

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

Where Seeking, Negotiating and the STOCK Act Merge

September 2014

2013 OGE Prosecution Survey



- Former human resources director at FEMA
- Participated in hiring the Gallup Organization to provide consulting services to FEMA and requested and received additional funding for Gallup under the contract
- Interviewed and accepted a job offer from Gallup while overseeing the program Gallup was consulting on



- Failed to indicate the future employment on OGE Form 278
- He later asked Gallup to give him an offer letter that was dated to appear as if he received the offer after he left FEMA

RESULT:

- **2 years probation**
- **Barred from future Government contracts**
- **Pay \$40,000 to settle separate whistleblower case**

2011 OGE Prosecution Survey



- Former employee was responsible for an antisubmarine program
- He began seeking and negotiating for employment with a defense contractor that sought to perform elements of the antisubmarine program
- He later accepted employment with the contractor and received a \$25,000 signing bonus



- While he was negotiating for employment, he invited contractor employees to visit the program's headquarters and sent agency personnel to the contractor's facility
- The former employee discussed with agency personnel how the contractor could assist in the program

RESULT:

- one year unsupervised probation
- \$15,000 fine

General Principle #10



Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

Seeking Other Employment

5 C.F.R. § 2635.603(b)



Seeking employment means directly or indirectly making an unsolicited communication to any person or their intermediary regarding possible employment.

Seeking Employment & Social Media



- For the purpose of posting the employee's professional qualifications on a social media site the employee will be considered to have begun seeking employment when:
 - the employee responds (other than rejection),
 - to a contact through social media by a prospective employer (prospective employers agent/intermediary)
 - regarding possible employment
 - where the contact is in response to the employee posting his qualifications on a social media site.

Seeking Other Employment Hypothetical 1



- An employee in the Office of Strategic Planning serves as an advisor and is working on a special project with representatives from various sectors of the U.S. business community for the expansion of U.S. trade in Africa.
- She and a friend are planning to start a joint venture company when she leaves Government service in the first quarter of calendar year 2015. The company would provide consulting services to trade associations to assist with developing country specific strategies for their members and increase membership.
- She and her friend have drawn up a business plan and submitted it to the bank for a loan. They are currently waiting for bank approval.
- Is she seeking employment? If so, how would you advise?

Seeking Other Employment Hypothetical 2



- A supervisory IT Security Specialist is procuring software on all computers in OS. He just finalized the procurement to purchase anti-virus software with a major fortune 500 IT company.
- About one year ago, he posted a detailed resume on High-Tech jobs.com, who only works with major IT companies and seasoned IT professionals. When checking his personal email the weekend (after he signed-off on the procurement) he notices an email from High-Tech jobs.com notifying him that two employers wanted to schedule telephone interviews. Interested, he clicks on the link and one of the interested companies is the same IT company that was awarded the contract. The specialist set up the telephone interview and immediately sent an email to his subordinate removing himself from any further action on the contract.
- Is he seeking? Was his disqualification timely?

Seeking Other Employment Hypothetical 3



- A special assistant in International Operations was approached by a company representative with whom he works regularly. Impressed the employee's attitude and work ethic, the representative told the employee that he had recommended him for a vacant position at a trade association. The representative explained the duties of the position (which he learned from his friend who is the hiring official for the position). The employee expressed his interest in the position. He was told that the hiring official would be in contact with him in the near future. Ironically, the employee was working with a different representative from the trade association to plan a conference for small businesses.
- Is he seeking and is disqualification required?

5 C.F.R. 2635.603, Example 3:



An employee is auditing a contractor and while at the contractor's office, the head of the contractor's accounting division tells the employee that they are thinking about hiring another accountant and asks if the employee is interested in leaving his agency. The employee says he is interested in knowing what kind of work would be involved.

