

§ 2635.603

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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, con-

sultant, 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