute and/or required or permitted by the Agency pursuant to a written agreement between the Agency and the University*, an employee may engage in teaching a full-semester/quarter/term course where the Agency determines that teaching of the course furthers the mission of the Agency and the University does not compensate the scientist or provide any benefits to the scientist based upon the teaching activity.
- **Personal Capacity.** In contrast to guest lecturing activities, below, teaching duties, whether paid or unpaid, may result in the scientist being deemed a university employee under the governing state law. The scientist is providing service as a professional. Moreover, the teacher is responsible for writing and grading exams, course preparation, and is subject to University control and student appraisal. Accordingly, teaching activities that are not deemed to be part of the scientist's

official duties must be treated as outside employment with the University. To avoid a conflict of interest, the scientist must then recuse himself or herself from performing official duties that affect the financial interests of the University. See Section 7, below.

Example: An Agency scientist currently serves as a paid, part-time professor at X University. She has collaborated, in her [personal capacity](#), with scientists at the University in preparing a research grant application for submission to USDA as part of a competitive process. As the financial interests of the University are imputed to her, she risks violating 18 U.S.C. § 208 by participating in peer review of any applications submitted as part of that competitive process, serving on any recommendation or selection panels for awarding funds as part of that process, serving as [ADODR](#), or serving as a formally-designated university investigator on the grant application.

NOTE: If she is listed as Principal Investigator on the grant application, or if she defends the grant application before any Federal Agency, then she could violate [18 U.S.C. § 205](#) by unlawfully [representing](#) the interests of the University before a Federal agency.

6.4. Serving as Guest Lecturer.

- **Official Capacity.** An employee may be assigned, as part of his or her official duties, to serve as a guest lecturer discussing matters related to the employee's official duties. This is merely utilizing an opportunity to inform the public of relevant Federal Government programs and operations. 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 recuse himself or herself from performing any official duties that affect the financial interests of the University. See Section 7, below. **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 employed 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.

Example 1: An Agency scientist is asked to present guest lectures in a course at the University. The scientist is a recognized expert on the subject of the course and the subject matter of the course relates to his or her official duties with the University. The supervisor may determine that the scientist may present the lectures as an official duty. Because this is an official duty, the scientist may not accept compensation for the activity from any source other than his or her pay from the Federal Government; however, the activity presents no “employment” relationship requiring either recusal under 18 U.S.C. § 208, or a request for prior approval before engaging in the activity, and it does not need to be reported as an Outside Position in the employee’s financial disclosure report.

Example 2: Same facts as in Example 1, except that the subject relates only generally to his official duties. The supervisor may determine that the scientist may present the lectures as an official duty [see Example 1, above], or may decide that the lecture should be performed in the scientist’s personal capacity. If presented in his/her personal capacity, the employee he may accept [compensation](#), depending upon prior approval by the Agency based, upon the determination that the resulting “employment” relationship, and residual impartiality concerns, do not interfere with his performance of official duties.

Example 3: An ARS scientist has been granted an “adjunct professor” title by the University where he is stationed. The scientist performs no tasks on behalf of the University. He is not employed by the University. The scientist is asked to serve as a guest lecturer for a graduate seminar in his area of expertise. The seminar meets during official duty hours. He may do so if the Agency determines that the guest lecture is an appropriate use of official time. There is no conflict.

6.5. Service on or with University Committees and Other Bodies. Agency managers should *presume* that an invitation issued by the University to an Agency scientist co-located at that University is related to the scientist’s *official duties* with the University or based upon his or her Federal status.

- **Official Capacity: Membership**

- **Permissible:** Agencies **may** permit their scientists to serve officially as members of University committees/bodies that directly affect the needs of the Agency and the Agency's interest in dissemination of Agency scientific knowledge at the University, and which do not involve the internal business of the University. Examples of appropriate committees and bodies would include those that deal with:

- (1) Space, facilities, and equipment;
- (2) Curriculum; and
- (3) Graduate Students' Masters Theses and Doctoral Dissertations.

Example: A University asks a co-located Agency scientist to serve on a committee that determines the working, office and storage space to be allocated within University facilities to all persons employed in those facilities. The space utilized by Department employees may be affected by decisions or recommendations made by such committees. A supervisor or manager may authorize the employee's participation as an official duty.

- **Impermissible.** Agencies **may not** assign or authorize official service by Agency scientists as members of committees/bodies that are responsible primarily for internal University matters. Federal participation in the internal business of the University is normally not part of the mission of the Agency as authorized by Congress and could well subject the Federal government and/or the participating employee to liability. Examples of such committees/bodies include:

- (1) Budget and/or Finance committees;
- (2) Tenure committees;
- (3) Employee/Faculty Search committees; and
- (4) Faculty/Academic Senate.

- **Official Capacity: Liaison.** Where an Agency scientist may not serve officially on a University committee or body, he or she may still attend meetings and appear before any such committee or body of the University in an official capacity as an Agency liaison in order to obtain or provide information relative to a committee/body decision that impacts the work of the Agency. The Agency employee may present the Agency's views on the matter before the committee or body, but may not otherwise participate in deliberations or decision-making.

Example: An Agency scientist has been invited to serve on the University's Budget Committee. The supervisor should not authorize participation as a committee member. Active Agency involvement in internal University finances and administration also may subject the Agency and/or scientist to liability.

However, the Agency scientist could be authorized to appear before the Finance Committee to provide information relevant to the Committee deliberations affecting the Agency and may advocate the Agency's position.

- **Personal Capacity.** An Agency scientist may serve as a member of a University committee or body in his or her personal capacity **only where**:
 - Circumstances clearly indicate that the invitation to serve is completely unrelated to either the scientist's official duties at the University, or his or her Federal status;
 - The committee or body is not ordinarily involved in University finances, personnel or administration; and
 - The function of the committee or body ordinarily has no other significant impact on the Agency.

Example: An NRCS scientist who graduated from the University where she currently is co-located, could serve, in her personal capacity, on an Alumni Committee. However, it is recommended, given the close relationship of the Agency to the University, that the scientist not be involved in efforts by the Alumni Committee that involve fundraising, or that otherwise enter into internal University finances or administration.

6.6. Activities with Students.

- **Official Capacity.** Where involvement with students directly relates to the Agency's mission at the University, and with Agency approval, Agency scientists **may** participate in their official capacities in such activities as mentoring students.

Example 1: An FS scientist has been granted an "adjunct professor" title by the University where he is stationed. The scientist performs no tasks on behalf of the University. In the laboratory on the University campus, the scientist works daily alongside graduate students, one of whom seeks a Ph.D. degree in the scientific expertise of the FS scientist. The University seeks permission of the FS to have the scientist serve on the student's graduate committee. If FS authorizes the use of official time for this purpose as being in furtherance of the Agency's mission, the scientist may serve on the graduate committee in his official capacity. There is no conflict.

Example 2: An ARS scientist is recognized for his or her expertise in genetics of vegetable crops. A University Ph.D. candidate in that same discipline and studying in the same laboratory asks that the scientist serve on his or her doctoral committee. The Agency supervisor may determine, based on all the facts, that the scientist may serve because the activity promotes the statutorily mandated goal of the Agency to promote research in that specific scientific field.

- **Personal Capacity.** Where the relationship between the scientist’s work with students and the Agency mission is less clear, the Agency manager may permit the scientists to participate in his or her personal capacity.

Example: After considering relevant circumstances, a supervisor may determine that an Agency scientist should not participate as an official duty on the committee of a Ph.D. or Master’s degree candidate. The scientist is not thereby precluded from participating on the committee, but the participation must take place on the personal time of the scientist without cost to the Government.