Notice of Intent Not to Participate



- Sensitive area as employee may not want to alert their supervisors of their job search.
- Agency has legitimate interests in regulating flow of work and preventing conflicts.
- Under 2635.604(b), employee who becomes aware of need to recuse “should” notify the person responsible for his assignments.
- If employee is responsible for his own assignments, he should take whatever steps are necessary to ensure that he does not participate in a matter.

Notice of Intent Not to Participate (continued)



- These provisions fall short of *mandatory* notification, but they do point employees in the direction of common sense.
- If an actual future employment agreement or arrangement results, employees must disclose it on their OGE form 278 or 450. Good practice for ethics officials to remind 278 filers as this item is required on their termination reports and it is sometimes overlooked.
- Obligation to recuse and assurance that it is observed always remains the personal responsibility of the individual employee.

Documentation of Intent Not to Participate



- Yes, if the matter is within the scope of an ethics agreement.
- Yes, if agency ethics official or supervisor requires it.
- Yes, if the employee elects to document.
- Ethics officials can be useful in providing advice and assuring that commitments to recuse are fulfilled and that screening arrangements are provided, if necessary.

5 C.F.R. § 2635.604(c)

Example 1



An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in his work assignments can be made.

Negotiating for Employment

5 C.F.R. § 2635.603(b)(i)



Negotiating for employment means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position.

5 C.F.R. 2635.603, Example 3 (continued):



They discuss the duties of the position the accounting division would like to fill and the employee's qualifications. They do not discuss salary and the head of the accounting division explains that he has not yet received authorization to fill the particular position and will get back to the employee after getting the approval for additional staffing.

Advice



- Employees should understand the meaning of technical terms “particular matter involving specific parties”. Examples may help.
- Employees must understand that they must not be involved in preliminary discussions, interim evaluations, intermediate steps, or in supervision of subordinates.
- Employees should understand that they are always personally responsible for ensuring that recusal is fulfilled.
- Employees must understand the continuing need to update a recusal arrangement as circumstances change.
- Employees should be aware that the agency ethics official is available to provide advice whenever a question arises.

Written Advice



Good Written Documentation Should Contain:

- An indication of when the advice was given;
- A summary of the relevant facts as described by the employee;
- Citation of the applicable legal authority;
- An analysis describing how the law applies to the facts; and
- A conclusion.

Screening Arrangements



Consider the following factors:

- The kind and number of matters that will come before the employee;
- The level of the employee's position;
- The nature of the employee's responsibility;
- Whether or not the employee is responsible for his or her own assignments;
- The size and organizational structure of the employee's office; and
- The process for controlling the flow of information, work assignments and contacts from outside persons.

The STOCK Act



On April 4, 2012, President Obama signed into law the Stop Trading on Congressional Knowledge Act of 2012

Section 17 of the STOCK Act



The STOCK Act requires a covered employee (public filer) to notify their ethics official within three days after they begin negotiating or have an agreement for future employment or compensation.

Who is subject to section 17?



Covered Employees: Employees who are required to file a public financial disclosure report under section 101 of the Ethics in Government Act of 1978 (EIGA).

OGE Form 278 (Rev. 09/2010)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Help Form Approved: OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent <input type="checkbox"/>	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate <input type="checkbox"/>	Termination Filer <input type="checkbox"/>	Termination Date (If Applicable) (Month, Day, Year)
Reporting Individual's Name Last Name		First Name and Middle Initial		Fee for Late Filing Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.		
Position for Which Filing Title of Position		Department or Agency (If Applicable)				
Location of Present Office (or forwarding address)		Address (Number, Street, City, State, and ZIP Code)			Telephone No. (Include Area Code)	
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)		Title of Position(s) and Date(s) Held				
Presidential Nominees Subject to Senate Confirmation		Name of Congressional Committee Considering Nomination			Do You Intend to Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.		Signature of Reporting Individual			Date (Month, Day, Year)	
Other Review (If desired by agency)		Signature of Other Reviewer			Date (Month, Day, Year)	

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:
Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.
Schedule B—Not applicable.
Schedule C, Part I (Liabilities)—The

When are the requirements of section 17 triggered?



