



# Outside Employment, “Moonlighting,” by Federal Executive Branch Employees

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## Summary

Most federal employees in the executive branch of government are *not* subject to a broad, overall prohibition on so-called "moonlighting." Rank-and-file employees of the government are generally free to take an additional, compensated job outside of their federal work, subject to certain specific "conflict of interest" limitations.

High-ranking officials of the government, on the other hand, may be prohibited from taking *any* outside compensated private job if they are presidential appointees, and may otherwise be limited in the type of outside employment and the amount of private compensation they may receive if they are *non-career* officials receiving compensation from the federal government over a particular amount.

For most employees of the federal government, other than high-level appointees and non-career officials, outside employment opportunities and activities are prohibited when they create a "conflict of interest" for the employee with respect to his or her official duties and responsibilities for the government. The Office of Government Ethics expressly provides in regulation that such a "conflict of interest" will arise in two circumstances: (1) when the activity is expressly prohibited either by statute or by a specific agency regulation concerning such conduct; and (2) when general "conflict of interest" principles and rules would require that an employee recuse or disqualify himself or herself from participating in governmental matters to such an extent as to "materially impair" the employee's ability to do his or her duty.

This report examines general statutory restrictions on certain types and categories of outside, compensated employment activities by federal employees, and surveys specific agency and departmental regulations prohibiting particular types and areas of outside, compensated employment activities for employees of that agency or department.

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For most rank-and-file federal employees in the executive branch of government there is no general, overall statutory or regulatory restriction or prohibition on outside, additional compensated employment activity—known colloquially as “moonlighting.”<sup>1</sup> Broad restrictions on outside, compensated employment may apply to more *senior* officials in the executive branch. However, for rank-and-file federal employees the concept of “conflicts of interest” generally controls the restriction on or permissibility of outside, compensated activity, and would bar such “moonlighting” when (1) a statute or a specific agency regulation expressly prohibits that particular kind of outside employment activity, or (2) when an outside activity, because of the particular official duties of the employee, would require that the employee “recuse” or disqualify himself or herself from official duties to such an extent as to impair the effectiveness of his or her employment for the government.

## Conflicting Outside Employment

The conflict of interest limitations on outside, additional private employment of federal employees, which are set out in provisions of federal law, regulation, and executive order, establish the general principle that employees may not receive compensation from certain private parties where a potential “conflict of interest” may arise, that is, where the outside *private* activity may conflict with one’s federal, *public* position and duties. This may limit and restrict outside employment opportunities both as to the source of compensation and, potentially, as to the subject matter and nature of the duties of an outside position.

General ethical standards promulgated by executive order specifically require that employees avoid “outside employment or activities ... that conflict with official Government duties and responsibilities.”<sup>2</sup> The Office of Government Ethics (OGE) has stated in the government-wide ethics regulations promulgated for the executive branch that outside employment would “conflict” with official duties in two specific instances:

*1. Express Statutory or Regulatory Restriction.* Initially, the Office of Government Ethics notes that conflicting activities include those that are prohibited by statute or by agency supplemental regulations.<sup>3</sup> Each federal agency, upon approval from the Office of Government Ethics, is authorized to issue ethics and conflict of interest regulations supplemental to OGE’s government-wide provisions, which may relate to and bear upon the particular function and mission of that agency.<sup>4</sup> Employees must thus examine their individual agency’s own regulations on outside employment and conflicts of interest before engaging in outside compensated activity. In addition to specific restrictions on certain kinds of outside employment, it is common for agency supplemental regulations to require the employee to receive express prior approval to engage in outside employment activities.<sup>5</sup>

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<sup>1</sup> For a general discussion, see Office of Government Ethics (OGE), *Do It Right, An Ethics Handbook for Executive Branch Employees*, at 29-34 (1995); also OGE discussion at: <http://www.oge.gov/Topics/Outside-Employment-and-Activities/Outside-Employment-Limitations> (website last visited on date of this report).

<sup>2</sup> Executive Order No. 12674, as modified by Executive Order No. 12731, Section 101(j); see 5 C.F.R. §§ 2635.101(10), and 2635.802.

<sup>3</sup> 5 C.F.R. § 2635.802(a).

<sup>4</sup> Executive Order No. 12674, Section 301(a); see 5 C.F.R. § 2635.105.

<sup>5</sup> 5 C.F.R. § 2635.803. Agency specific regulations barring particular outside employment can be found in the **Appendix** to this report.