6.7. Representing the University at Events. Given the close relationship between Agency scientists co-located at Universities and University scientists, roles become blurred. This can lead to engaging in activities that unwittingly result in conflicts of interest. Accordingly, Agency scientists co-located at a University **may not** represent the University, or represent themselves as University employees, at professional society meetings/ conventions or at other activities or occasions. At all times, they are Federal employees whose first duty it is to represent the United States Government and their Agency.

6.8. Participation on University Grants. Given that a grant is directly tied to University finances, any involvement by Agency scientists in such grant applications should be **undertaken only in an [official capacity](#)** (as part of the official duties of the scientist) and in accordance with the guidance set forth in Part IV, below.

7. Outside Employment with the University.

7.1. General. If an Agency scientist is performing duties that create an employment relationship with the University, or is [negotiating](#) for employment with the University, the employee has a [financial interest](#) in the University and has a potential conflict of interest under [18 U.S.C. § 208](#) in terms of performing his or her official duties. If the interests of the University are [imputed](#) to the Agency scientist, that individual, as well as Agency managers approving the activity, must be concerned about the possible implications of any official duty/ action affecting the University that the employee might take or recommend.

7.2. Compensation. While the presence or absence of [compensation](#) is a major indication that an individual is in the employment of another; it is not the only factor. See 5.4., above.

7.3. Requesting Prior Approval for Outside Employment. If an Agency employee is required to file a public or confidential financial disclosure report, or if the employee is otherwise required to do so by his or her Agency’s Supplemental Agency Ethics Regulation [see [5 CFR part 8301](#)], the employee must seek [prior approval for outside employment](#) from the Agency **before** engaging in outside employment. Application of the definition of “[outside employment](#)” at 5 CFR § 8301.102(b) determines whether the

employee needs to request prior approval for outside employment. Consult with a Science Ethics Advisor to ensure compliance with your Agency’s specific requirements. The form provided in [Appendix C](#) may be used by employees and management to clarify the nature of the relationship between the employee and the University.

- **Additional Responsibilities of the Science Ethics Branch of OE:**

- Ensure that managers, supervisors, and employees are aware of the requirements of this issuance;
- Document the methods used to make employees aware of these requirements; and
- Make the information available, upon request, to the [DEO](#) and/or other ethics officials.

7.4. Factors for Agency Consideration. Agency managers and supervisors, in determining whether to permit a scientist to participate in teaching activities as part of outside employment, must consider the following statutes and regulations:

- [5 CFR § 2635.807](#). **Teaching, speaking, and writing restrictions.** As a general rule, employees may not receive compensation from a source other than the Federal Government for teaching, speaking, and writing that relates to their official duties. Managers must determine how close the subject of the lecture relates to the employee’s official duties.
- [18 U.S.C. § 209](#). **Dual Compensation.** To the extent that the lecturing, teaching, or any other activity with the University is deemed to be an intrinsic part of the employee’s official duties, receiving compensation for engaging in that activity could violate this statute.
- [18 U.S.C. § 208](#). **Conflicting Financial Interests.** University employment, even if uncompensated, creates a conflicting financial interest in the University.

Example: An ARS scientist has been granted an “adjunct professor” title by the University where she is stationed. The scientist, based on her scientific credentials earned while a professor at the University prior to accepting USDA employment, has been invited to serve on the University’s tenure committee. Hence, she will serve on this committee in her personal capacity. The Agency notifies the scientist that she is to be assigned as [ADODR](#) to provide financial oversight of a temporary agreement with the University’s School of Agriculture. While there is no pay involved, there would be a conflict for her to serve as ADODR while still sitting on the tenure committee. The duties would constitute an employment relationship with the University.

NOTE: *Since serving on a tenure committee involves solely internal University interests, the scientist could not undertake them, nor could the Agency assign them to be performed as part of her official duties.*

- [5 CFR § 2635.502](#). **Loss of Impartiality.** [Agency managers take note.] While the aforementioned term of employment may be very brief, the decision to approve outside employment with the University may have a much longer practical effect. The rules against loss of impartiality generally impose a **one-year** prohibition following the end of the employment relationship upon an employee [participating personally and substantially](#) in any [particular matter involving specific parties](#) in which the former employer is or represents a party (*e.g.*, a cooperative agreement of grant application).
- [5 CFR §§ 2635.702 and 703](#). **Misuse of Position.** Particularly where the teaching activity involves subjects related to the employee's official duties, the employee must ensure that his/her or her teaching does not violate 5 CFR § 2635.702(b) by giving the audience the impression that the facts presented or opinions provided are those of the Agency, or are otherwise endorsed or sanctioned by the Agency. The employee also must avoid violating 5 CFR § 2635.703, by improperly utilizing non-public information, as stated above.
- [5 CFR Part 2634](#). If the employee files a financial disclosure report as part of his or her official duties, the paid teaching activity must be reported.

7.5. Specific Application to Teaching and Compensated Lecturing Activities.

- **Immediate Conflict of Interest Concerns.** To the extent that Agency managers approve outside employment in the form of teaching, or compensated lecturing, managers should be aware that the conflict status under 18 U.S.C. § 208 remains in existence from the date on which the employee began discussions with University officials concerning the possibility of teaching a course or compensated lecturing through either: (a) the date on which the teaching or lecturing activity is completed; or (b) the date on which any compensation to be paid for the teaching or lecturing activity was received in full, whichever is later.

Example: You are a scientist assigned to work at University X. You also are a part-time paid professor at the University. Your agency assigns you to review a grant proposal from the University and to recommend whether to award the grant. You may not do so. As a paid professor, you clearly are a [university employee](#). If you participate in any way in reviewing the grant proposal, such as by making a recommendation, you violate 18 U.S.C. § 208 because the interests of your outside employer are imputed to you and you have taken an official action affecting those financial interests. You must disqualify yourself or terminate the employment relationship with the University. Also see the impact of the impartiality rules below.

- **Extended Loss of Impartiality Concerns.** As noted above, when the term of

University employment ends, the scientist still must be recused for a period of one year from participating in matters in which the University is a party (e.g., a cooperative agreement or grant application).

Example: The same facts as in the prior example, except that you have just recently finished and have been fully-paid for teaching the course for the University when the Agency notifies you that you are being assigned to review the University's grant proposal. Under 5 CFR § 2635.502, you still would be unable to participate in such duties for a period of one year after the end of your employment relationship with the University unless you receive specific permission to do so from the Agency under [5 CFR § 2635.502\(d\)](#). Even as a former employee, you remain, for one year, in a "[covered relationship](#)" with the University.

8. Spousal, Partner, and Other Family Involvement with the University.

It is not unusual for Universities, in an effort to attract certain Agency scientists to their campuses, to offer employment opportunities for a spouse, non-spousal partner, or other family member. Depending upon the circumstances surrounding the involvement that this person has with the University, an employee who is an Agency scientist co-located at that University may face either conflict of interest, or loss of impartiality concerns. Where the official actions of the Agency scientist can have a [direct and predictable effect](#) upon the [financial interests](#) of a spouse or minor child, a conflict of interest, under [18 U.S.C. § 208](#) may result. Where the same situation involves a non-spousal partner, or an adult child (or other household member, or other close family member) at the University, the employee does not have a conflicting financial interest, but still faces potential impartiality concerns under 5 CFR § 2635.502.