Three days after commencement of

- 1) Negotiations for employment or compensation (negotiations as defined in 5 C.F.R. § 2635.603(b)(1)(i)); or
- 2) An agreement of employment or compensation

With a non-federal entity

for future employment or compensation

Compensation in Exchange for Personal Services



Compensation includes any form of consideration, remuneration, or income, as well as royalties.

It also includes compensation in the form of transportation, lodgings, and meals.

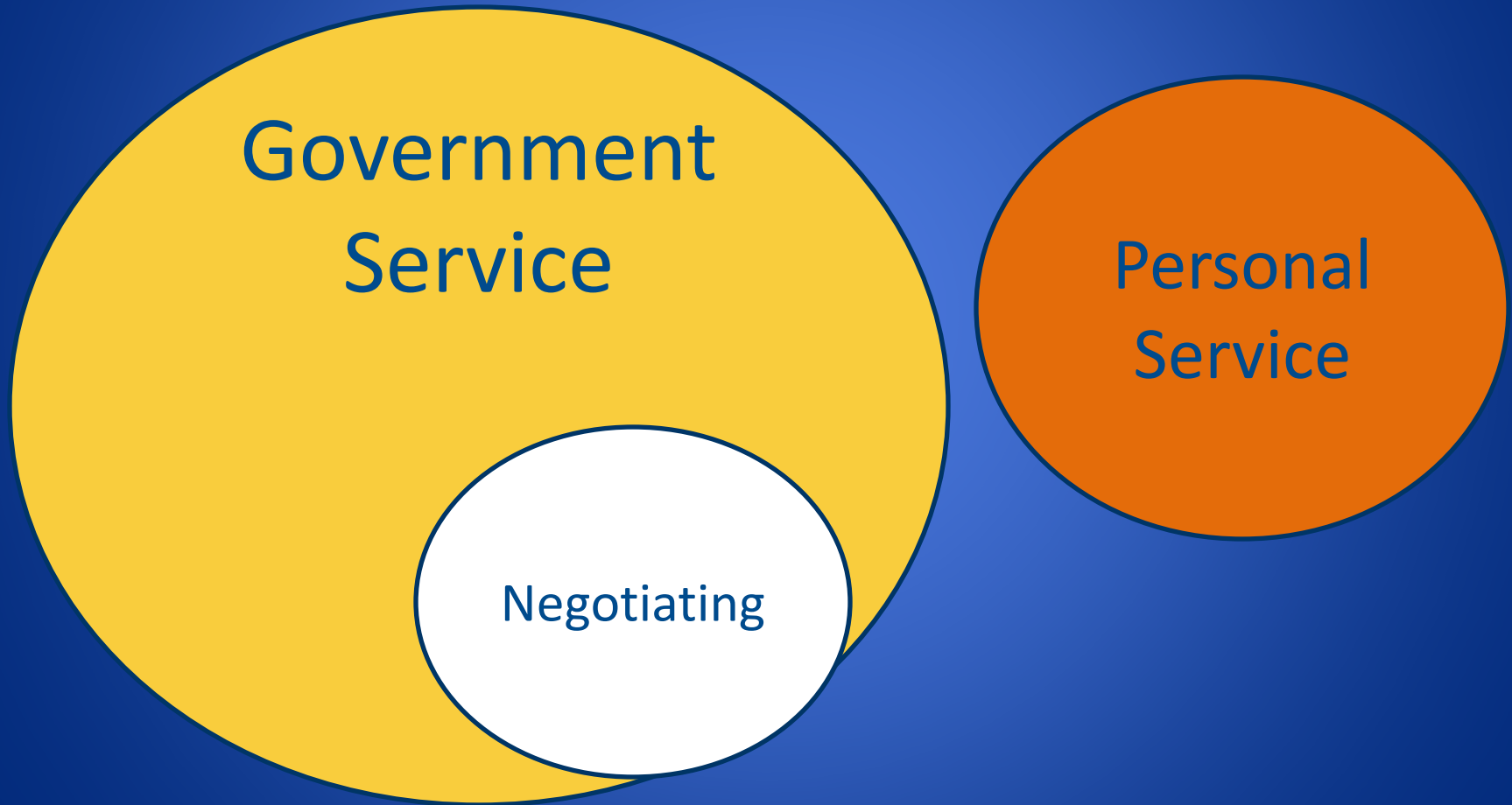
The requirement to report a negotiation for, or agreement of, future compensation applies only if the compensation will be in exchange for the provision of personal services.

