

U.S. DEPARTMENT OF AGRICULTURE – OFFICE OF ETHICS

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Appendix: Adjunct Professor Questionnaire

1. Purpose

This Ethics Issuance establishes guidelines for applying the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635), the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture (5 CFR Part 8301), and Federal conflict of interest statutes (18 U.S.C. §§ 202–209) to employees of the Department of Agriculture (Department or USDA) who are designated as adjunct professors by universities.

2. Authority

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

3. General

Some Department programs require employees to be stationed at or near universities and to perform official duties at those university locations. Frequently, employees will engage in activities on behalf of the Department that affect or involve those universities. On many occasions, universities will designate Department employees with “adjunct professor” or similar titles. This issuance will apply existing rules of Government-wide and Department applicability to the situations in which universities have so designated employees with “adjunct professors” or similar titles. This issuance does not create any new rules.

4. Controlling Statutes and Regulations

18 U.S.C. § 205 – Activities of officers and employees in claims against and other matters affecting the Government. See 8.2, example 3, Note.

18 U.S.C. § 208 - Acts affecting a personal financial interest. See 7.2 (Outside Employment) and paragraph 8 (Conflicting Financial Interests and Impartiality).

18 U.S.C. § 209 - Salary of Government officials and employees payable only by United States. See paragraph 9 (Gifts and Supplements to Salary Involving University Privileges and Benefits).

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

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

- Subpart B – Gifts from Outside Sources. See paragraph 9 (Gifts and Supplements to Salary Involving University Privileges and Benefits).
- Subpart E - Impartiality in Performing Official Duties. See 7.2 (Outside Employment) and paragraph 8 (Conflicting Financial Interests and Impartiality).
- 5 CFR § 2635.807 – Teaching, Speaking and Writing. (See 7.2.2).

5 CFR Part 8301 - Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture and specifically 5 CFR § 8301.102 –Prior approval for outside employment. See 7.2 (Outside Employment).

5. Definitions

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

Agency
Agency Ethics Advisor
Alternate DAEO
Confidential Filer
Deputy Ethics Officials (DEOs)
Designated Agency Ethics Official (DAEO)

Director, OE
Ethics Advisors
Ethics Assistants
Mission Area Ethics Advisor (MAEA)
Mission Area Ethics Offices (MAEOs)
Office of Ethics (OE)
Public Filer
Senior Ethics Specialist
U.S. Office of Government Ethics (OGE)

- 5.2. **“Authorized Departmental Officer's Designated Representative (ADODR),”** in the context of a reimbursable cooperative agreement (a research agreement between the Agency and a Sponsor in which the Agency is reimbursed by the Sponsor for research work previously conducted), this means the Agency’s technical representative, acting within the scope of delegated authority, who is responsible for participating with the Sponsor in the accomplishment of the objectives of the agreement and monitoring and evaluating the Sponsor's performance.
- 5.3. **“Adjunct Professor”** is a generic title with no specific meaning. What an “adjunct professor” is depends exclusively upon the rights, privileges, and duties/obligations conveyed with the title from a given university to a given employee. Some universities may vary their terminology, not using "adjunct faculty." For example, some universities might use the term "Special Membership on the Graduate Faculty," or "Courtesy Faculty," or simply "Faculty." Whether one’s status as an “adjunct professor” creates, or is likely to create, a conflict of interest or other ethical problem will depend upon whether the rights, privileges, duties and obligations bestowed by the university or assumed by the employee create the problem. For purposes of this issuance, the term "adjunct professor" will include any term, except "tenure," that a university uses to confer status.
- 5.4. **“Consultant”** means one who provides “consultative services,” as defined at 5 CFR § 5501.106(b)(2). “Consultative services, under this provision, means providing personal services, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialize instruction and study in an institution of higher education, hospital, or other similar facility.”
- 5.5. **“Professional”** is defined, consistent with 5 CFR § 2636.305(b)(1), as one who pursues, as a means of livelihood, a calling requiring specialized knowledge, often requiring long and intensive preparation, including instruction, in skills and methods, as well as in the scientific, historical or scholarly principles underlying such skills and methods. It is characteristic of a profession that those in the profession, through force of organization or concerted opinion, establish and

maintain high standards of achievement and conduct, and commit its practitioners to continued study of the field.