NOTE: *Examples 1 through 4, below, specifically deal with spouses in order to show the interaction between the criminal statute, 18 U.S.C. § 208, and the regulatory rule regarding impartiality, 5 CFR § 2635.502. Were the following situations to involve significant others, only 5 CFR § 2635.502 would be at issue.*

*Example 1: **Spouse as University Trustee.** Louise, an Agency biological scientist, is stationed at a university. She marries Joe, a Trustee of the University. The Agency notifies Louise that she is to be assigned as [ADODR](#) to provide financial oversight of a temporary agreement with the University School of Agriculture. Joe, the husband, as a Trustee, possesses the financial interests of the University as his own; thus, the full interests of the University are [imputed](#), in turn, to Louise, the Agency scientist. Louise, faces a conflicting financial interest. She must notify her supervisor of the conflict of interest and disqualify herself from the assigned task.*

*Example 2: **Spouse as Professor whose professional success may be directly affected by the Agency scientist.** Same facts as in Example 1, above, except that Joe is an Associate Professor in the University's School of Agriculture. The*

Agency notifies Louise that she is to be assigned as ADODR of the temporary agreement. Her husband directs the project on behalf of the University. Unlike service as a Trustee, Joe's employment relationship with the University does not impute the financial interests of the University to Louise; however, still imputed to Louise are Joe's financial interests in his position. Thus, where her performance of official duties as ADODR may have a direct and predictable effect (impact) upon on whether Joe will retain his position, level of salary, career prospects (such as tenure), or continued responsibility for the project, will determine whether her participation as ADODR constitutes a criminal conflicting financial interest, or a loss of impartiality. In this case, Joe's interests will be directly and predictably affected by Louise's performance of her duties as ADODR. She must notify her supervisor of the conflict of interest and disqualify herself from the assigned task. However, see Example 3, below, concerning remaining impartiality concerns.

NOTE: If the Agency chooses to still have her perform the ADODR duties, the standard for a determination authorizing participation despite appearance of impartiality [see Example 3, below] in accordance with 5 CFR § 2635.502(d) is not as strict as the standard for a criminal conflict of interest waiver under 18 U.S.C. § 208(b)(1) [see Example 2, above].

Example 3: Spouse as Professor whose professional success won't be directly affected by the Agency scientist. Same facts as in Example 2, above, except that Joe, the spouse, is a professor in the University School of Public Administration. Joe's employment does not impute the financial interests of the University to Louise and her performance of official duties has no direct and predictable affect upon Joe's professorial success at the University. However, an employee is deemed to have a "[covered relationship](#)" with, amongst other parties, a spouse's employer under [5 CFR § 2635.502\(b\)\(1\)\(ii\)](#). If Louise [participates personally and substantially](#) in a [particular matter involving specific parties](#) (the project with the University would meet that description), she could create the appearance of a loss of impartiality on her part. Similar to the foregoing example, Louise should notify her supervisor of the appearance concern and disqualify herself from the assigned task unless, after full disclosure to the Agency, authorization is received in accordance with 5 CFR § 2635.502(d).

Example 4: Spouses working together on Same Project. Same facts as in Example 2, above, except that Joe, as Associate Professor in the University's School of Agriculture, wants to seek grant money from a foundation to conduct research that is of mutual benefit to the University and the Agency. Louise, Joe's spouse and an Agency scientists employed at an Agency facility located at the University, knows all about Joe's research, believes that it has incredible promise, and has even discussed its benefits, at length, with Agency supervisors. Without any Agency approval, she volunteers to serve as co-Principal Investigator on the grant application. The grant application is accepted. None

of the money goes to Louise. However, she begins working with Joe, on Agency time, on his research. Again, as in Example 2, above, Louise's performance of official duties have had a direct and predictable effect (impact) upon on whether Joe will get the grant and whether his research is likely to be successful. These factors, in turn, relate directly to whether Joe will retain his position, level of salary, career prospects, etc. Her actions appear already to have violated 18 U.S.C. § 208 [conflicting financial interest] and the matter must be referred to the Office of the Inspector General.

*Example 5: **Adult child is degree candidate who may be directly affected by the Agency scientist.** The Agency stations an agricultural scientist at a land-grant university to work in a laboratory adjacent to the campus. The scientist's adult child is a teaching assistant who is a Ph.D. candidate in the University's College of Agriculture. The Agency assigns ADODR responsibilities to the employee for a project in the College of Agriculture. The covered relationship with the child will not permit the employee to fulfill the ADODR responsibility unless he or she makes full disclosure to the Agency and authorization is received in accordance with 5 CFR § 2635.502(d).*

9. Gifts and Supplements to Salary Involving University Privileges and Benefits.

9.1. General Concerns. Universities offer a variety of benefits and privileges to Agency scientists during the course of their service at the University. Whether the benefits and privileges can be accepted or used by the scientist depends on several factors. Agency managers, in addressing acceptance of gifts and benefits offered by the University to Agency scientists, should consider the following:

- Is the benefit or privilege primarily offered in order to directly facilitate the scientist's performance of official duties?
- If the answer to this question is "yes," then Agency managers should consider whether the Agency can accept the privilege or benefit either: (a) under a written agreement between the University and the Agency; or (b) under Agency statutory gift acceptance authority; and
- If the answer to the opening question is "no," or if the Agency either cannot or chooses not to accept the privilege or benefit under available authority, then Agency managers must consider whether the scientist may accept the benefit or privilege without raising dual compensation, conflict of interest, impartiality, or other gift concerns.

9.2. Gifts, Privileges and Benefits Provided to the Agency. If what is being provided by the University directly and primarily benefits the scientist's ability to perform his or her official duties, the Agency may consider the gift, benefit or privilege

to be offered to the Agency, rather than directly to the scientist. In such cases, Agency managers should consider whether such offerings may be accepted under:

- [Departmental Regulation \(DR\) 5200-003](#) which implements the USDA Gift Acceptance statute, 7 U.S.C. § 2269;
- Other Agency-specific statutory authority; or

In either case, acceptance pursuant to these authorities should be documented in an appropriate [written agreement](#). To the extent that the Agency and University are properly able to address the provision of appropriate gifts and benefits in a cooperative agreement, MOU, or other appropriate document, as furthering the purposes of the agreement and authorized by law, those items cease to be an ethics concern for the Agency scientist.

9.3. Dual Compensation Concerns: Free or Reduced-cost Tuition; Housing.

Unless properly accepted by the Agency (see 9.2, above), or covered by an exception below, an employee of the Agency **may not solicit or accept** free or reduced cost tuition or housing from the University based on his or her official duties with the institution. He or she is paid by the Federal Government for those efforts. To accept free or reduced cost tuition or housing on the basis of the performance of official duties may constitute supplementation of official salary, which is a criminal offense ([18 U.S.C. § 209](#)).

- **Exceptions.** An employee may personally accept or take advantage of free or reduced-cost tuition or housing offered by the University only where:
 - The free or reduced cost tuition or housing is offered either:
 - (1) To the Agency employee's spouse or child based solely upon an employment relationship between the spouse or child and the University which is unrelated to the scientist's official presence at the University; or
 - (2) To the Agency scientist pursuant to an Agency-approved outside employment relationship with the University; and
 - The University customarily extends free or reduced cost tuition or housing to its employees as part of the pay package extended by the University all other similarly-situated employees.

***NOTE:** Agency management should always be mindful of whether such offers signify that the employee's presence at the University is more for the benefit of the Agency or the University, or that the spouse's employment relationship with the University was a result, or related to, the employee's official assignment. Also, as stated previously, in a co-located environment, there is a strong likelihood that an Agency scientist's outside employment relationship with the University will pose at least an impartiality concern, if not a conflict of interest.*

Example 1: A FS research scientist is co-located at a university situated near an experimental forest. The scientist's official duties will heavily

involve research at that forest. Other than a university housing area, there is no decent housing in reasonable distance of the forest. Under those circumstances, the Agency could consider whether to accept the offer of free housing from the University under DR 5200-003, or other authority.

Example 2: An well-renowned ARS scientist is assigned to serve at an agency research center at the University. The University, aware that the Agency will not let the scientist accept free housing, offers the scientist's spouse a teaching position at the University. The University normally offers such housing to its professors. The Agency may reasonably conclude that the offer to the spouse really was aimed at the scientist and simply accomplished through offering the spouse the teaching position. Under such circumstances the scientist could be in jeopardy of violating 18 U.S.C. § 209.

9.4. Other Gifts, Privileges and Benefits Provided to the Scientist. Where the University provides less substantial privileges and benefits [benefits that do not indicate dual compensation or a University employment relationship], either for free or for less than market value, though unrelated to the performance of any specific official duty, a Federal employee's acceptance of those privileges could violate the rules concerning gifts from outside sources, as set forth in 5 CFR Part 2635, Subpart B. A university, as a cooperator or partner with the Agency, is a "[prohibited source](#)" as defined by 5 CFR § 2635.203(d); therefore, Agency employees [not just those who are co-located at the University] are precluded from accepting gifts from universities with interests that are affected by the Agency.

- **General Rule.** Except where accepted by the Agency under DR 5200-003 or other statutory authority exercised primarily in connection with the performance of the scientist's official duties, or covered by one of the exceptions listed below, acceptance of the following for less than "[market value](#)" [see 5 CFR § 2635.203(b)(9)] would be a gift based either on one's official position, or from a prohibited source:
 - Library Borrowing Privileges (if borrowing privileges of members of the public at the library are predicated on payment of an established fee);
 - Recreation Facility Cards; and
 - Faculty/Staff Ticket Rates, Faculty Club Membership, and Faculty/Staff Discounts at the University Book Store.
- **Exceptions.** Acceptance of the above privileges, either for free or for less than market value, would be permitted under 5 CFR 2635.204, where:
 - The value of the gift or benefit is worth no more than \$20 and the Agency employee has accepted no more than \$50 in personal [as opposed to Agency] gifts or benefits during the past calendar year;

- The gift or benefit is provided to the Agency employee by a personal friend
NOTE: this exception would not cover a gift actually purchased or provided by a prohibited source through the friend;
 - The gift or benefit was provided by the University to the Agency employee's spouse or child based upon an employment relationship or student benefit and was provided, in turn, by the spouse or child to the Agency employee;
 - The facility is open to the general public without payment of a fee;
 - The same or more favorable rates and discounts are available to the general public or to a class consisting of all Government employees as provided in 5 CFR § 2635.203(b)(4);
 - The employee has an outside employment relationship with the University and the fee to be paid for privileges by the employee is the fee appropriate to his or her employment at the University;
 - The employee has free access and borrowing privileges solely by virtue of being an alumnus of the University;
 - The fee waiver or reduction was provided to the Agency through a *written agreement* between the Agency and the University [see Gifts, Privileges and Benefits Provided to the Agency, above]; or
 - The employee holds official capacity "Adjunct Faculty" status and therefore has borrowing privileges consistent with that afforded other non-tenure appointments.
- **Parking and Campus Shuttle Services.** Agency employees may utilize these services when charged at the same "market value" rate charged other faculty or adjunct faculty members.

9.5. Gifts as Evidence of University Employment. If a gift, benefit, or privilege is provided by the University to a scientist that is not related to performance of the scientist's official duties, but is provided in the context of a relationship between the scientist and the University (e.g., where the scientist provides services or engages in activities with the University in his or her personal capacity), such gift, benefit, or privilege, especially if of significant monetary value, may signify that the employee is also a *university employee* as a result of his or her unofficial activities with the University. In such cases, the Agency manager and employee should be aware of the potential for the employee, in performing any official duties that relate to the University, to be engaged in a criminal conflict of interest under [18 U.S.C. § 208](#), or at a minimum, a loss of impartiality under [5 CFR § 2635.502](#).

III. PEER REVIEW ACTIVITIES

10. Writing for and Participating in Peer Review of Articles for Publication in Scientific and Professional Journals.

10.1. General. It is expected in the field of science for scientists to write articles concerning the results of their scientific work for publication in established scientific and

professional journals. As part of the publication process, these journals subject the submitted articles to the scrutiny of other scientists who review and critique the article [peer review process]. This peer review process is part of the decision-making process used by the journal in determining what to publish. While scientific and professional journals are non-Federal publications published by non-Federal entities, a Federal scientist, in seeking to improve as a scientist and to enhance one's career potential as a scientist, is expected to write articles for publication and is expected, as a scientist, to participate in peer review of articles written by other scientists.

10.2. Official Capacity. Because scientists have a professional responsibility to publish findings based on their scientific work, Agency managers should presume, based on the above, that a Federal scientist who is engaged in the activity of writing for a scientific journal, or of participating in peer review of such articles for a scientific journal, that relate to the type of science which he or she performs for the Agency does so as part of his or her **official duties**. Where authorized by the Agency, an employee may, as part of his or her official duties, engage in such activity. Where assigned or performed as part of one's official duties, the only ethical restrictions are:

- The scientist may not accept any form of compensation for writing the article. The scientist also may not designate donation of offered compensation to a non-profit entity in lieu of acceptance; and
- Where necessary, the scientist must provide all proper disclaimers.

10.3. Personal Capacity. If not assigned as, performed as part of, or deemed by the Agency as directly related to, the scientist's official duties, the scientist **may** write and submit scientific articles to scientific journals for publication and may participate in peer review activities subject to the following ethics considerations:

- **Compensated Activity.** Treat as outside employment with the society or entity that publishes the journal. The scientist must then recuse 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 or use of non-public USDA information. To this end, the scientist must:
 - Ensure that he or she does not use any non-public USDA information without getting proper Agency clearance to do so;
 - Ensure that his or her official title does not appear prominently in the article [for more information, see Section 20, below];
 - Avoid conveying or giving the impression within the article that USDA endorses or sanctions his or her activities or the contents of his or her articles; and

- Where necessary, ensure that the article contains all proper disclaimers.

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**. 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.

- 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 recuse 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.

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.

13. Personal Capacity Participation.

To the extent that a Federal employee seeks to participate in a non-Federal entity's grant application in a capacity other than in the proper performance of his or her official duties, ethical issues can arise where there is any relationship between the grantee and the employee's official duties. Where an employee participates in such activity in a personal capacity, either intentionally, or because such participation is not authorized as part of their official duties, the involvement could trigger concerns under 18 U.S.C. §§ 205 and 208, and, if participation results in their receiving compensation, possibly 18 U.S.C.

§§ 203 and 209. Moreover, to the extent that the employee's services fall within the definition of "consultant," as defined at 4.4, above, if the employee is a financial disclosure report filer, he or she must request prior approval for outside employment in accordance with 7.4, above.

13.1. All Grant Applications. Where a Federal employee performs official duties that involve or directly affect a non-Federal entity, then the following ethical issues can arise should he or she participate in a personal capacity when preparing a grant application for the non-Federal entity, irrespective of the recipient of the application.

- **18 U.S.C. § 208. Conflicting Financial Interests.** Where the employee performs, in support of a grant application of a non-Federal entity, either: (1) compensated services in support of the application; or (2) uncompensated services as a professional or consultant, the employee should be deemed to have an employment relationship with the non-Federal entity. Employment constitutes a financial interest in the non-Federal entity and to the extent that the Federal employee performs official duties that directly and predictably affect the financial interests of the non-Federal entity, even if those duties have no relationship to the purpose of the grant application, the employee could violate this statute.
- **5 CFR § 2635.502. Loss of Impartiality.** There are two ways in which the impartiality provisions can apply:
 - **Active Relationship.** Where the Federal employee provides uncompensated assistance in support of a non-Federal entity's grant application that does not involve professional or consultative services, the employee's participation in the grant application constitutes "active participation" in the entity. Accordingly, the employee has a covered relationship with the non-Federal entity that is subject to the rules against loss of impartiality. The employee would violate these rules by participating in a particular matter involving specific parties in which the non-Federal entity is a party or represents a party.
 - **Recent Prior Relationship.** Absent Agency authorization, where the employee, within one year of having an employment relationship with the non-Federal entity, participates in a particular matter in which the non-Federal entity is or represents a party, he or she would also violate the impartiality rules.

