



## NOTICE TO EMPLOYEES FOR PRIOR APPROVAL OF OUTSIDE ACTIVITIES

**Caution:** Approval of an REE-101, Application for Approval to Engage in Non-Federal Employment or Activity, does not relieve the employee of the obligation to abide by all applicable laws governing employee conduct nor does approval constitute a sanction of any violation. Approval involves an assessment that the general activity as described on the submission does not appear likely to violate any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated, that, nevertheless, pose ethical concerns. When you work for a company, organization, or other employer outside your government job, your relationship with that outside employer has certain legal and ethical consequences. The approval of an outside activity does not mean that you are free of conflicts of interest. You must still follow all substantive ethics requirements after approval is granted. Employees should become familiar with the provisions of the Standards of Conduct, specifically ethics regulations contained within 5 C.F.R. § 2635.802.

**Conflicts Resolution.** An approved REE-101 does not signify that you need not be concerned about conflicts of interest. Under the law, conflicts of interest arising out of outside employment can be resolved in advance in only three ways: (1) you can inform your supervisor and disqualify yourself from participating in a conflicting government matter (often called a recusal); (2) you can ask for and receive, if certain legal requirements are satisfied, a separate legal document from your appointing official or designee that specifically permits you to work on the government matter (known as a waiver, an exemption, or an authorization); or (3) you can resign from either your government or outside job.

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

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

Second, assuming your proposed activity is not specifically prohibited, the reviewer determines whether, under the circumstances, approval should be denied for other reasons specified under the law. For example, the reviewer may deny approval if the facts show that you used your government position to obtain an outside compensated business opportunity. Another common reason for denying approval is that the outside activity may prevent you from handling work that is expected of you. Because the outside activity may cause you to have to disqualify yourself from a broad range of job assignments, or even a few crucial projects, that will affect your outside employer, it may be impossible for you to discharge fully your government duties. If, however, your outside activity is approved, the reviewer has determined that the matters in which you will not be allowed to participate are not so central or critical to the performance of [your] official duties that your ability to perform the duties of your position would be materially impaired. In other words, you cannot work on a government matter affecting your outside employer, but the reviewer expects that you will be able to stay away from these assignments and still do your job.

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

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