2. *Employment Which Creates a Disqualifying Conflict of Interest.* Secondly, the regulations provide that a "conflicting" outside employment would result if that activity necessitated the employee's disqualification and recusal from official matters so central to the individual's governmental duties that it would "materially impair" the employee's capacity to perform his or her official responsibilities.<sup>6</sup> "Recusal" or disqualification from participating in a governmental matter under consideration is one of the principal "conflict of interest" avoidance mechanisms in federal law and regulation. Under current conflict of interest law and regulation, an employee in the executive branch is required to disqualify himself or herself from official governmental activities regarding any "particular matter" when such matter would have a "direct and predictable effect" upon a personal financial interest of the employee, or upon the financial interests of the employee's outside employer or business associates.<sup>7</sup> Outside activities which entangle federal employees in outside employment, business, or economic relationships requiring such regular recusals or disqualifications under federal law or regulation would thus be prohibited, on a case-by-case basis, under this standard.

Federal employees are cautioned as a general matter that outside employment and other outside activities must comply with the other ethics standards and provisions promulgated by the Office of Government Ethics and by executive order, including "the principle that an employee shall endeavor to avoid actions creating the appearance of violating any of the ethical standards" promulgated by OGE, and "the prohibition against use of official position for an employee's private gain or for the private gain" of one with whom he or she has a business or economic relationship.<sup>8</sup> Employees are expressly restricted by regulation from using official government resources, supplies, or their official government time, to work on outside, private activities.<sup>9</sup> It should also be noted that general ethical standards for executive branch personnel provide that "An employee shall not ... solicit or accept any *gift* or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties."<sup>10</sup> This standard must be observed by federal employees in the conduct of any outside business and financial activities and relationships.<sup>11</sup>

## Statutory and Regulatory Restrictions

There are certain specific statutory restrictions which might apply in some circumstances to restrict or prohibit the receipt of outside compensation by executive branch personnel, or to limit certain types of outside activities for private parties. No employee of the U.S. government may

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<sup>6</sup> 5 C.F.R. § 2635.802(b).

<sup>7</sup> 18 U.S.C. § 208; 5 C.F.R. § 2635.402. Federal employees in the executive branch may also be required to disqualify themselves from official matters under a regulation, at 5 C.F.R. § 2635.502, for those particular governmental matters involving specific parties which affect the financial interests of certain persons in the employees' household, or the interests of other persons with whom the employees have a "covered relationship" when those persons are parties to a particular matter, even when such recusal may not be mandated by the statutory disqualification provision.

<sup>8</sup> 5 C.F.R. § 2635.801(c).

<sup>9</sup> 5 C.F.R. § 2635.701 – § 2635.705.

<sup>10</sup> Executive Order No. 12674, as modified by E.O. 12731, Sec. 101(d), 5 C.F.R. § 2635.101(b). (Emphasis added).

<sup>11</sup> Note, however, exceptions to gift rule prohibition for certain gifts and items of monetary value based on outside business and employment relationships, 5 C.F.R. § 2635.204(e).

receive anything of value "for or because of" any official act performed or to be performed by that employee or officer;<sup>12</sup> no employee may receive or share in compensation for private "representational services" rendered to parties in any matter before a federal agency;<sup>13</sup> federal employees may not represent private parties in any matter in which the United States is a party or is interested, before an agency of the government or a court, whether for compensation or not;<sup>14</sup> federal employees must disqualify themselves from working on any government matter in which they have a personal financial interest, or in which a firm or entity for whom they serve as an officer or employee has a financial interest;<sup>15</sup> and no executive branch employee may be compensated by a private source for his or her government work, that is, one may not receive salary supplementation from outside private sources for services performed within the scope of one's federal employment.<sup>16</sup>

Furthermore, no federal government officer or employee may receive any compensation ("emoluments") from a foreign government or other official foreign entity, without the consent of Congress,<sup>17</sup> nor may any federal employee act as an "agent" of a "foreign principal."<sup>18</sup> Employees of the federal government who earn over a particular amount are restricted by tax consequences from "self-dealings" with private foundations, which may include limitations on the receipt of compensation and expenses from such entities.<sup>19</sup>

## **Honoraria, Lecturing, and Writing**

For a short time executive branch employees were prohibited, under the provisions of the Ethics Reform Act of 1989,<sup>20</sup> from receiving or earning any "honoraria" for outside writing, lecturing, or speaking. That prohibition, however, was overturned by the Supreme Court as an overbroad intrusion into protected First Amendment rights of federal employees<sup>21</sup> and is no longer enforced by the Department of Justice against *any* officer or employee of the federal government.<sup>22</sup>

Outside lecturing, writing, and speaking for compensation by federal employees in the executive branch is *not* now completely unregulated, however. In addition to the general conflict of interest rules and standards discussed above, the Office of Government Ethics has issued regulations on outside lecturing and writing, limiting such compensated activity where particular ethics issues related to an employee's governmental responsibilities may arise.