Hypothetical



Alice is a PAS official at a Federal agency. She has studied art history for years and has filled dozens of notebooks with interesting facts about various artists, museums and pieces of art. Alice will be retiring on August 30. In May, Alice contacts a speakers bureau to find out if they will add her to their roster of speakers for speaking engagements beginning in September. The bureau is very interested and they tell Alice that based on her background they believe her starting fee will be \$1,500.

Future/Post Government Compensation Section 17 Notification Required



Employees should submit the notifications to their DAEO, or to an ethics official if delegated by the DAEO.



NOTIFICATION OF POST-EMPLOYMENT NEGOTIATION OR AGREEMENT AND RECUSAL STATEMENT

Section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) requires certain employees to file a statement notifying their agency ethics official of any negotiation for or agreement of future employment or compensation with a non-federal entity within three business days after commencement of the negotiation or agreement. Employees who file this notification statement also must file with their agency ethics official a recusal statement whenever there is a conflict of interest or appearance of a conflict of interest with the entity. In any such case, the employee must recuse, unless the employee has first obtained a written waiver or authorization as discussed in 5 C.F.R. § 2635.605, or qualifies for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

NOTIFICATION OF POST-EMPLOYMENT NEGOTIATION OR AGREEMENT

Name of Employee	
Agency/Office	
Date Negotiation or Agreement Commenced	
Name(s) of Non-Federal Entity or Entities Disclose each non-federal entity with which you are negotiating for or have an agreement of future employment or compensation.	

What are the employee's recusal obligations?



Section 17 also requires an employee to file a notification regarding recusal whenever there is a conflict of interest or an appearance of a conflict of interest with that entity.

RECUSAL STATEMENT

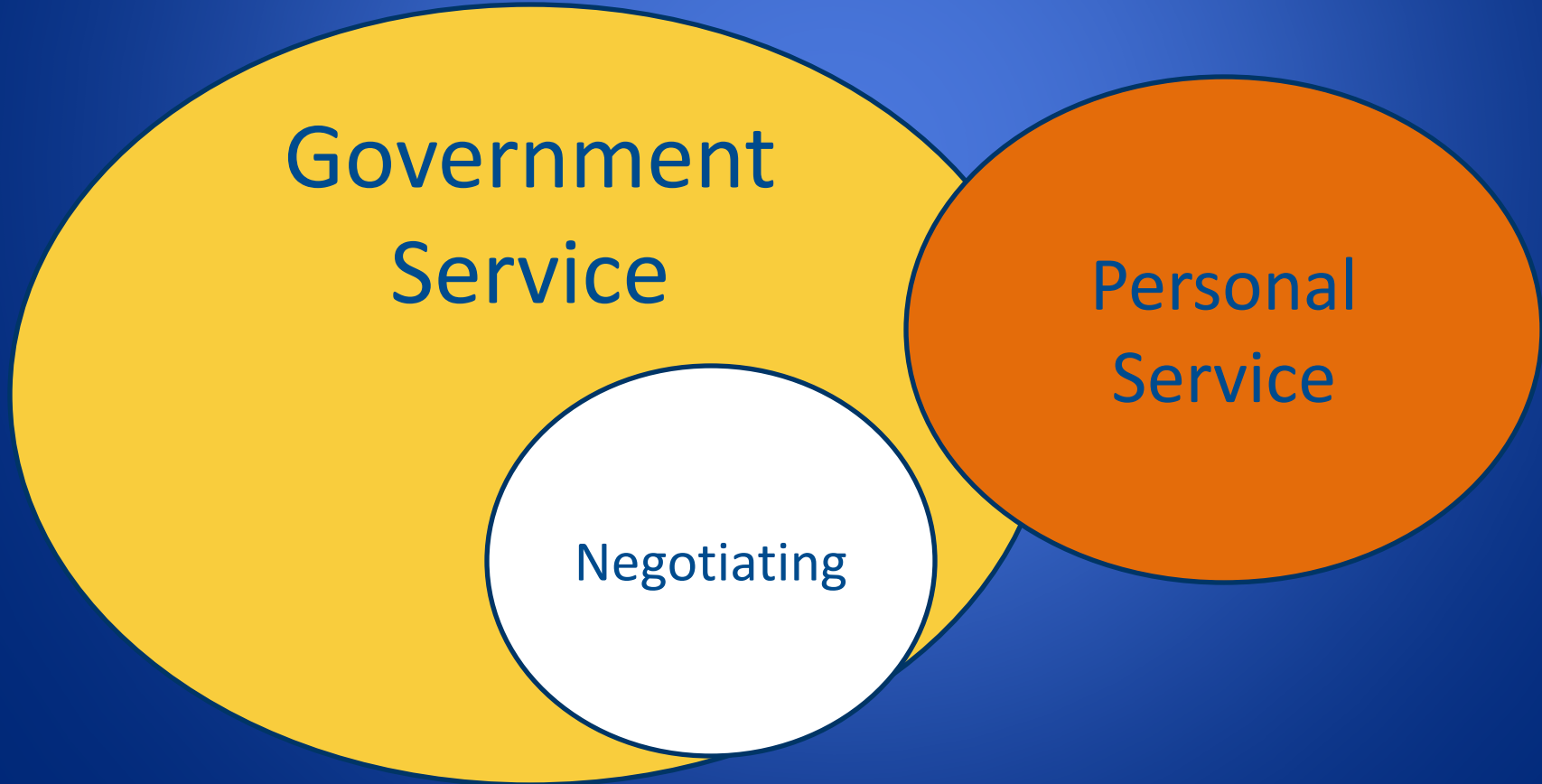
For as long as I am negotiating for, or have an agreement of, employment or compensation with any entity listed above, I will comply with all applicable recusal obligations under 5 C.F.R. part 2635 and, where applicable, 18 U.S.C. § 208. I understand that it is my responsibility to consult an agency ethics official if I have questions regarding these recusal obligations.

Employee Signature	Date Submitted
Agency Ethics Official Signature	Date Received

Compensation Received During Government Service



No Section 17 Notification Required



Compensation Limitations for Current Government Employees



- 5 C.F.R. § 2635.807: Teaching, speaking, writing
- Agency Supplemental Ethics Regulations
- 5 C.F.R. § 2636.304: 15% limitation on outside earned income
- 5 C.F.R. § 2635.804(a): Outside earned income ban

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Subpart F—Seeking Other Employment

§ 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person “with whom he is negotiating or has any arrangement concerning prospective employment.” See § 2635.402 and § 2640.103 of this chapter. Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee’s actions in seeking employment fall short of actual employment negotiations.

[57 FR 35042, Aug. 7, 1992, as amended at 64 FR 13064, Mar. 17, 1999]

§ 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in § 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of §§ 2635.604 and 2635.606 if particular matters in which the employee will be participating personally and substantially would directly and predictably affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

NOTE: An employee who is seeking employment with a person whose financial interests are not affected directly and predictably by particular matters in which he participates personally and substantially has no obligation under this subpart. An employee may, however, be subject to other statutes which

impose requirements on employment contacts or discussions, such as 41 U.S.C. 423(c), applicable to agency officials involved in certain procurement matters.

(a) *Related employment restrictions*—(1) *Outside employment while a Federal employee.* An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D or E of this part as a result of his outside employment activities.

(2) *Post-employment restrictions.* An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Governmentwide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 423(d).

(b) *Interview trips and entertainment.* Where a prospective employer who is a prohibited source as defined in § 2635.203(d) offers to reimburse an employee’s travel expenses, or provide other reasonable amenities incident to employment discussions, the employee may accept such amenities in accordance with § 2635.204(e)(3).

[57 FR 35042, Aug. 7, 1992, as amended at 62 FR 48748, Sept. 17, 1997; 64 FR 13064, Mar. 17, 1999]

§ 2635.603 Definitions.

For purposes of this subpart:

(a) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

(b) An employee is seeking employment once he has begun seeking employment within the meaning of paragraph (b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if he has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a), the term negotiations means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(A) For the sole purpose of requesting a job application; or

(B) For the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(iii) Made a response other than rejection to an unsolicited communication from any person, or such person's

agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 3: An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not discuss salary. The head of the division explains that he has

not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.

Example 4: An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has not begun seeking employment with any of the twenty-five. If he receives a response from one of the resume recipients indicating an interest in employment discussions, the employee will have begun seeking employment with the respondent at that time.

Example 5: A special Government employee of the Federal Deposit Insurance Corporation is serving on an advisory committee formed for the purpose of reviewing rules applicable to all member banks. She mails an unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

Example 6: A geologist employed by the U.S. Geological Survey has been working as a member of a team preparing the Government's case in an action brought by the Government against six oil companies. The geologist sends her resume to an oil company that is a named defendant in the action. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.

(c) *Prospective employer* means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) *Direct and predictable effect, particular matter, and personal and substantial* have the respective meanings set forth in § 2635.402(b)(1), (3), and (4).

[57 FR 35042, Aug. 7, 1992, as amended at 64 FR 13064, Mar. 17, 1999]

§ 2635.604 Disqualification while seeking employment.

(a) *Obligation to disqualify.* Unless the employee's participation is authorized in accordance with § 2635.605, the employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment within the meaning of § 2635.603(b). Disqualification is accomplished by not participating in the particular matter.

(b) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(c) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in his work assignments can be made.

Example 2: An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is involved in testing a drug for which the company is seeking FDA approval. Before making a response that is not a rejection, the employee should disqualify himself from further participation in the testing. Where he has authority to ask his colleague to assume his testing responsibilities, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his disqualification.

Example 3: The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be as-

sumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he would be wise to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official or the Commissioners to file a written disqualification statement.

Example 4: A scientist is employed by the National Science Foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.

(d) *Agency determination of substantial conflict.* Where the agency determines that the employee's action in seeking employment with a particular person will require his 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, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

[57 FR 35042, Aug. 7, 1992, as amended at 64 FR 13064, Mar. 17, 1999]

§ 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) *Waiver.* Where, as defined in § 2635.603(b)(1)(i), an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in § 2635.402(d). See also subpart C of part 2640 of this chapter. For certain employees, a regulatory exemption under the authority of 18

§ 2635.606

5 CFR Ch. XVI (1–1–14 Edition)

U.S.C. 208(b)(2) may also apply (see subpart B of part 2640 of this chapter).

Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and § 2635.603(b)(1)(i). In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) *Authorization by agency designee.* Where an employee is seeking employment within the meaning of § 2635.603(b)(1) (ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in § 2635.502(d).

Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of § 2635.603(b)(1)(ii) even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with § 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

[57 FR 35042, Aug. 7, 1992, as amended at 62 FR 48748, Sept. 17, 1997; 64 FR 13064, Mar. 17, 1999]

§ 2635.606 Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations.

(a) *Employment or arrangement concerning employment.* An employee shall be disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate

in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3), or by a regulatory exemption under the authority of 18 U.S.C. 208 (b)(2). These waivers and exemptions are described in § 2635.402(d). See also subparts B and C of part 2640 of this chapter.