13.2. Grant Applications Submitted to Federal Entities. In addition to the foregoing concerns, where the application is to be submitted to a Federal entity, the following additional concerns apply:

- **18 U.S.C. § 205. Representation.** This statute would apply to a Federal employee who, other than in the proper performance of official duties (see above), signs the grant application, meets with Federal officials, writes a Letter of Support, or otherwise contacts Federal officials on behalf of the non-Federal entity.

- [18 U.S.C. § 203](#). **Compensated Representational Activities.** This statute would apply to a Federal employee who, other than in the proper performance of official duties (see above), is compensated for performance of any other services in support of the grant application (e.g., drafting the application).

V. **PARTICIPATION IN PROFESSIONAL AND SCIENTIFIC ASSOCIATIONS** [For further guidance see [Office of Ethics Issuance 00-1, Participation In Non-Federal Organizations](#)]

14. Official Capacity Participation.

14.1. Service as an Officer, Director, Trustee, or Employee. Federal employees generally **may not** serve in [official capacity](#) as officers, directors, trustees, (*i.e.*, as “fiduciaries”) with, or employees of, a non-Federal entity unless: (1) the service is *specifically* authorized by statute; (2) the role involves assumption of no legal duties to the non-Federal entity, such as fiduciary duties, or employer-employee obligations; or (3) the employee receives an individual waiver under [18 U.S.C. § 208\(b\)\(1\)](#) (see 16, below).

14.2. Service as an Agency Liaison. Where a scientific or professional association (association) is closely aligned with a departmental program, it may be in the Department’s interest to have an employee participate in a liaison capacity with the governing board of the association. In such capacity, the employee is present solely as a representative of his or her agency. As an Agency Liaison, the employee’s participation must be *ex officio* (in an *advisory/consultative role*); and he or she may not:

- Vote on matters before the Association Board of Directors;
- Participate in issues related solely to the business or internal interests of the Association (e.g., finances, fundraising, membership, etc.);
- Engage in lobbying efforts or representation of the Association’s interests before the Federal Government; or
- Actively participate in Association activities in a personal capacity during tenure as an Agency Liaison. [See Appendix D: Agency Liaison Designation Letter.](#)

14.3. Service on Committees and in Other Non-managerial Roles. As with Agency Liaison designation, where an association is closely aligned with a departmental program, Agency managers have broad discretion to assign or approve official capacity participation by a Federal scientist in activities of the association, including service on and chairing association committees related to the scientist’s field of expertise, or that further the Agency’s mission. The rules applicable to Agency Liaisons, above, should be followed.

14.4. Attending Association Conferences.

- **Simply Attending in Official Capacity.** Even where a scientist serves as a fiduciary or employee of the association, he or she may attend, in official capacity, a conference held by the association for the purpose of professional development. If the scientist performs no other duties other than to attend the conference, there is no conflict of interest. However, where the scientist is sought by the association to be more actively involved in the conference, such as by being a featured speaker or presenter, see the discussions in 15.1 and 15.2, below.
- **Participating in Internal Association Meetings During the Conference.** Where an association schedules a conference in connection with an internal business or administrative meeting of the association, an agency may still permit an agency scientist, who is approved to attend the conference for training on official travel and who is also active in the association, either as a simple member of the association, or as a fiduciary, to also participate in some administrative functions of the association. The Agency, in permitting such participation, should consider such factors as the type of function and the amount of time to be spent on association 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: (1) on personal or administrative leave; and (2) at no additional cost to USDA. Moreover, 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 scientist may perform.
- **Permissible functions** would include functions related either to: (1) 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 (2) the planning of future meetings or conferences to which the Agency is likely to send employees;
- **Impermissible 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).

15. Personal Capacity Participation.

15.1. Service as an Officer, Director, Trustee, or Employee. In personal capacity, an employee may serve in any capacity with an association, including as an officer, director, trustee, or employee. That said, the scientist, even in serving in a personal capacity, must avoid actions that would violate the provisions of 18 U.S.C. §§ 203 and 205 should his or her participation in the association involve interaction with a Federal agency or court. Moreover, where a scientist serves in such a capacity with an

association, for purposes of 18 U.S.C. § 208, he or she has a *financial interest* in the association. Accordingly, the scientist who serves in such roles may be subject to criminal penalties should he or she take official action on any particular matters (including broad policy issues) affecting or involving the association. Examples of official actions affecting the association include, among others, the following:

- Recommending to Agency superiors that the Agency enter a memorandum of understanding with the association to jointly-sponsor a conference;
- Making an official speech before the association, or requesting that Agency managers send a speaker to make a presentation to the association;
- Requesting approval of acceptance of travel funds for official travel offered by the association to the Agency under [31 U.S.C. § 1353](#).

15.2. Other Active Participation. Agency scientists who are not fiduciaries or employees, but who are otherwise *active participants* in the association, could violate the rules concerning loss of impartiality under 5 CFR 2635.502, where they participate officially in a *particular matter involving specific parties* in which the association is, or represents, a party. While this prohibition does not prohibit the scientist from being involved in broad policy matters affecting the association, it would still preclude involvement in grants, loans, contracts, cooperative agreements, memorandums of understanding, lawsuits, and other specific dealings between the Agency and the association.

16. Waivers and Memorandums of Understanding.

16.1. Waivers. The conflict of interest statute places stringent requirements on qualifying for an individual waiver under 18 U.S.C. § 208(b)(1). Under the statute, an Agency may determine in an individual case that a disqualifying financial interest in a *particular matter* or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, the Agency may then waive the employee's disqualification notwithstanding the financial interest, and permit the employee to participate in the particular matter. In reference to serving in a capacity described in 14.1, above, the peculiar circumstances of official capacity service cause individual waivers to be looked upon with *disfavor*. Before considering this option, the Agency MUST be able to articulate a NEED for the Agency to be managing a non-Federal entity that overrides such ethics and legal concerns. [Normally, if Congress wants the Federal Government to run a non-Federal entity, it will authorize such through statute.] At a minimum, the Agency should confer with OGC concerning liability exposure to the Agency and to its employees, personally; and must consult with the Office of Government Ethics. In doing the latter, the Agency shall confer with this Office.

16.2. Memorandums of Understanding. To the extent that an Agency deems it

beneficial to assign its scientists to perform official duties on behalf of an association, and especially should the Agency choose to issue a waiver for a scientist to serve officially as a fiduciary or employee of the association, the Agency should enter into a memorandum of understanding with the association.

VI. ACCEPTANCE OF AWARDS AND FELLOWSHIPS FROM NON-FEDERAL SOURCES.

17. Nominations Based on Performance of Official Duties.

Federal scientists are often recognized by the scientific community for the performance of their official duties, including for research and other contributions to science. This recognition often comes in the form of a nomination for an award (this term will include fellowships) aimed at assisting the scientist in continuing their official work. The ethical rules that impact whether the award can be accepted and under what conditions it may be accepted are determined primarily based on whether the work for which the award is offered furthers the Agency mission (i.e., official research).

17.1. Prior Agency Approval Considerations. While the Agency scientist may be recognized in name for his or her research, contributions to science, or other notable activities, the Agency also is truly a party where the award is based upon performance of official duties. The Agency, accordingly should consider the following factors in determining whether to permit acceptance:

- **The nature of the donor.** Agency managers should consult with ethics advisors whenever the donor is one of the following:
 - **For-profit entities.** Awards from for-profit entities are always subject to greater scrutiny, particularly where they have interests affected by USDA;
 - **Foreign Governments and Foreign Government-owned Corporations and Universities.** Any time that a Federal employee receives an award or honor from a foreign government, it must be determined whether acceptance is proper in light of the Emoluments Clause of the U.S. Constitution; and
 - **Domestic research or educational institutions tied to Agency.** If the award or fellowship is from an domestic research or educational institution whose interests may be directly affected by the performance or non-performance of official duties [*e.g.*, a university where the Agency scientist is co-located].
- **Authority for Acceptance.** As the monetary award is offered based upon the scientist's performance of official duties, the funds may be accepted:
 - By the Scientist on his or her own behalf only where in accordance with the rules set forth in Section 18.1, below. (Other than as provided in Section 18.1, funds awarded to compensate the Agency scientist for performance of his or

her official work could constitute dual compensation in violation of [18 U.S.C. § 209](#)); or

- By the Agency (or the Agency scientist on behalf of the Agency) only if the Agency has statutory authority to accept the funds (See Section 9.2, above).
 - By the Agency (or the Agency scientist on behalf of the Agency) on behalf of a university or other third party only where:
 - The Agency has statutory authority to accept the funds;
 - The Agency has authority to provide those funds to or for the use of the University or other third party; and
 - Acceptance and transfer of the funds are provided for through an appropriate [written agreement](#).
- **Basis for Nomination.** The Agency scientist must be nominated solely in his or her capacity as an Agency employee. In no way may the nomination indicate or infer that the Agency scientist is seeking or accepting the award either in his or her own personal capacity, or as a representative of a non-Federal entity, such as a university. To that end, where an Agency scientist is nominated for an award by a non-Federal entity, the Agency scientist must obtain Agency approval based upon a determination that the nomination presents no conflict of interest or appearance concerns before he or she may accept the award. See above

17.2 Addressing Through Written Agreement. Where it is reasonable for the Agency to anticipate that a university, or other partnering entity, would nominate Agency scientists for awards in order to further mutually beneficial projects, the Agency should consider whether provisions for handling such awards should be contained in a [written agreement](#) with the University.

18. Nominations Other Than for the Performance of Official Duties.

Where an Agency scientist either seeks an award, or is nominated by a non-Federal party, and where the basis for the award is work or activities that has no clear connection to his or her official duties, the Agency scientist must consider gift and conflict of interest rules in determining whether he or she may accept the award.

18.1. Gift Rules. Where the award is offered in order to recognize work conducted in the past, the receipt of the award from a non-Federal party is apt to qualify as a gift under subpart B of 5 CFR part 2635 and generally may not be accepted if either:

- The donor or nominating party are considered [prohibited sources](#) under [5 CFR § 2635.203\(d\)](#); or
- The award being offered, or the nomination by a third party, is based upon the scientist's official position.

If either situation exists, the award cannot be accepted by the scientist unless permitted under an exception to the gift rules. If the award is worth more than \$20, the award must

be viewed under the awards and degrees exception in [5 CFR §2635.204\(d\)](#). Factors determining whether the award should/may be accepted under this exception include the following:

- **Award Worth More Than \$200:** Where the award is worth more than \$200, or is comprised of cash or investment interests, the Agency scientist may **only** accept the award upon a **written determination** by the Agency ethics official that the award is made as part of an established program of recognition under which:
 - Awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and
 - Selection is made pursuant to written standards.
- **Award Worth \$200 or Less.** Where the award is worth no more than \$200 and not comprised of cash or investment interests, it **may** be accepted if:
 - It is a *bona fide* award given for meritorious public service; and
 - Neither the donor nor nominating party has interests that may be substantially affected by the performance or nonperformance of the scientist's official duties.

18.2. Pre-Award Conflict/Impartiality Concerns.

- **General.** During the award process [the period commencing at the point where the Agency scientist either applies for, or learns that he or she has been nominated for, an award and terminating at the point of full receipt of the award, or notice that he or she did not receive the award], it is conceivable that the Agency scientist has a conflicting financial interest in, or impartiality concern involving, both the donor and possibly the nominating party. In any case, a reasonable person possessing all of the facts could reasonably conclude that the Agency scientist could misuse his or her official position to the benefit of the donor or nominating party. During the award process, and particularly where the award is substantial, Agency managers should consider whether the scientist should have to recuse himself or herself from official duties affecting these parties, or be reassigned.
- **Agency Considerations.** Significant factors to consider in this determination include:
 - The nature of the relationship between the donor and the Agency;
 - The likelihood that matters affecting the donor will come before the nominated scientist for official action;
 - The perceived frequency of such matters coming before that scientist;
 - The level of discretion that the nominated scientist must exercise in the matters;
 - Whether such matters can be reassigned;
 - The sensitivity or monetary value of the matters; and

- Level of supervision normally exercised in connection with the nominated scientist.

18.3. Post-Award Conflict/Impartiality Concerns.

- **Outside Employment.** To the extent that the award is tied to the prospective performance of official duties by the Agency scientist, Agency managers should presume, absent a clear showing to the contrary, that the Agency scientist has entered into an employment relationship with the donor. To the extent that a nominating third party is specifically to receive the benefit of the scientist's official duties (e.g., funded research), and employment relationship with that entity may exist, as well. Where prospective official work, such as research, is anticipated following an award, the Agency scientist should:
 - Request *prior Agency approval for outside employment* pursuant to [5 CFR § 8301.103](#);
 - Absent an Agency waiver under [18 U.S.C. § 208\(b\)\(1\)](#), immediately recuse himself or herself from official duties on any *particular matter*, including general policies, programs and regulation, that *directly and predictably affect* the interests of the employing party until such time as the official duties (e.g., funded research) and all required work for the employing party has been completed; and
 - Absent authorization under [5 CFR § 2635.502\(d\)](#), upon completion of the required work for the employing party and for a period of one year afterwards, recuse himself or herself from official duties on any *particular matters involving specific parties* in which the former employer is a party, or represents a party.
- **Misuse of Official Position, Title or Authority.** The Agency scientist must not use his or her official title, position, or authority in any way in support of their nomination for an award that is unrelated to their official duties.

VII. TESTIMONY AND CONSULTING

19. Preliminary Considerations

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](#).

20. Testimony

20.1 General.

- **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.

20.2. 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. Exceptions to this rule are as follows:

- **Special Government Employees (SGEs).** An SGE generally may serve as an expert witness in such cases except where the SGE has participated as an employee or SGE in the particular proceeding or in the *particular matter* that is the subject of that proceeding; or
- **DAEO Authorization.** The *DAEO* may authorize an employee to provide expert testimony in such cases if:
 - After consultation with: either (1) the agency representing the Government in the proceeding; or (2) where no agency represents the Government, with the Department of Justice and the Federal agency with the most direct and substantial interest, the DAEO determines that the employee's service as an expert witness is in the interest of the Government; or
 - The DAEO determines that the subject matter of the testimony does not relate to the employee's official duties.

20.3. Misuse of Official Position. Under [5 CFR § 2635.702](#), even if there is no other Federal interest in the litigation, a Federal employee is not permitted to use his or her public office (including authority and information) for private benefit. To the extent that the basis of the scientist's testimony comes from his or her Federal performance of official duties, or to the extent that the scientist's official position would tend to give their testimony added credence, he or she would likely violate this provision.

21. Consulting

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.

21.1. Outside Employment. As stated above, 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.

21.2. Compensated Services in Support of Representation. Under [18 U.S.C. § 203](#), a current Federal employee who is acting other than in the proper performance of his or her official duties would violate Federal criminal law by receiving compensation from a non-Federal entity in return for performing services in direct *support* of a representation by a non-Federal entity before an officer or employee of a Federal Agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest. This would mean that an Agency scientist who is paid by a company in return for consulting services related to an effort by the company to obtain action by a Federal agency or Federal court could violate this statute.