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<sup>12</sup> 18 U.S.C. § 201(c) ("illegal gratuities"); note also 18 U.S.C. § 201(b) (bribery).

<sup>13</sup> 18 U.S.C. § 203.

<sup>14</sup> 18 U.S.C. § 205.

<sup>15</sup> 18 U.S.C. § 208.

<sup>16</sup> 18 U.S.C. § 209.

<sup>17</sup> U.S. CONST. art. I, §9. cl. 8.

<sup>18</sup> 18 U.S.C. § 219.

<sup>19</sup> 26 U.S.C. §§ 4941, 4946.

<sup>20</sup> P.L. 101-194, title VI, § 601(a), 103 Stat. 1760, November 30, 1989. This provision is codified at 5 U.S.C. app. § 501(b).

<sup>21</sup> *United States v. National Treasury Employees Union*, 513 U.S. 454 (1995).

<sup>22</sup> See Office of Legal Counsel, U.S. Department of Justice, Memorandum to the Attorney General, "Legality of Honoraria Ban Following *U.S. v. National Treasury Employees Union*," February 26, 1996. The honoraria ban for Members of Congress and staff remains in effect under House and Senate Rules, and would be enforced internally in each house.

Under existing rules, employees may generally engage in privately compensated outside lecturing, writing, or teaching, even in subject areas which involve their inherent professional expertise or background, as long as no specific conflict or ethical problem arises in relation to their official duties. Employees may not use official government resources, time, supplies, or non-public information in the performance or preparation of those outside activities, nor may the outside, compensated activity deal with a matter which is currently (or has been within the last year) assigned to the employee, or which deals with an ongoing or announced policy of one's agency.

As to the subject matter of the outside activity, the Office of Government Ethics has explained that a federal employee is allowed to accept outside compensation for lecturing or writing, even if the subject is within the employee's area of expertise because of his or her education, training, and employment, and even though the employee's agency may deal with the subject matter:

[The regulation] does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's area of responsibility.<sup>23</sup>

The central ethical issue in outside, compensated writing and lecturing is thus not whether the *subject* of a lecture or writing is merely "related" in some general, undefined way to the subject of one's employment or expertise with the government.<sup>24</sup> It has not been perceived to be a significant or particular "conflict of interest" or ethical problem, in and of itself, for a government employee to share his or her knowledge or expertise, gained through the employee's education, background, and experience, with members of the public, or to join in the discussion of issues of public policy outside of the work place, even for additional compensation. Rather, the concerns have been with an employee wrongly using the perquisites of federal office, non-public information, government resources or supplies, for his or her own personal financial gain, and to the detriment of the government; the potential undue influence upon an employee in being compensated merely because he or she is a government official, or being compensated by an outside party whose interests may be affected by the employee's official duties for the government; the issue of divided loyalties if a government employee is compensated by a *private* party for his or her *official* government work; creating an outside employment or other financial interest which may pose a conflict of interest with official duties; and in restricting outside activities so as not to compromise confidential information or ongoing or recent government matters or decisions, or creating the appearance that the employee in his or her private capacity is somehow representing official government policy.

As outlined by the Office of Government Ethics regulations, compensation for outside lecturing and writing activities is proscribed when such activities are "related" in particular, prohibited ways to one's official position or duties such that these ethical issues might arise. This so-called "relatedness test" restricts an outside paid activity if

(A) the activity is undertaken as part of one's official duties;

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<sup>23</sup> 5 C.F.R. § 2635.807(a)(2)(i), *note*; 57 F.R. 35064, August 7, 1992.

<sup>24</sup> But note stricter prohibitions on non-career officials compensated at a rate of pay above a GS-15 level, 5 C.F.R. § 2635.807(a)(2)(i)(E)(3), discussed below.