Example 1: A military officer has accepted a job with a defense contractor to begin in six months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

Example 2: An accountant has just been offered a job with the Comptroller of the Currency which involves a two-year limited appointment. Her private employer, a large corporation, believes the job will enhance her skills and has agreed to give her a two-year unpaid leave of absence at the end of which she has agreed to return to work for the corporation. During the two-year period she is to be a COC employee, the accountant will have an arrangement concerning future employment with the corporation that will require her disqualification from participation in any particular matter that will have a direct and predictable effect on the corporation's financial interests.

(b) *Offer rejected or not made.* The agency designee for the purpose of § 2635.502(c) may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors, including those listed in § 2635.502(d), and a determination that the concern that a reasonable person may question the integrity of the agency's decisionmaking process outweighs the Government's interest in the employee's participation in the particular matter.

Example 1: An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to

be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Government's interest in her participation.

[57 FR 35042, Aug. 7, 1992, as amended at 62 FR 48748, Sept. 17, 1997; 64 FR 13064, Mar. 17, 1999]

Subpart G—Misuse of Position

§ 2635.701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

- (a) Use of public office for private gain;
- (b) Use of nonpublic information;
- (c) Use of Government property; and
- (d) Use of official time.

§ 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, 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, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) *Inducement or coercion of benefits.* An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated 18 U.S.C. 205.

(b) *Appearance of governmental sanction.* Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of

Subpart F of the Standards of Conduct	Section 17 of the STOCK Act
Disqualification Requirements Employee must:	Notification and Recusal Requirements “Covered employee” must:
<ul style="list-style-type: none"> • <u>Immediately</u> disqualify himself from participation in particular matters affecting the financial interests of a prospective employer with whom he is seeking employment as defined in 5 C.F.R. §§2635.603(b)(1)(ii) and (iii), unless the employee’s activities are authorized in accordance with 5 C.F.R. § 2635.605(b); and • <u>Immediately</u> disqualify himself from participation in particular matters affecting the financial interests of a person with whom he is negotiating for employment as defined in 5 C.F.R. § 2635.603(b)(1)(i), or with whom he has an arrangement concerning prospective employment pursuant to 5 C.F.R. § 2635.606, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. § 208(b)(1) or (b)(3), or by regulatory exemption. 	<ul style="list-style-type: none"> • File a notification statement within <u>three business days</u> of commencement of negotiations or agreements of non-federal, post-government employment or compensation with <u>any</u> non-federal entity; • File a notification regarding recusal whenever there is a conflict of interest or appearance of a conflict of interest with respect to the non-federal entity identified in the notification statement; and • Comply with all applicable recusal obligations under 5 C.F.R part 2635 and, where applicable, 18 U.S.C. § 208.
Triggering Events	
<ul style="list-style-type: none"> • Unsolicited communications regarding possible employment, as described in 5 C.F.R. §§2635.603(b)(1)(ii) and (iii); • Negotiations for employment within the meaning of 5 C.F.R. § 2635.603(b)(1)(i); • Entered into an arrangement concerning prospective employment, as described in 5 C.F.R. § 2635.606. 	<ul style="list-style-type: none"> • Negotiations for post-government employment or compensation within the meaning of 5 C.F.R. § 2635.603(b)(1)(i); or • Entered into an agreement for post-government employment or compensation.
Employment	Employment or Compensation
<ul style="list-style-type: none"> • Non-federal employment or business relationship involving the provision of personal services by the employee, including personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee. 5 C.F.R. § 2635.603(a). 	<ul style="list-style-type: none"> • Non-federal post-government employment, within the meaning of 5 C.F.R. § 2635.603(a), <u>or post-government compensation</u> for the provision of personal services, including teaching, speaking, and writing activities.
Occurrence of Non-Federal Employment or Compensation	
<ul style="list-style-type: none"> • Employment either concurrent with or subsequent to Federal government employment. 	<ul style="list-style-type: none"> • Provision of all personal services subsequent to Federal government employment.