21.3. Misuse of Official Position. See 17.2, above and Part VIII, below.

VIII. USE OF OFFICIAL TITLE AND POSITION.

22. Official Capacity.

If an Agency scientist is approved to participate in any of the activities discussed in this Issuance 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. Hence, Dr. Smith may be listed as Dr. Jane Smith, Deputy Chief for Research, U.S. Forest Service.

23. Personal Capacity.

Where an Agency scientist participates in any of these activities 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. For 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 title as “Deputy Chief for Research,” or list a specific duty location such as “Headquarters,” or “Region 5.”

24. Official Letters of Recommendation and Endorsements.

24.1 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 stationery 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.

24.2 Official Endorsements. In addition to grant applicants (see Part IV, above), 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.

IX. PATENT RIGHTS, ROYALTIES AND LICENSING AGREEMENTS.

25. Inventions Made in Connection with Federal Employment.

25.1. Background. Under the invention rights regulations, the Government is entitled to own any invention made by a Government employee, either as part of the employee's official duties, or with the use of Government resources. 37 CFR part 501. Pursuant to the Bayh-Dole Act (Act), Federal Agencies are authorized to obtain patents for such inventions and to license such inventions for royalties. 35 U.S.C. §§ 207-209; 37 CFR part 404. Under section 7 of the Federal Technology Transfer Act of 1986 (FTTA), as amended, a Federal Agency must "pay each year the first \$2,000, and thereafter at least 15 percent, of the royalties or other payments . . . to the inventor . . . if the inventor's . . . rights are assigned to the United States." 15 U.S.C. § 3710c(a)(1)(A)(i). While payments are being made to a Federal employee-inventor, the employee may continue to work on the development and improvement of the invention in his or her official capacity as part of Federal research and development efforts. These continuing efforts, for example, may be in the context of a cooperative research and development agreement (CRADA) with a university or other private sector entity aimed at refining and commercializing an invention. 15 U.S.C. § 3710a.

Whenever USDA wishes to promote commercialization of its inventions, it typically does so either by applying for a patent or by other commercialization means, such as publishing the research results. On those occasions where a Federal Agency does not intend to file a patent application or otherwise promote commercialization of an invention, the Agency is required to allow an employee-inventor to obtain or retain title to the invention subject to a license to the Government. 15 U.S.C. § 3710d; 37 CFR part 501. At USDA, the determination of rights is delegated to the Office of the General Counsel (OGC). 7 CFR § 2.31. Inventors should direct their requests directly to OGC. An Agency may choose to file a patent application only in the United States and may optionally elect not to file in foreign countries. An employee-inventor may request rights

in those foreign countries where the Government does not have an interest. 37 CFR § 501.9(d).

25.2. Effect of FTTA Royalty Payments. Amounts paid to Federal employees under section 7 of the FTTA constitute compensation from the Federal Government. As a result, a Federal scientist-inventor who assigns his or her rights in an invention to the United States and accepts the government's payment of amounts from the resulting royalties and other licensing payments, as provided in the FTTA, may continue to work on the invention without violating either [18 U.S.C. § 208](#), by taking part in matters in which he or she has a conflicting *financial interest*, or [18 U.S.C. § 209](#), the statute forbidding supplementation of Federal salaries. The same principle holds true concerning both domestic and foreign invention rights owned and licensed by the Government that, thus, do not constitute a conflicting financial interest for the Federal employee-inventor.

25.3. Conflict with Employee-Owned Foreign Invention Rights. Under the FTTA and the invention rights regulations, the Agency may decide to file a patent application in the United States and may optionally elect not to file in foreign countries. As a result, foreign rights may be obtained or retained by the Federal employee-inventor. If this occurs, the Federal employee has a financial interest in foreign invention rights. As a result, 18 U.S.C. § 208 would preclude the Federal employee-inventor from taking any official action that would directly and predictably affect those foreign invention rights. For example, if the employee has contracted with a company to exploit his or her invention abroad, the employee could not take official actions with respect to an agreement between the United States and that company for development of the invention.

Example: A Federal Agency, while obtaining a patent for an invention in this country, permits a Federal employee-inventor to retain the rights to obtain certain foreign patents. The employee-inventor has obtained some foreign patents and has entered into an exclusive license agreement with a private firm, granting it the right to exploit the invention overseas in exchange for royalties. At the same time, the Agency employing the inventor has awarded an exclusive license to develop and exploit the invention domestically to the same firm. Moreover, the Agency intends to enter into a cooperative research and development agreement (CRADA) with the firm under which the firm would handle the clinical research trials necessary to test and evaluate the invention for the marketplace. This gives the private firm exclusive licenses in both the Government's domestic patent rights and the employee-inventor's foreign patent rights, plus a CRADA with the Government to develop and test the invention. The employee-inventor, through the CRADA, will be directly involved, as part of his official duties, with work related to the invention. The Federal employee-inventor has a financial interest in his invention because he has licensed foreign patent rights from which he receives royalties. He also has a financial interest in the license agreement. Therefore, he cannot take official action on any matter involving the private firm to which he has licensed his foreign patent rights. This prohibition would include work by the employee-inventor on the research and development agreement with the private firm.

26. Pre-existing Rights. Agencies generally seek to hire scientists based upon demonstrated expertise in a subject area critical to the Agency mission. Often these newly-hired scientists come from universities or private sector research laboratories and often have existing inventions, either licensed or unlicensed. Sometimes, the inventions are retained by the scientist who seeks to license the rights to a private firm; sometimes the rights have been retained by the University/laboratory which has executed a license with royalties payable to the scientist through the university. Where a scientist retains the invention rights for prospective licensing, personally licenses a patent, or is receiving royalties from a non-Federal source (i.e., the University), the scientist has a [*financial interest*](#) in the invention and a [*covered relationship*](#) with the non-Federal entity licensee who pays the scientist royalties. Accordingly, should the scientist, upon becoming a Federal employee, take official action that directly and predictably affects the value of his or her invention, he or she could violate [*18 U.S.C. § 208*](#). At the same time, the employee has a financial relationship with the University covered under [*5 CFR § 2635.502\(b\)\(1\)*](#). Should the employee take official action that does not directly and predictably affect the value of his or her invention, but that does involve a [*particular matter involving specific parties*](#) in which the University is a party or represents a party, he or she could violate the impartiality rules. See [*5 CFR § 2635.502\(a\)*](#).

NOTE: In practice, at USDA, these pre-existing rights should be identified by research leaders, or other line management, during the hiring process. Where the Agency expects to produce complementary technologies in the same field, conflicts may be resolved through means such as divestiture by the scientist of rights in the invention.

Example 1: ARS hires a scientist from a University. While a university employee, the University licensed a patent based on the scientist's research and, based upon that license, the scientist now receives royalties from the University. ARS hires the person to work at one of its laboratories. He or she is assigned to serve as project manager under a cooperative agreement with the University which relates directly to the research connected with the University patent and to his royalties from it. As his performance of official duties directly and predictably affects the commercial value of the invention that is the source of his patent payments, the scientist could violate 18 U.S.C. § 208 by performing official duties as project manager.

Example 2: Same facts as in Example 1, except that the scientist is project manager under a cooperative agreement which does not relate directly to the research he performed for the University and upon which his royalties are based. The royalty payments do not constitute an employment relationship or other financial interest in the University; however, the scientist has a covered financial relationship with the University. If he takes official action on a University grant application, he would likely violate rules concerning loss of impartiality under 5 CFR § 2635.502(a).

APPENDIX A: CONTROLLING STATUTES AND REGULATIONS

18 U.S.C. § 203 – Compensation to Members of Congress, officers, and others in matters affecting the Government. Under this statute, a current Federal employee is prohibited from receiving [compensation](#) in return for providing services in support of another who is [representing](#) a party (other than the United States) before any officer or employee of a Federal executive agency or court. Also see 18 U.S.C. § 205, below.