- 5.6.** *“Tenure”* is a permanent appointment of a university faculty member. A tenured appointment normally may not be terminated except for cause, for reasons of financial emergency, by resignation, or by retirement. It normally is granted only by specific faculty and administrative action. Tenure at a university usually implies a commitment by the faculty member to participate in professional faculty activities, and the commitment continues for as long as the appointment continues. Because of the professional obligations on tenured faculty, any tenure appointment – with or without pay -- held by a Department employee is outside employment.
- 5.7.** *“University”* means an institution of higher learning authorized and generally recognized by competent crediting authority to issue bachelors or higher degrees to students after a period of study and after meeting the requirements for the degree. For purposes of this issuance, a “college” that grants bachelor or higher degrees is considered the same as a “university.” The term includes all parts of a university or college, including all institutions in a multi-institution State or city system.
- 5.8.** *“University Employee”* means generally a relationship recognized in law between the individual and the University wherein the University has the right to control and direct the individual in the performance of services for the University. Whether a USDA employee is, in fact, an employee of the University is determined under the governing state statutes and case law. Thus, it is not unusual for an employment relationship to exist under one statute (e.g., a tort claims statute), but not for another (e.g., a worker’s compensation statute). Payment or receipt of compensation for services is an indication of an employment relationship with the University; however, the fact that the services are provided without compensation does not mean that an employment relationship does not exist.

NOTE: While one who is a University employee usually will be required to seek prior agency approval for outside employment under 5 CFR § 8301.102, the terms are not synonymous. It is possible that, in situations where an individual provides uncompensated services to the University, the individual could be deemed a University employee even where possibly not required to seek prior agency approval.

6. Official Duties Involving the University

- 6.1. General.** Employees stationed at, or working on collaborative efforts with, universities may have official duties associated with the universities that directly affect the programs of the Department and the working conditions of its employees. Accordingly, it is critical, at the outset, to determine whether one’s

actions in relationship to the University are properly undertaken as part of their official duties, or whether those activities are more appropriately undertaken (if at all) in one's personal capacity. Official duties include any activities that are undertaken by a Federal employee in furtherance of an agency mission and can reasonably be considered as being part of that employee's official duties. Moreover, a Federal employee is required to use official time, official facilities, and official services, solely for the official work of the Federal Government (see 5 CFR §§ 2635.704-705). Where authorized to participate, the employee should participate in the duty solely to represent the interests of his or her agency. The fact that he or she has an "adjunct professor" designation from the University is irrelevant to his or her representation of the Agency. An Agency employee owes his or her first duty as an employee to the Federal Government. He or she is bound by statute, executive order, and regulation of the Federal Government.

6.2. Presumption of Official Capacity. Managers and supervisors should presume, in absence of a conclusive showing otherwise, that all activities undertaken with the University are undertaken in the employee's official capacity – in effect, that the offer from the University for the employee to participate in the activity is based either upon his or her official position, or official duties with the University. The burden is on the employee to prove conclusively to Agency management that the activity with the University is completely unrelated to the employee's official duties with the University and that the activity poses no additional conflict of interest or other ethical concern.

6.3. Determining Official Duties: Agency Discretion. Agency management has wide discretion in determining what activities are official; nevertheless, the manager is required to be able to describe how activities determined to be official fall within the intended purposes of the appropriation from which the employee is paid. In this context, a Federal employee may be assigned to perform services in connection with the University if there is a direct tie to the accomplishment of the Agency mission.

Example 1: A University asks an employee/adjunct professor to participate on a "space" committee that determines the working, office and storage space to be allocated within University facilities to all persons employed in those facilities. The space utilized by Department employees may be affected by decisions or recommendations made by such committees. A supervisor or manager may authorize the employee's participation as an official duty.

Example 2: An employee/adjunct professor is a scientist recognized for his or her expertise in genetics of vegetable crops. A University Ph.D. candidate in that same discipline and studying in the same laboratory asks that the employee/adjunct professor serve on his or her doctoral committee. The supervisor may determine, based on all the facts, that the employee/adjunct professor may serve because: the activity promotes the statutorily mandated goal

of the Agency to promote science; and/or it helps the agency maintain good relations with the University. (Compare with Examples in 7.1 and 7.2.4, below).

Example 3: An employee/adjunct professor is asked to present guest lectures in a course at the University. The employee/adjunct professor is a recognized expert on the subject of the course. The supervisor may determine that the employee/adjunct professor may present the lectures as an official duty for the same reasons as stated above in Example 2. Because this is an official duty, the employee/adjunct professor may not accept compensation for the activity from any source other than his or her pay from the Federal Government; however, the activity presents no “employment” relationship requiring either recusal under 18 U.S.C. § 208, or a request for prior approval before engaging in the activity, and it does not need to be reported as an Outside Position in the employee’s financial disclosure report. (Compare with Example 1 at 7.2.2, below).