(B) the invitation to speak or write is extended because of one's official position rather than one's expertise on a matter;

(C) the compensation is offered by a party who may be affected by the performance of the employee's official duties;

(D) the activities rely on non-public information; or

(E) the activities deal in significant part with a matter currently assigned to the employee, or assigned within the last year, or deal with an ongoing or announced policy of one's agency.<sup>25</sup>

## Specific Agency Regulatory Restrictions

As noted above, each federal agency is authorized to promulgate and publish additional, supplemental ethics regulations when approved by the Office of Government Ethics and published in the Code of Federal Regulations.<sup>26</sup> Most federal agencies that have published additional, supplemental ethics rules expressly require that employees receive advanced approval from the agency for outside employment activities, and set out the criteria for approval of such activities.<sup>27</sup> Numerous other agencies and departments in the executive branch have also promulgated regulations which provide specific restrictions on particular types or areas of outside, compensated private employment. These agency-specific regulations on particular types or areas of outside employment are set out in the **Appendix** to this report.

## High-Ranking Government Officials

There are other, broad prohibitions and restrictions for higher-ranking government officials which may not generally apply to rank-and-file government employees. By executive order of the President, an officer or employee who is appointed by the President to a full-time, non-career position in the executive branch, including all full-time employees of the White House and the Office of Policy Development, may not receive *any* outside earned income during that appointment.<sup>28</sup>

Other higher-level officials in the executive branch, that is, *non-career* officials who are compensated at the rate *above* a GS-15, are limited in their outside earned income opportunities by other provisions of the Ethics Reform Act of 1989.<sup>29</sup> Such officials may not have outside earned income which exceeds 15% of the official salary earned by a level II on the Executive Schedule;<sup>30</sup> may not receive compensation for affiliating with a firm to provide professional services involving a fiduciary relationship; may not permit their names to be used by any such firm; may not receive any compensation for practicing a profession which involves a fiduciary relationship; may not serve for compensation as an officer or member of the board of any

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<sup>25</sup> OGE regulations at 5 C.F.R. §§ 2635.807(a), 2635.807(a)(2)(i)(A)-(E).

<sup>26</sup> 5 C.F.R. § 2635.105.

<sup>27</sup> Published agency supplemental ethics regulations are set out at 5 C.F.R. Chapter XXI (Part 3101) to Chapter LXXXII (Part 9201).

<sup>28</sup> Executive Order No. 12674, April 12, 1989, Section 102. Note 5 C.F.R. § 2636.302.

<sup>29</sup> P.L. 101-194, as amended. See now 5 U.S.C. app. §§ 501 et seq.

<sup>30</sup> 5 U.S.C. app. § 501(a)(1). Salaries and positions at Level II of the Executive Schedule are set out at 5 U.S.C. § 5313.

association, corporation, or other entity; and may not receive compensation for teaching without prior notification of and approval by the appropriate supervisory ethics office.<sup>31</sup>

When higher-ranking officials are allowed to accept compensation for writing or speaking on the outside, these officials have more restrictions on the subject matter and content of such activities than do rank-and-file employees. Unlike rank-and-file federal employees, a non-career official who is compensated at a rate above a GS-15 is prohibited by Office of Government Ethics regulations from receiving compensation for speaking, lecturing, or writing activity if the subject matter of the speech, article, or appearance “deals in significant part with ... the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency,”<sup>32</sup> and must receive authorization in advance to engage in outside, compensated teaching activities.<sup>33</sup>

Although the general restriction on compensated outside employment in the executive order applicable to presidential appointees may supersede many specific statutory limitations on directors or administrators of federal regulatory agencies, there may also be statutory provisions, often enacted as part of the organic act creating the particular agency or federal entity, which—for certain high-level officials such as the director or head of such entity—may limit professional or employment activity in a particular field or endeavor that the agency regulates or oversees, or outside employment generally. For example, the Administrator and Deputy Administrator of the Federal Aviation Administration are instructed by statute not to “engage in another business, vocation, or employment.”<sup>34</sup>

## Financial Disclosure

Financial disclosure statements and reports are required from many federal officials and employees under the provisions of the Ethics in Government Act of 1978, as amended.<sup>35</sup> Financial disclosure reports under the Ethics in Government Act require annual public reporting and disclosure of a wide range of personal financial information, including the disclosure of compensated outside employment activities, outside income, financial transactions, as well as certain positions held in outside organizations or entities.<sup>36</sup> Even when a *public* report is not required because of an employee’s salary level, a *confidential* statement may be required of certain employees, depending on their duties and responsibilities, by the employing agency.<sup>37</sup>

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<sup>31</sup> 5 U.S.C. app. § 502. See also 5 C.F.R. Part 2636, particularly 5 C.F.R. §§ 2636.301 *et seq.*

<sup>32</sup> 5 C.F.R. § 2635.807(a)(2)(i)(E)(3).