18 U.S.C. § 205 – Activities of officers and employees in claims against and other matters affecting the Government. Under this statute, a current Federal employee is prohibited, irrespective of compensation, from serving as agent or attorney for a party (other than the United States) before any officer or employee of a Federal executive agency or court. Also see 18 U.S.C. § 203, above.

18 U.S.C. § 208 - Acts affecting a personal financial interest. A Federal employee is prohibited from [participating personally and substantially](#) in a [particular matter](#) in which the employee knows he or she has a [financial interest](#) if participation is likely to have a [direct and predictable effect](#) upon that financial interest. See also, 5 C.F.R. part 2635, subpart D, and 5 C.F.R. part 2640.

18 U.S.C. § 209 – Salary of Government officials and employees payable only by United States. A Federal employee may not receive from a non-Federal source a “salary, or any contribution to or supplementation of salary, as compensation for” performing official duties.

5 CFR Part 2634 – Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture. Officers and employees who are required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), are required to disclose outside employment and positions. “[Adjunct Professor](#)” status should be reported in Schedule D, Part I of the SF 278 and Part III of the OGE Form 450, only where the status and/or duties are NOT related to the performance of one’s official duties.

5 CFR Part 2635 - Standards of Ethical Conduct for Employees of the Executive Branch, and specifically:

-- **5 CFR Part 2635, Subpart B – Gifts from Outside Sources.** Generally, Agency employees may not solicit or accept gifts either (1) given based upon their official position; or (2) from a “[prohibited source](#).”

-- **5 C.F.R. § 2635.502 — Loss of Impartiality.** Even where a conflicting financial interest does not exist, a Federal employee also should not work on a matter if a reasonable person who is aware of the circumstances would question the employee's ability to be impartial in the matter. A loss of impartiality is presumed to exist where an employee:

1. participates personally and substantially in a [particular matter involving specific parties](#) and knows:
 - a. That is likely to have a direct and predictable effect on the financial interest of a member of his or her household; or

- b. That a person with whom he or she has a [covered relationship](#) is or represents a party to such matter, **and**
2. determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter.

Note: *This is not a criminal prohibition, but violation can result in disciplinary action up to, and including, removal. Subpart E - Impartiality in Performing Official Duties. See 7.2 (Outside Employment) and paragraph 8 (Conflicting Financial Interests and Impartiality).*

-- **5.1.3. 5 C.F.R. § 2635.702 — Use of Public Office for Private Gain.** An employee also may not use his or her public office for his or her own private gain, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member. Thus, to the extent that the foregoing restrictions do not apply, this prohibition could (e.g., friends). Unlike the above restrictions, however, you are not prohibited from working on matters involving these parties so long as you do not participate in a manner that clearly is designed to benefit them. As with Loss of Impartiality (above) this is not a criminal prohibition, but could result in disciplinary action up to, and including, removal.

-- **5 CFR § 2635.807 – Teaching, Speaking and Writing.** (See 7.2 and 5.4). As a general rule, employees may not receive compensation from a source other than the Federal Government for teaching, speaking, and writing that relates to their official duties.

5 CFR Part 8301 - Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture and specifically 5 CFR § 8301.102 –[Prior approval for outside employment](#).

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APPENDIX B: CONFLICT DEFINITIONS

“Compensation,” in addition to salary or wages, could include such non-cash benefits normally provided in lieu of salary or wages, or in addition to salary or wages, such as: housing; tuition benefits for family; and spousal employment.

“Covered relationships” — Under [5 CFR § 2635.502](#), an appearance that an employee has lost impartiality in participating in a [particular matter involving specific parties](#) would likely arise if identified parties to the matter included any of the following persons:

- other than a prospective employer, anyone with whom the employee has or seeks a business, contractual or other financial relationship (e.g., an outside employer) that involves other than a routine consumer transaction;
- members of the employee's household, or relatives with whom the employee has a close personal relationship;
- anyone for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- anyone for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- An organization (other than a political party) in which the employee is an active participant. Active participation would include, for example, service as an official, committee or subcommittee chairperson, spokesperson, participation in directing the organization, devotion of significant time to promoting specific programs of the organization (e.g., fundraising).

"Direct and predictable effect" means a close causal link between official participation in a ["particular matter"](#) and any expected effect of the matter on the employee's [financial interests](#). The effect need not be immediate, but the chain of causation must be direct, not attenuated or contingent upon the occurrence of events that are speculative, or independent of, and unrelated to, the matter.

"Financial interest" means interests such as stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and rights to purchase interests such as stock options or commodity futures.

“Imputed,” in terms of financial interests, includes not only the employee's own personal financial holdings, but also the financial interests of the following persons:

- The employee's spouse, minor child, or general partner;
- **An organization or entity in 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.

"Market value" under [5 CFR 2635.203\(c\)](#), means the retail cost the employee would incur to purchase a gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

"Negotiating" for non-Federal employment includes seeking employment by sending an unsolicited resume to bidders or offerors, making unsolicited communications concerning possible employment, and failing to decline unsolicited offers to discuss employment by bidders and offerors, and deferring employment negotiations.

"Participating personally and substantially" means involvement anywhere in the decision-making process (e.g., through recommendation, the rendering of advice, investigation, etc., not just through decision, approval, and disapproval. **"Participating personally"** means involvement that is "direct" or the "direct and active" supervision of a subordinate's participation.

"Participating substantially" means significant involvement. It is more than having official responsibility, or involvement on an administrative or peripheral issue. It is the quality of the involvement, not the quantity that is at issue.

"Particular matter" includes a broad array of identifiable matters and programmatic initiatives pending before an agency. It **would include** not only such matters as specific contracts and bids on contracts, but also rulemaking issues, such as an agency's determination to undertake a particular project or to open such a project to competitive bidding.

"Particular matter involving specific parties" is more narrow than "[particular matter](#)." For purposes of determining an appearance of a loss of impartiality, this would cover matters that involve specific contracts and bids on contracts, but would not include rulemaking issues, or an agency's determination to undertake a particular project or to open such a project to competitive bidding.

"Prohibited source," means any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or Non-performance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in (1) through (4) of this section.

"Representing" means acting as an agent or attorney for, or otherwise making, with intent to influence, any communication to or appearance before any officer or employee of the Executive or Judicial Branches of the United States Government on behalf of any other person in connection with a particular matter in which the United States Government is a party or has a direct and substantial interest.

APPENDIX C: ADJUNCT PROFESSOR QUESTIONNAIRE

This appendix may be used by an Agency employee, or by Agency managers, as an aid in determining whether an employee's activities with the University constitutes outside employment or official duties. 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:

7. Position Title (i.e., "adjunct professor," "adjunct faculty," 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.

QUESTION	YES	NO	UNSURE
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NATURE OF UNIVERSITY ACTIVITY:

Was this activity assigned by your Federal supervisor?			
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Will your activity occur during your Federal working hours?			
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Will any costs associated with your activity (e.g., travel costs) be paid by your Federal agency?			
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Had you been involved with this University in the last 2 years?			
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If so, was your involvement part of your Federal duties? Please explain.			
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APPENDIX C: ADJUNCT PROFESSOR QUESTIONNAIRE

(Continued)

QUESTION	YES	NO	UNSURE
Will you use Federal equipment, time, or resources to perform your activity?			
Will you be likely to use Agency information to perform your activity?			
COMPENSATION FOR UNIVERSITY 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?			
Will you receive any perquisites due to your position (e.g., reduced tickets to events, or seating reserved for faculty)?			
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?			

APPENDIX D: AGENCY LIAISON DESIGNATION LETTER

FROM: Senior 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-stated 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 efforts 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]; or
- 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