6.4. Inappropriate Official Duties Involving the University. Performance of duties that are solely internal to the administration of the University *may not be assigned or performed as official duties*. Examples of inappropriate official activity by an employee who is an adjunct professor would include:

6.4.1. Teaching a course at the University. Teaching of a course generally requires the adjunct professor to assume full responsibility for all activities connected with the course, including ultimately the grading of students. Also, the adjunct professor becomes subject to the supervision of the dean or administrative leader of the department or academic unit offering the course. In short, such activity could result in the adjunct professor being a University employee.

6.4.2. Tenure-related Activities. Making tenure recommendations or participating in votes on tenure of University faculty;

6.4.3. Involvement in University Finances, Policy, and Operations. Participating as part of the University faculty in recommending or voting on matters of University finance or administration, including budget deliberations and decisions; and

6.4.4. Representing the University at Events. Acting on behalf of the University at conventions or at other activities or occasions.

NOTE: Moreover, authorizing an employee to participate in the internal administration or management of the University may expose the Agency, and/or employee, to liability.

6.4. Dual Compensation Concerns. Where an adjunct professor is assigned to perform appropriate official duties, the adjunct professor may not accept any form of compensation from the University for those services. Under 18 U.S.C. § 209, Federal employee may not receive from a non-Federal source a “salary, or any contribution to or supplementation of salary, as compensation for” performing official duties. “Compensation,” for purposes of this statute also would include

such non-cash benefits normally provided in lieu of, or in addition to faculty, such as: housing; tuition benefits for family; and spousal employment. [See specific application to teaching and lecturing activities under 7.2.2, below.]

7. Personal Capacity Activities Involving the University

- 7.1. General.** To the extent that an activity with the University is not deemed by the Agency to be directly related to the accomplishment of its mission, the Agency may permit the employee to engage in such activities, where appropriate, in his or her personal capacity. “Personal capacity activity,” generally speaking, is one that is conducted (1) when the employee is not on official time; (2) without expenditure of Agency funds; and (3) in a manner that does not otherwise indicate that the employee is participating on behalf of the Agency. One’s “own time” is that time in which the employee is not working for the Government – after hours and on weekends, annual leave, leave without pay, and administrative leave (i.e., authorized absence without charge to leave). Paragraphs 8 and 9 address a variety of ethical issues that originate with “personal capacity activity.”

Example: After considering relevant circumstances, a supervisor may determine that an employee/adjunct professor should not participate as an official duty on the committee of a Ph.D. or Master’s candidate. The employee/adjunct professor is not thereby precluded from participating on the committee, but the participation must take place on the personal time of the employee/adjunct professor without cost to the Government. (Compare with Example 2 in 6.3, above).

- 7.2. Outside Employment.** Application of the definition of “employment” at 5 CFR § 8301.102(b) determines whether the employee needs to request prior approval for outside employment. (NOTE: 5 CFR § 8301.102(a) requires that an “employee, other than a special Government employee, who is required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by the Office of Government Ethics, shall, before engaging in outside employment, obtain written approval[.]” [Emphasis added.] Under part 8301, “employment” includes, in pertinent part,

any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses.”

However, while the presence or absence of compensation is a major indication that an individual is in the employment of another; it is not the only factor. Under 5 CFR § 8301.102(b)(1), “outside employment” also includes, irrespective of compensation, the providing of “personal services as a *consultant* or

professional, including service as an expert witness or as an attorney[.]”
[Emphasis added.]

- 7.2.1. Application to “Adjunct Professor” Designation.** As stated previously, the title “adjunct professor” has no specific meaning. In each case of an “adjunct professor” designation, the Agency should examine the rights, privileges, and duties/obligations conveyed with the title from the University to the employee.

Example: An employee who files a financial disclosure report and who is not stationed at or nearby to the University receives an “adjunct professor” designation from the University. The employee has no officially assigned duties relating to the University or its employees. The employee, in his or her personal capacity, does not perform any functions on behalf of the University. The employee/adjunct professor, even though he or she files a financial disclosure report, is not required to request prior approval from the Agency for the designation by the University. Merely holding a title of “adjunct professor,” without more, does not impose any obligations or duties upon the employee to the University. Note, however, that a change in circumstances of the employee or of the employee's activities as adjunct professor may necessitate his or her requesting approval for the outside employment.

7.2.2. Application to Teaching and Lecturing.

- **Serving as Guest Lecturer:** An employee may serve as a guest lecturer, either as part of the employee’s official duties, or in a personal capacity.

Official Capacity. An employee may be assigned, as part of his or her official duties, to serve as a guest lecturer discussing matters related to the employee’s official duties. This is merely utilizing an opportunity to inform the public of relevant Federal Government programs and operations. The employee **may not** accept any form of compensation for such service.

Personal Capacity.

- **Compensated Activity.** If compensation is to be received by the employee for providing guest lecture services, the activity must be undertaken in the employee’s personal capacity, as described in 7.1, above. Under such circumstances, if the employee is a financial disclosure filer, the employee is required to request prior approval for outside employment (see 7.3, below). Agency managers, in considering whether to grant the request must consider the request in light of the following:

5 CFR § 2635.807. Teaching, speaking, and writing restrictions. Managers must determine how close the subject of the lecture relates to the employee’s official duties. As a general rule, employees may not receive compensation from a source other than the Federal

Government for teaching, speaking, and writing that relates to their official duties.

18 U.S.C. § 209. Dual Compensation. To the extent that the lecturing or teaching activity is deemed to be part of the employee's official duties, receiving compensation for engaging in that activity could actually violate 18 U.S.C. § 209 (see 6.5.,above).

18 U.S.C. § 208. Conflicting Financial Interests. Compensation creates an employment relationship with, and hence a conflicting financial interest in, the University which would last from the date on which the employee began discussing the possibility of delivering such a lecture through to either the date on which the lecture was delivered, or the date on which the compensation was received in full, whichever is later. The employee would violate this statute if, in absence of an Agency waiver, he or she performs official duties that directly and predictably affect the financial interests of the University at any time during the existence of the employment relationship.

5 CFR § 2635.502. Loss of Impartiality. While the aforementioned term of employment with the University may be brief, the rules against loss of impartiality generally impose a one-year prohibition upon an employee participating in a particular matter involving specific parties in which the University is or represents a party (e.g., a cooperative agreement or grant application).

5 CFR §§ 2635.702 and 703. Misuse of Position. Particularly where the lecture activity touches upon subjects related to the employee's official duties, the employee must ensure that his or her lecture does not violate 5 CFR § 2635.702(b) by giving the audience the impression that the facts presented or opinions provided are those of the Agency, or are otherwise endorsed or sanctioned by the Agency. The employee also must avoid violating 5 CFR § 2635.703, by improperly utilizing nonpublic information, as stated above.

5 CFR Part 2634. If the employee files a financial disclosure report as part of his or her official duties, the paid lecture activity must be reported.

- ***Uncompensated Activity.*** If no compensation is to be received by the employee for providing guest lecture services in his or her personal capacity, as described in 7.1, the only concern should be the appearance of Agency sanction and use of nonpublic information.

- **Teaching.** In contrast to lecturing activities, teaching duties, *whether paid or unpaid*, constitute University employment because the individual is providing service as a **professional**. As one generally cannot teach a course as part of their official duties (see 6.4.1, above), the employee must request prior approval before engaging in any teaching activity. Accordingly, whether paid or unpaid, teaching a course is considered an outside employment for this purpose and must be approved in advance in accordance with 5 CFR § 8301.102. Agency managers, in determining whether to approve a request to engage in teaching activities, should consider the same factors discussed above in relation to paid lecturing activities.

Example 1: An employee/adjunct professor is asked to present guest lectures in a course at the University. The employee/adjunct professor is a recognized expert on the subject of the course; however, the subject relates only generally to his official duties. The supervisor may determine that the employee/adjunct professor may present the lectures as an official duty, or may decide that the lecture should be performed in the employee/adjunct professor's personal capacity. If this is an official duty, the employee/adjunct professor may not accept compensation for the activity from any source other than his or her pay from the Federal Government. If presented in his personal capacity, he may accept compensation, depending upon prior approval by the agency based, largely, upon the determination that the resulting "employment" relationship, and residual impartiality concerns, do not interfere with his performance of official duties. (Compare to Example 3 at 6.3, above).

Example 2: An ARS scientist has been granted an "adjunct professor" title by the University where he is stationed. The scientist performs no tasks on behalf of the University. He is not employed by the University. The scientist is asked to serve as a guest lecturer for a graduate seminar in his area of expertise. The seminar meets during official duty hours. He may do so if the Agency determines that the guest lecture is an appropriate use of official time. There is no conflict. Note: An agency employee may hold adjunct professor status at more than one university; such a circumstance does not change the analysis.

- 7.2.2. Application to Tenure Status.** As stated at 5.5 above, an agency employee who has tenure is also a University employee. An agency employee who is offered tenure must, if he or she is required to file a public or confidential financial disclosure report, seek prior approval of his or her agency before accepting the tenured appointment.
- 7.2.3. Application to Other University Activities.** As with teaching duties, such services as serving on graduate or tenure committees, *whether paid or unpaid*, is University employment because the individual is providing a **professional service**. Accordingly, whether paid or unpaid, such activities are considered outside employment for this purpose and must be approved in advance in accordance with 5 CFR § 8301.102.

Example: An employee who files a financial disclosure report serves without pay on his/her personal time on the committee of a Ph.D. candidate. The employee/adjunct professor is providing a professional service and must request prior approval in accordance with 5 CFR § 8301.102. This same analysis applies to teaching or any other professional service that would be provided by the employee on the basis of his/her experience and academic credentials. However, if the Agency authorizes an employee to perform a professional service on Government time or as representative of the Agency, the activity is official and, by definition, does not require approval for outside employment. (Compare to examples in 6.3 and 7.1, above).

7.3. Requesting Prior Approval for Outside Employment

7.3.1. *Procedure for Requesting.* The applicable procedure for requesting prior approval for outside employment is in the “Supplemental Standards of Ethical Conduct For Employees of the Department of Agriculture,” at 5 CFR § 8301.102.

7.3.2. *Responsibility of Mission Area Ethics Advisor and Ethics Advisor.* Each Mission Area Ethics Advisor will ensure that managers, supervisors, and employees are aware of the requirements of this issuance. The Mission Area Ethics Advisor will document the methods used to make employees aware of these requirements and will make the information available, upon request, to the Deputy Ethics Official and/or other ethics officials. Mission Area Ethics Advisors and Ethics Advisors will serve as advisors to all concerned persons in applying the requirements of this issuance and making the determinations required.

7.3.3. *Documentation of Requests and Approvals.*

- When an Agency determines that designation as an “adjunct professor” requires the employee to fulfill duties/obligations qualifying as “employment” as described in 7.2 above, the employee/adjunct professor will request approval for outside employment in the same form and method as the agency requires for all outside employments. The appendix to this issuance may be used to clarify the nature of the relationship between the employee/adjunct professor and the university;
- An immediate supervisor or line manager will grant or deny approval;
- An Ethics Advisor will review each request and provide a recommendation to the immediate supervisor or line manager; and
- A copy of each approval or denial will be provided to the employee. The original will be included in the financial disclosure file of the individual employee.

7.3.3. *Responsibility of Office of Ethics.* The Director, Office of Ethics, and Senior Ethics Specialists in OE will provide such advice and assistance to an Agency in applying this issuance as is requested or appropriate. In addition, the Director

may require such reports from Deputy Ethics Officials or Mission Area Ethics Advisors as are necessary.

8. Conflicting Financial Interests and Impartiality

8.1. General Rules. To the extent that either the Agency approves the “personal capacity activities” of an employee/adjunct professor, or to the extent that the employee/adjunct professor has other financial or personal relationships with the University, the employee may face either financial conflict of interest, or appearance of loss of impartiality concerns in performing official duties relating to the University.

8.1.1. *Conflicting Financial Interests.* Under 18 U.S.C. § 208, it is unlawful for a Federal employee to participate personally and substantially in an official capacity in any particular matter in which, to the employee’s knowledge, he or she has, or any person whose interests are imputed to him or her under this statute, has a financial interest, if the particular matter will have a direct and predictable effect on that interest. See also 5 CFR § 2635.402(a). Under this statute, a Federal employee is imputed to possess as his or her own, among other interests, the financial interests of:

- The employee’s spouse, minor child, or general partner;
- An organization or entity in which the employee serves as an officer, director, trustee, general partner, or employee; and
- A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

Conflicting Financial Interests are discussed at length in the Standards of Ethical Conduct, 5 CFR §§ 2635.401-403. Employees are expected to govern their personal and official conduct by those rules.

8.1.2. *Loss of Impartiality.* In addition to 18 U.S.C. § 208, above, is the similar non-criminal prohibition against losing one’s impartiality. The Standards address impartiality in performing official duties at 5 CFR §§ 2635.501-503. An employee should not participate in a particular matter involving specific parties which he knows is likely to have a direct and predictable affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. The key to impartiality questions for an employee who holds an adjunct professor position is whether the employee has a covered relationship with the university. The definition of covered relationship appears at 5 CFR § 2635.502(b)(1). An adjunct professor may have a covered relationship with a university through, among other things:

- his or her own outside employment;
- the employment of his or her spouse, child, parent;
- active participation in the university (e.g., service on a faculty committee), even if that participation falls short of making the adjunct professor a university employee;
- the financial interests of a member of his or her household or of a close personal relative.

Assuming that a covered relationship exists, the practical effect of the regulation is to impose a limitation on the official duties of an adjunct professor similar to the disqualification required by the conflict of interest statute. This prohibition most often comes into play in the adjunct professor setting where the employee's spouse, or other covered part, is an employee (or trustee) of the University at which the employee holds an adjunct professorship. Where the employee is required to take official action, or recommend official action concerning a matter (e.g., approval of a grant application) involving the University, the Federal employee may have to recuse himself or herself from performing official duties relating to the University.

8.2. University Employment and Negotiations for Employment. If an adjunct professor is performing duties that create an employment relationship with the University, or is negotiating for post-government employment with the University, the employee has a financial interest in the University and a potential conflict of interest in terms of performing his or her official duties. If the interests of the University are imputed to the adjunct professor, that individual, as well as Agency managers approving the activity, must be concerned about the possible implications of any official duty action affecting the University that the employee might take or recommend.

Example 1: You are a scientist assigned to work at University X. You also are a part-time paid professor at the University, teaching classes, supervising the work of University students, working in your laboratory, and advising doctoral candidates. The University considers you to be an adjunct professor. Your agency assigns you to review a grant proposal from the University and to recommend whether to award the grant. You may not do so. If you participate in reviewing the grant proposal and making a recommendation, you violate the conflict of interest statutes because the interests of your outside employer are imputed to you. You must disqualify yourself or terminate the employment relationship with the University.

NOTE: You may also seek a waiver under 18 U.S.C. § 208(b)(1), but seeking a waiver does not allow you to continue participating in the matter pending approval of the waiver request.

Example 2: An agency scientist currently serves as a paid, part-time professor at X University. She has collaborated, in her personal capacity, with scientists at the University in preparing a research grant application for submission to USDA as

part of a competitive process. As the financial interests of the University are imputed to her, she risks violating 18 U.S.C. § 208 by participating in peer review of any applications submitted as part of that competitive process, serving on any recommendation or selection panels for awarding funds as part of that process, serving as ADODR, or serving as a formally-designated university investigator on the grant application.

NOTE: If she is listed as Principal Investigator on the grant application, or if she defends the grant application before any Federal agency, she could violate the bar against unlawful representations found at 18 U.S.C. § 205.

Example 3: An ARS scientist has been granted an “adjunct professor” title by the University where he is stationed. The scientist performs no tasks on behalf of the University. In the laboratory on the University campus, the scientist works daily alongside graduate students, one of whom seeks a Ph.D. degree in the scientific expertise of the ARS scientist. The University seeks permission of ARS to have the scientist serve on the student’s graduate committee. If ARS authorizes the use of official time for this purpose as being in furtherance of the Agency’s mission, the scientist may serve on the graduate committee in his official capacity. There is no conflict.

Example 4: An ARS scientist has been granted an “adjunct professor” title by the University where he is stationed. The scientist, based on her scientific credentials, has been invited to serve on the University’s tenure committee. The Agency notifies the scientist that she is to be assigned as ADODR to provide financial oversight of a temporary agreement with the University’s School of Agriculture. While there is no pay involved, there would be a conflict for her to serve as ADODR while still sitting on the tenure committee. The duties most likely would constitute an employment relationship with the University. (NOTE: Since serving on a tenure committee involves solely internal university interests, the scientist could not undertake them, nor could the agency assign them to be performed as part of her official duties).

- 8.3. Spousal and Family Involvement with the University.** Depending upon the circumstances surrounding the involvement that a spouse has with the University, an employee who is an adjunct professor at that University may face either conflict of interest, or loss of impartiality concerns. Where the official actions of the employee who is also an adjunct professor can directly and predictably affect the financial interests of the spouse, a conflict of interest may result. In most cases, where a child or other family member are involved at the University, the employee faces potential impartiality concerns, but does not have a conflict of interest.

Example 1: Louise, an Agency biological scientist, is stationed at a University. She marries Joe, a Trustee of the University. The Agency notifies Louise that she is to be assigned as ADODR to provide financial oversight of a temporary agreement with the University School of Agriculture. Joe, the husband, as a Trustee, possesses the interests of the University as his own; thus, the full interests of the University

are imputed to Louise, the Agency scientist. Louise, faces a conflicting financial interest. She must notify her supervisor of the conflict of interest and disqualify herself from the assigned task.

Example 2: Same facts as in Example 1, above, except that Joe is an Associate Professor in the University's School of Agriculture. The Agency notifies Louise that she is to be assigned as ADODR of the temporary agreement. Her husband directs the project on behalf of the University. Unlike service as a Trustee, Joe's employment relationship with the University does not impute the financial interests of the University to Louise; however, still imputed to Louise are Joe's financial interests in his position. Thus, where her performance of official duties as ADODR have a direct and predictable affect (impact) upon on whether Joe will retain his position, level of salary, career prospects (such as tenure), or continued responsibility for the project, will determine whether her participation as ADODR constitutes a criminal conflicting financial interest, or a loss of impartiality. In this case, Joe's interests will be directly and predictably affected by Louise's performance of her duties as ADODR. She must notify her supervisor of the conflict of interest and disqualify herself from the assigned task. However, see Example 3, below, concerning remaining impartiality concerns.

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

NOTE: If the Agency chooses to still have her perform the ADODR duties, the standard for a determination authorizing participation in accordance with 5 CFR § 2635.502(d) is not as strict as the standard for a waiver under 18 U.S.C. § 208(b)(1).

Example 4: The agency stations an agricultural scientist at a land-grant university to work in a laboratory adjacent to the campus. The scientist rejects an adjunct professor appointment by the University; however, the scientist's child, who is no longer dependent, is a teaching assistant who is a Ph.D. candidate in the University's College of Agriculture. The Agency assigns ADODR responsibilities to the employee for a project in the College of Agriculture. The covered relationship with the child will not permit the employee to fulfill the ADODR

responsibility unless he or she makes full disclosure to the Agency and authorization is received in accordance with 5 CFR § 2635.502(d).

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

9.1. General Concerns. University environments often create issues pertaining to parking, use of campus shuttle services, activity tickets and/or fees, faculty memberships, use of libraries and other matters. *To the extent that the agency and the university cover certain items in the cooperative agreements between them because the items further the purposes of the agreement,* those items would not create a matter of concern under the Standards. However, agencies must determine whether benefits provided in cooperative agreements are intended to further the purpose of the agreement, or whether the benefits raise dual compensation, conflict of interest, impartiality, or other gift concerns.

- **18 U.S.C. § 209. Dual Compensation.** To the extent that the University offers an employee benefits, such as tuition assistance, housing, or spousal employment, the Agency manager must first consider whether what is provided is meant to compensate the employee for the performance of services that are the same or similar to the employee's official duties. If so, the employee may be in jeopardy of violating 18 U.S.C. § 209 if he or she accepts such benefits.
- **Conflicts of Interest & Impartiality concerns.** If a benefit is provided that is not related to performance of the employee's official duties, but is provided in the context of a relationship between the employee and the University (e.g., where the employee provides services or engages in activities with the University in his or her personal capacity), such payment may signify that the employee is also a University employee as a result of his or her unofficial activities with the University. In such cases, the Agency manager and employee should be aware of the potential for the employee, in performing any official duties that relate to the university, to be engaged in a criminal conflict of interest under 18 U.S.C. § 208, or at a minimum, a loss of impartiality under 5 CFR § 2635.502.
- **Gifts.** Where the University provides other lesser privileges that may not indicate an employment relationship, either for free or for less than market value, though unrelated to the performance of any specific official duty, the privileges could violate the rules concerning gifts from outside sources, as set forth in 5 CFR Part 2635, Subpart B. A University, as a cooperator or partner with the Agency, is a 'prohibited source' as defined by 5 CFR § 2635.203(d); therefore, the employee who is stationed at a University may not accept gifts from the school.

9.2. Gift Rules. Except where covered by one of the exceptions listed below, acceptance of the following for less than "market value" [the retail cost the employee would incur for access to similar recreation facilities [See 5 CFR § 2635.203(b)(9)]] would be a gift based either on one's official position, or from a prohibited source:

- Library Borrowing Privileges (if personal borrowing privileges of members of the public at the library are predicated on payment of an established fee);
- Recreation Facility Cards;
- Faculty/Staff Ticket Rates, Faculty Club Membership, and Faculty/Staff Discounts at the University Book Store.

Exceptions. Acceptance of the above privileges, either for free or for less than market value, would be permitted where:

- The facility is open to the general public without payment of a fee;
- The same or more favorable rates and discounts are available to the general public or to a class consisting of all Government employees as provided in 5 CFR § 2635.203(b)(4);
- The employee has an outside employment relationship with the University and the fee to be paid for library privileges by the employee is the fee appropriate to his or her employment at the University;
- The employee has free access and borrowing privileges solely by virtue of being an alumnus of the University; or
- The fee waiver or reduction was provided to the Agency through a memorandum of understanding or cooperative agreement between the Agency and the University.