<sup>33</sup> 5 C.F.R. § 2636.307

<sup>34</sup> 49 U.S.C. § 106(e).

<sup>35</sup> P.L. 95-521, 92 Stat. 1824 (1978), as amended. See now 5 U.S.C. app. §§ 101 *et seq.* Public disclosure statements are generally required from executive branch officials who occupy positions above a GS-15 and who are compensated at a rate of pay equal to or greater than 120% of the base salary of a GS-15, for at least 60 days in a calendar year.

<sup>36</sup> 5 U.S.C. app. § 102.

<sup>37</sup> 5 U.S.C. app. § 107; 5 C.F.R. §§ 2634.901 *et seq.*

## **Appendix. Agency-Specific Regulations**

Although not intended to be an exhaustive list, such agency regulations which provide specific restrictions on particular types or areas of outside, compensated private employment include the following:

*Commodities Futures Trading Commission:* A Commission member or other employee shall not engage in non-federal employment or any other outside activity that: (1) involves the rendering of advice concerning any legal, accounting or economic matter, or any agricultural, mining, foreign currency market or other commodity-related matter, in which the Commission may be significantly interested (except that this prohibition shall not apply to a special Government employee unless the special Government employee: (i) has participated personally and substantially as an employee or special Government employee in the same matter; or (ii) has served with the Commission 60 days or more during the immediately preceding period of 365 consecutive days); (2) involves an appearance in court or on a brief in a representative capacity in relation to any matter which relates to any policy, program or operation of the Commission; or (3) is prohibited by section 2(a)(7) of the Commodity Exchange Act, as incorporated in 17 CFR 140.735-2 and 140.735-3. That statute provides that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission. 5 C.F.R. § 5101.103(b).

*Department of Agriculture, Rural Development (RD):* Department of Agriculture's RD employees are prohibited from providing personal consulting services for any entity or person with an application on file with, grant from, or outstanding loan or loan guarantee with RD if the application, grant, or loan or guarantee could be affected directly by the decisions of the particular RD office in which the employee serves. 5 C.F.R. § 8301.107(f).

*Department of Health and Human Services (HHS):* An employee shall not provide consultative or professional services, for compensation, to or on behalf of any other person to prepare, or assist in the preparation of, any grant application, contract proposal, program report, or other document intended for submission to HHS; an employee shall not, for compensation, engage in employment, as defined in 5 CFR 2635.603(a), with respect to a particular activity funded by an HHS grant, contract, cooperative agreement, cooperative research and development agreement, or other funding mechanism authorized by statute. 5 C.F.R. § 5501.106(c).

*Department of Health and Human Services, Food and Drug Administration (FDA):* An employee of the Food and Drug Administration who is required to file a public or confidential financial disclosure report pursuant to 5 CFR part 2634 shall not: (i) engage in any self-employed business activity for which the sale or promotion of FDA-regulated products is expected to constitute ten percent or more of annual gross sales or revenues; or (ii) engage in employment, as defined in 5 CFR 2635.603(a), whether or not for compensation, with a significantly regulated organization, as defined in § 5501.101(c)(2), unless the employment meets either of the following exceptions: (A) the employment consists of the practice of medicine, dentistry, veterinary medicine, pharmacy, nursing, or similar practices, provided that the employment does not involve substantial unrelated non-professional duties, such as personnel management, contracting and purchasing responsibilities (other than normal "out-of-stock" requisitioning), and does not involve employment by a medical product manufacturer in the conduct of biomedical research; or

(B) the employment primarily involves manual or unskilled labor or utilizes talents, skills, or interests in areas unrelated to the substantive programmatic activities of the FDA, such as clerical work, retail sales, service industry jobs, building trades, maintenance, or similar services. 5 C.F.R. § 5501.106(c)(3).

