

Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time. Where the compensation is not adequate, however, the arrangement would involve a gift to the superior in violation of the standards in subpart C of this part.

Subpart H—Outside Activities

§ 2635.801 Overview.

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of this part. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

(1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;

(2) Any agency-specific requirement for prior approval of outside employment or activities;

(3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;

(4) The limitations on paid and unpaid service as an expert witness;

(5) The limitations on participation in professional organizations;

(6) The limitations on paid and unpaid teaching, speaking, and writing; and

(7) The limitations on fundraising activities.

(c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee's private gain or for the private gain of any person with whom he has employment or business relations or is

otherwise affiliated in a nongovernmental capacity.

(d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty;

(2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act;

(3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction;

(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions;

(5) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability;

(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits anyone holding an office of profit or trust under the United States from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any public official from being or acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 *et seq.*;

(7) The Hatch Act Reform Amendments, 5 U.S.C. 7321 through 7326, which govern the political activities of executive branch employees; and

(8) The limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this chapter.

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992; 61 FR 50691, Sept. 27, 1996; 62 FR 48748, Sept. 17, 1997]

§ 2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties

that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a non-profit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of § 2635.802, it would create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.

§ 2635.803 Prior approval for outside employment and activities.

When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees