

INFORMATION PAPER

ARNO-JA
11 March 2014

SUBJECT: Off-Duty or Employment Outside the Federal Government

1. General. Federal employees may engage in off-duty part time employment outside the Federal government. If you file a public SF 278, or confidential OGE Form 450 disclosure report, you are required to seek permission from your Agency Designee. In most instances, the Agency Designee is your supervisor. See JER, § 3-306. In addition to the restrictions in the JER, there may be other restrictions applicable to off-duty or employment outside the Federal government. These restrictions are not addressed in this information paper.

2. Specific Restrictions. The following regulations address conflicts of interest that may arise while engaging in any off duty employment.

a. You must always be aware of the potential for conflicts of interest arising between your outside employment and your government duties. Conflict of interest activities essentially interfere with your obligation to protect the government's interests, affect your objective judgment with regard to a business decision, and could reasonably bring discredit upon you or the Army. See 5 C.F.R § 2635.101(b)(14).

b. You must always ensure that any specific knowledge you may have concerning the Army's current or future requirements is protected and not divulged to a non-government entity. For example, you should not use information gained during your government employment that is generally not available to the public, (for example, proprietary or source selection information) if the use of that "inside" information would give you or anyone else an unfair financial or commercial advantage. Additionally, 18 U.S.C. §§ 793 and 794 protect and prohibit the use or disclosure of trade secrets, confidential business information, and classified information.

c. You must remain sensitive to the underlying nature of any project you are assigned and the potential for the **appearance** of a conflict of interest if you work on any project for your non-Federal employer that involves Army or DoD activities. Accordingly, you should decline to work on any project that could have any involvement with the Department of Army and carefully evaluate any DoD project on which you are asked to work, to ensure there is no relation to your Government employment. See 5 C.F.R. § 2635.502.

d. You may not accept compensation for any representational services involving the Federal government. You may receive payment for services provided pursuant to a consultant agreement or other employment arrangement provided that payment is for professional work actually performed. You may not share in any fees or bonuses

ARNO-JA

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collected as a result of you or another **representing a third party to the Federal government**. For example, if you engage in off-duty employment with a non-Federal entity and this same company does business with the Government, then you cannot accept any bonus or compensation tied to these representations. You do not have to perform the representation for this ban to be applicable. See 18 U.S.C. § 203.

e. You may not represent your civilian employer to the Federal government, which includes all employees of the Executive or Judicial Branches. You should not interact or appear in the Federal workplace as you perform this employment. In other words, you should have no business-related contact with any Federal employee while you are performing work for your civilian employer. This restriction prohibits you from sending emails, making telephone calls, or appearing before any Federal employee or officer. Also, you are prohibited from engaging in any activity that could be construed as seeking business from the Federal government for your outside employer or influencing a Federal government business decision that could affect your outside employer. See 18 U.S.C. § 205.

(1) The prohibitions noted in para. 2e above are inapplicable to off-duty or outside employment as an adjunct professor. Therefore, Army personnel may teach a course in which Federal employees attend.

(2) You should be aware, however, that you are prohibited from receiving compensation for teaching, speaking, or writing that “relates to the employee’s official duties” (5 C.F.R. § 2635.807(a)). You are not precluded, however, from receiving compensation for teaching, speaking or writing on a subject within your discipline or inherent area of expertise based on your educational background or experience, even though the teaching, speaking or writing deals generally with a subject within the agency’s areas of responsibility. Again, you should ensure that you do not use non-public information.

f. You may not engage in off-duty employment or any outside activity that conflicts with your official duties. A conflict of interest arises if the activity requires your disqualification from matters critical to performance of your official duties. See 18 U.S.C. § 208.

g. The Procurement Integrity Act (PIA) may also apply. The PIA prohibits a wide range of actions focusing upon preventing unauthorized release of procurement sensitive information. The specific provisions of the PIA place a heavy burden upon Government employees who have access to information concerning government requirements to protect that information from disclosure. Therefore, you must always be aware of the procurement sensitive information to which you have access, and must

ARNO-JA

SUBJECT: Off-Duty or Employment Outside the Federal Government

ensure to not release such information to any individual outside the federal government. See 41 U.S.C. § 423.

h. Under the JER, you are required to avoid the appearance of a conflict of interest and you are prohibited from using Government property or official time for other than authorized purposes.

i. The PIA and the JER carry significant administrative and criminal penalties, and could potentially expose individual Federal contracts to challenge by unsuccessful bidders.

j. To ensure that your off-duty or outside employment does not conflict with your duties, you should submit any project that concerns the Army or the DoD to your supervisor for further approval. This will ensure that your supervisor determines that the proposed work is unlikely to raise conflict of interest issues or PIA concerns.

3. Employees should contact their Agency's Ethics Counselor for tailored guidance.

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