*Department of Health and Human Services, National Institutes of Health (NIH):* Except as permitted by paragraph (c)(3) of this section, an employee of the NIH shall not: (i) engage in employment with a substantially affected organization, a supported research institution, or a health care provider or insurer; (ii) teach, speak, write, or edit for compensation for any substantially affected organization, supported research institution, or health care provider or insurer; or (iii) engage in any employment or self-employed business activity that involves the sale or promotion of products or services of a substantially affected organization or a health care provider or insurer, except for the purpose of commercializing invention rights obtained by the employee pursuant to Executive Order 10096, 15 U.S.C. 3710d, or implementing regulations. Nothing in paragraph (c)(1) of this section prevents an employee from engaging in employment with, or teaching, speaking, writing, or editing for, a political, religious, social, fraternal, or recreational organization. Notwithstanding the prohibitions in paragraph (c)(1) of this section: an employee may engage in and accept compensation for: (A) teaching a course requiring multiple presentations as permitted under 5 CFR 2635.807(a)(3); or (B) delivering a class lecture that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a regularly scheduled course offered under the established curriculum of an institution of higher education as defined at 20 U.S.C. 1001. An employee may engage in and accept compensation for the outside practice of medicine, dentistry, pharmacy, nursing, or similar health-related professional practice that involves the personal provision of care, treatment, or other health-related professional services to or in connection with individual patients, provided that: (A) the provision of health-related professional services to such individuals is not part of any ongoing research project conducted or funded by the NIH; (B) the employee does not establish a private practice relationship with a current or recently discharged NIH patient or subject of an NIH-conducted or NIH-funded clinical trial or protocol; (C) the employee does not personally refer private practice patients to the NIH; and (D) the professional practice does not involve substantial unrelated non-professional duties, such as personnel management, contracting and purchasing responsibilities (other than "out-of-stock" requisitioning), and does not involve employment by a medical product manufacturer in the conduct of biomedical research. An employee may engage in and accept compensation for any outside employment or self-employed business activity that primarily involves manual or unskilled labor or utilizes talents, skills, or interests in areas unrelated to the health and scientific research activities of the NIH, such as clerical work, retail sales, service industry jobs, building trades, maintenance, or similar services. An employee may engage in and accept compensation for a teaching, speaking, writing, or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a continuing professional education program conducted by an educational activity provider. If a substantially affected organization provides financial support for a continuing professional education program conducted by an educational activity provider, this exception is inapplicable unless the substantially affected organization is involved only as the funding source for an unrestricted educational grant. An employee may engage in and accept compensation for a writing or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the resulting article, chapter, essay, report, text, or other writing is submitted to a publisher, academic press, editorial board, or other entity affiliated with or operated by a supported research institution or a health care provider or insurer for publication in a scientific journal, textbook, or similar publication that subjects manuscripts to scientific peer review or a substantially equivalent editorial review

process. If a substantially affected organization funds the publishing activities of a supported research institution or a health care provider or insurer, this exception is inapplicable unless the substantially affected organization is involved only as an unrestricted financial contributor and exercises no editorial control. An employee may serve as a member of a data and safety monitoring board (DSMB) for a clinical study conducted by a supported research institution or health care provider or insurer, provided that: (A) the members of the DSMB are not selected or paid for their service by a substantially affected organization; (B) the clinical study is not funded under a grant, cooperative agreement, or research and development contract from, or conducted pursuant to a cooperative research and development agreement (CRADA) with, or aided under another funding mechanism by, the NIH; and (C) if the service is performed for compensation, the service does not entail prohibited assistance in the preparation of documents intended for submission to HHS within the meaning of § 5501.106(c)(1), and the clinical study is not an HHS-funded activity described in § 5501.106(c)(2). An employee may engage in and accept compensation for a teaching, speaking, writing, or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a Grand Rounds program conducted by an accredited educational institution offering instruction in the life sciences, such as a medical school or school of public health, or by an affiliated teaching hospital, provided that: (A) the employee's presentation includes an interactive component, such as visiting patients or discussing individual clinical cases, or interacting for educational purposes with undergraduates, graduates, or post-graduate students and fellows, in addition to any lecture; (B) the audience is composed primarily of faculty and students or trainees registered in a biomedical or health-related program of studies; and (C) a substantially affected organization or a speakers' bureau affiliated with a substantially affected organization does not sponsor or underwrite the costs of the Grand Rounds program or the employee's presentation, except pursuant to an unrestricted educational grant. An employee may serve on a grant or scientific review committee for a supported research institution or a health care provider or insurer, provided that: (A) the members of the grant or scientific review committee are not selected or paid for their service by a substantially affected organization; (B) the grant award or program in relation to which the recommendation of the grant or scientific review committee is sought is not funded under a grant, cooperative agreement, or research and development contract from, conducted pursuant to a cooperative research and development agreement (CRADA) with, or aided under another funding mechanism by, the NIH; and (C) if the service is performed for compensation, the service does not entail prohibited assistance in the preparation of documents intended for submission to HHS within the meaning of § 5501.106(c)(1), and the grant award or program in relation to which the recommendation of the grant or scientific review committee is sought is not an HHS-funded activity described in § 5501.106(c)(2). 5 C.F.R. § 5501.109.