Parking and Campus Shuttle Services. Universities may offer these services at the same rates as other faculty or adjunct faculty members. Those rates are the “market value” for parking and campus shuttle services [See 5 CFR § 2635.203(b)(9)], and the employee may pay them and use the services.

9.3. Specific Concerns

- 9.3.1. *Free or reduced cost tuition.*** An employee of the Agency may not solicit or accept free or reduced cost tuition from the University based on his or her official duties with the institution. He or she is paid by the Federal Government for those efforts. To accept free or reduced cost tuition on the basis of the performance of official duties may constitute supplementation of official salary, which is a criminal offense (18 U.S.C. § 209).

Further, acceptance of free or reduced cost tuition is a gift. A university that is a party to a cooperative agreement with the Agency is a prohibited source as

defined by 5 CFR § 2635.203(d). In accordance with 5 CFR § 2635.202(a)(1), an employee of the Agency may not solicit or accept a gift from a prohibited source.

Notwithstanding the prohibition on gift acceptance, if an Agency employee who is required to have prior approval for employment in accordance with 5 CFR § 8301.102(a), seeks and obtains such prior approval for employment at the University, and if the University customarily extends free or reduced cost tuition to its employees, then the Agency employee may accept the free or reduced cost tuition from the University. It is part of the pay package extended by the University to its employees. However, while such a benefit normally may be offered to the employee, when it is offered to family members, Agency management should consider whether the offer signifies that the employee's presence at the University is more for the benefit of the Agency or the University. The Agency, in considering a request to participate in the outside employment, must seriously consider the potential for a conflict of interest with official duties, as well as the potential for the public to question the impartiality of, or misuse of official position by, the employee.

9.3.2. *Free or reduced cost housing.* An employee may not solicit or accept free or reduced cost housing from the University based on his or her official duties with the University. The analysis is the same as for accepting a gift of free or reduced cost tuition in above.

Where free or reduced cost housing is offered to an Agency employee pursuant to his or her outside employment with the University (e.g., under a customary employment agreement with the University), it still is subject to the same analysis as in 9.3.1., above. The Agency, moreover, in considering a request to participate in the outside employment, must seriously consider the even greater potential for a conflict of interest with official duties, as well as the potential for the public to question the impartiality of, or misuse of official position by, the employee.

Appendix to Ethics Issuance No. 04-01 – Adjunct Professor Questionnaire

This appendix should be used by an employee as an aid in determining whether his/her appointment by the university as adjunct professor constitutes outside employment. If the employee is required to request prior approval for outside employment, he/she should forward the completed appendix with his/her request for approval. All questions on the form should be addressed.

1. Name: _____

2. Position/Title: _____

3. Agency: _____

4. Grade: _____

5. Office Location: _____

6. University/College extending "adjunct professor" title: _____

7. Position Title (i.e., "adjunct professor," or other): _____

8. Summary of Duties on behalf of the university: _____

Answer the following with regard to the position described in lines 6-8, above. If you answer "yes" or "unsure" to any question, please add a sheet of paper giving an explanation for your answer. Please answer every question.

QUESTION:

Yes

No

Unsure

NATURE OF ADJUNCT PROFESSOR ACTIVITY:

Was this activity assigned by your Federal supervisor?

Will your activity occur during your Federal working hours?

Will any costs associated with your activity (e.g., travel costs) be paid by your Federal agency?

Had you been involved with this University in the last 2 years?

If so, was your involvement part of your Federal duties? Please explain.

Will you use Federal equipment, time, or resources to perform your activity?

Will you be likely to use agency information to perform your activity?

QUESTION:

Yes

No

Unsure

COMPENSATION FOR ADJUNCT PROFESSOR ACTIVITY:

Will the University pay you for your service?

Will you receive payment-in-kind from the University in the form of:

Residence/housing assistance (in part or whole)?

Additional outside employment/positions?

Employment for spouse or close family member?

Educational benefits for you, spouse or close family member?

Travel costs and subsistence?

Will you receive any privileges (e.g., parking, library) due to your position?

Will you receive any perquisites due to your position (e.g., reduced tickets to events, or seating reserved for faculty).

DO YOUR DUTIES REQUIRE THAT YOU:

Apply for Federal grants on behalf of the University.

Serve as Principal Investigator on Federal grant applications on behalf of the University?

Be responsible for University funds?

Represent the University before others?

Participate in University administration/management?

Vote on tenure?

Participate in doctorate candidate reviews?