*Department of Health and Human Services, Office of General Counsel:* An employee who serves as an attorney in or under the supervision of the Office of the General Counsel or the Office of Counsel to the Inspector General shall not engage in any outside practice of law that might require the attorney to: (A) assert a legal position that is or appears to be in conflict with the interests of the Department of Health and Human Services, the client to which the attorney owes a professional responsibility; or (B) interpret any statute, regulation or rule administered or issued by the Department. However, nothing in this section prevents an employee from: (A) acting, with or without compensation, as an agent or attorney for, or otherwise representing, the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary to the extent permitted by 18 U.S.C. 203 and 205, or from providing advice or counsel to such persons or estate; or (B) acting, without compensation, as an agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration

proceedings in connection with those proceedings to the extent permitted by 18 U.S.C. 205, or from providing uncompensated advice or counsel to such person; or (C) giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

*Department of Housing and Urban Development (HUD):* With some exceptions, employees may not engage in an outside business dealing with or related to real estate or manufactured housing; employment with an entity that lobbies concerning HUD programs; or as an officer or director of a HUD-approved mortgagee, lending institution, or an organization which services securities for the Department. 5 C.F.R. § 7501.105.

*Department of the Interior:* Employees of the U.S. Geological Survey shall execute no surveys or examinations for private parties or corporations (5 C.F.R. § 3501.105(a)(1)); employees of the Bureau of Land Management may not engage in outside employment as real estate agents and realty specialists (5 C.F.R. § 3501.105(a)(2)); employees in the Office of Assistant Secretary–Indian Affairs, or in the Bureau of Indian Affairs (BIA) may not hold a position on a tribal election board or on a tribal school board which oversees BIA schools. (5 C.F.R. § 3501.105(a)(3)).

*Department of Justice:* Employees may generally not engage in outside employment that involves (i) the practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children; (ii) any federal, state, or local criminal or habeas corpus matter; or (iii) litigation, investigations, grants, or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant maker. Written waivers under some circumstances may be obtained. 5 C.F.R. § 3801.106(b).

*Department of the Treasury, Internal Revenue Service (IRS):* IRS employees may not have outside employment performing legal services involving federal, state, or local tax matters; appearing on behalf of any taxpayer before any governmental entity concerning a tax matter (except on written authorization from the Commissioner of the IRS); engage in accounting, or the use, analysis and interpretations of financial records involving tax matters; bookkeeping or similar activity related to a tax determination; engaging in the preparation of tax returns for compensation, gift, or favor. 5 C.F.R. § 3101.106(b).

*Department of the Treasury, Legal Division:* Attorneys employed in the Legal Division may not engage in the outside practice of law that might require the attorney to take a position in conflict with the interests of the Department of the Treasury, or to interpret any statute, regulation, or rule administered or issued by the Department. 5 C.F.R. § 3101.107(b).

*Department of the Treasury, Office of the Comptroller of the Currency (OCC):* Certain “covered” OCC employees may not perform outside services for any bank, banking or loan association, or national bank affiliate, or for any officer, director, or employees of or for any person connected with a bank, banking or loan association or national bank affiliate. 5 C.F.R. § 3101.108(f).

*Department of the Treasury, United States Customs Service:* Employees may not do outside work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise. 5 C.F.R. § 3101.110(a).

*Equal Employment Opportunity Commission (EEOC):* No employee of the Equal Employment Opportunity Commission may engage in outside employment with a person who is currently and substantially affected by the employee's performance of his or her official duties because the person is a party or representative of a party to a particular matter involving specific parties. No employee of the Equal Employment Opportunity Commission, other than a special Government employee, may receive compensation for representational services, or the rendering of advice or analysis, regarding any equal employment law or its application. No employee of the Equal Employment Opportunity Commission, other than a special government employee, may engage in outside employment involving a particular matter pending at EEOC or an equal employment opportunity matter in which EEOC or the federal government is a party. An employee may, however, with prior approval, provide uncompensated behind-the-scenes assistance to immediate family members in matters pending at EEOC or equal employment opportunity matters in which EEOC or the federal government is a party. An employee may also, with prior approval, represent without compensation another EEOC employee in an administrative equal employment opportunity complaint against EEOC. 5 C.F.R. § 7201.102

*Farm Credit Administration:* No covered employee shall perform services, either on a paid or unpaid basis, for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. 5 C.F.R. § 4101.108(a)

*Farm Credit System Insurance Corporation:* No covered employee shall perform services, either on a paid or unpaid basis, for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. 5 C.F.R. § 4001.108(a).

*Federal Deposit Insurance Corporation (FDIC):* Employees may not provide a service for compensation, in any capacity, to an FDIC-insured depository institution or to an employee or person employed by or connected with such institution; and unless an exception is provided, an employee who holds a license related to real estate, appraisals, securities, or insurance and whose official duties with the Corporation require personal and substantial involvement in matters relating to such areas, is prohibited from using such license for the production of outside income.

*Federal Housing Finance Agency (FHFA):* Employees may not work for an entity or person that is registered as a lobbyist under the Lobbying Disclosure Act of 1995 (as amended), and who engages in lobbying activities concerning FHFA programs; and may not engage in employment with any regulated entity or with the Office of Finance of the Federal Home Loan Bank System. 5 C.F.R. § 9001.105(a).

*Federal Labor Relations Authority (FLRA):* Employees shall not engage in rendering legal advice regarding, or preparing an individual or group in any matter relating to, labor relations in either the private or public sector, outside the employee's official duties. This prohibition shall not apply to a special Government employee unless he or she (A) has participated personally and substantially as a Government employee or special Government employee in the same matter; or (B) has served with the FLRA 60 days or more during the immediately preceding period of 365 consecutive days. 5 C.F.R. § 5901.102(d).

*National Aeronautics and Space Administration (NASA):* A NASA employee, other than a special Government employee, shall not engage in outside employment with the following: (1) a NASA contractor, subcontractor, or grantee in connection with work performed by that entity for NASA; or (2) a party to a Space Act agreement, Commercial Launch Act agreement, or other agreement

to which NASA is a party pursuant to specific statutory authority, if the employment is in connection with work performed under that agreement. 5 C.F.R. § 6901.103(c).

*National Science Foundation (NSF):* (1) An NSF employee may not receive, directly or indirectly, any salary, consulting fee, honorarium, or other form of compensation for services, or reimbursement of expenses, from an NSF award; (2) an NSF employee may not serve as principal investigator or project director under an NSF award; (3) an NSF employee may not receive, directly or indirectly, any honorarium or any other form of compensation, or reimbursement of expenses from anyone, other than the United States, for participating in an event supported by NSF funds. 5 C.F.R. § 5301.103(a).

*Postal Rate Commission:* An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service. 5 C.F.R. § 5601.104(a).

*Securities and Exchange Commission:* No employee shall undertake the following types of employment or activities: (A) employment with any entity regulated by the Commission; (B) employment or any activity directly or indirectly related to the issuance, purchase, sale, investment or trading of securities or futures on securities or a group of securities, except this prohibition does not apply to securities holdings or transactions permitted by § 4401.102; (C) employment otherwise involved with the securities industry. Additionally, members of the Commission may engage in outside employment only to the extent permitted by Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a). This provision does not preclude members from engaging in permitted securities transactions. Notwithstanding the absence of a statutory prohibition, a member may not engage in any outside employment or activity, if such outside employment or activity would materially impair the member's ability to perform properly the member's duties. Such outside employment or activity includes such fiduciary relationships such as serving as a trustee, executor or corporate director.

*United States Postal Service:* No Postal Service employee shall: (1) engage in outside employment or business activities with or for a person, including oneself, engaged in: (i) the manufacture of any uniform or other product required by the Postal Service for use by its employees or customers; (ii) the transportation of mail under Postal Service contract to or from the postal facility at which the employee works, or to or from a postal facility within the delivery area of a post office in which the employee works; (iii) providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract; or (iv) the operation of a commercial mail receiving agency registered with the Postal Service, or the delivery outside the mails of any type of mailable matter, except daily newspapers; or (2) engage in any sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, or at any postal facility. 5 C.F.R. § 7001.102(a).

## **Author Contact Information**

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