

Department of State

§ 10.735-408

and development or related work involving grants or money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 10.735-406 Submission of position description.

Each Statement of Employment and Financial Interests or annual supplement thereto must be accompanied by a full description of the employee's principal governmental duties. The description should be particularly detailed in regard to those duties which might possibly be an element in a conflict of interest. If the statement indicates that the employee has no outside employment or financial interests, the employee need not submit a description of duties. For a special Government employee, the employing office shall submit the description.

§ 10.735-407 Supplementary statements.

(a) Employees, as defined in paragraphs (b) and (c) of §10.735-401, shall report changes in, or additions to, the information contained in their statements of employment and financial interests in supplementary statements as of June 30 each year. If no changes or additions occur, a negative report is required.

(b) All special Government employees, as defined in paragraph (a) of §10.735-401, shall submit a current statement at the time their appointments are extended. A supplementary report indicating any changes in, or additions to the information already submitted will be accepted in lieu of a full submission. If there are no changes or additions, a negative report is required. For AID, no action to extend an appointment will be taken unless such supplementary report is submitted not later than 10 days prior to the expiration of said appointment.

(c) Notwithstanding the filing of reports required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of

title 18, United States Code, or subpart B of this part.

(d) An employee is also to keep current the employee's description of principal duties as to changes or additions which might possibly be an element in a conflict of interest. The employing office shall submit descriptions of changes in the principal duties of a special Government employee as they occur.

§ 10.735-408 Review of statements and determination as to conflicts of interest.

(a) On the basis of the Statement of Employment and Financial Interests submitted by each employee or special Government employee, or on the basis of information received from other sources, the Counselor shall determine, in the light of the duties which that employee or special Government employee is or will be performing, whether any conflicts of interest, real or apparent, are indicated. The Counselor shall make this determination based on the applicable statutes, the Executive order, and the applicable regulations of the Civil Service Commission, and of the agency.

(b) Where the Counselor's determination in a particular case is that a conflict of interest, real or apparent, is indicated, the Counselor shall initiate informal discussions with the employee or special Government employee concerned. These discussions shall have as their objectives:

(1) Providing the individual with a full opportunity to explain the conflict or appearance of conflict; and

(2) Arriving at an agreement (acceptable to the Counselor, the individual and the individual's immediate superior) whereby the conflict of interest may be removed or avoided. Such an agreement may include, but is not limited to: (i) Changes in assigned duties; (ii) divestiture of the financial or employment interest creating the conflict or apparent conflict; or (iii) disqualification for a particular assignment.

(c) Where an acceptable agreement cannot be obtained pursuant to paragraph (b) of this section, the Counselor shall present findings and recommendations to the officer designated by the agency head, who shall

decide which remedy is most appropriate to remove or correct that conflict or apparent conflict. Remedial action under this paragraph may include disciplinary action, including separation for cause, or any of the actions enumerated in paragraph (b)(2) of this section and shall be effective in accordance with applicable laws, Executive orders, and regulations.

(d) Written summaries of all agreements and decisions arrived at pursuant to paragraph (b) or (c) of this section shall be placed in the Counselor's files. Copies shall also be made available to the employee or special Government employee concerned.

§ 10.735-409 Confidentiality of employees' statements.

An agency shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality only the Counselor and Deputy Counselors are authorized to review and retain the statements. The Counselor and Deputy Counselors are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. An agency may not disclose information from a statement except as the Civil Service Commission or the agency head may determine for good cause shown.

§ 10.735-410 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required for employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee or the other person's participation is prohibited by law, order, or regulation. Save with respect to those financial interests excepted from the conflict of interest prohibitions of 18 U.S.C. 208(a) pursuant to a written advance determination under § 10.735-217 or exempted

by the provisions of § 10.735-205(c), an employee must disqualify himself or herself from participating in any matter in which the employee has a financial interest.

§ 10.735-411 Disqualification procedures.

(a) Where an employee is prohibited from participating in a matter because of a conflicting financial interest that is not exempt under § 10.735-205(c) or has not been specifically excepted by the appropriate agency official pursuant to § 10.735-217 in advance of the employee's participation in the particular matter, the employee shall conduct himself or herself in accordance with the following provisions:

(1) The employee shall promptly disclose the financial interest in such matter to the employee's immediate superior. The superior will thereupon relieve the employee of duty and responsibility in the matter.

(2) In foreign posts, it may be impossible or highly impracticable for an employee, who has a disqualifying financial interest, to assign the matter for official action to anyone other than a subordinate. In this event, the employee must instruct the subordinate to report fully and directly to the immediate superior to whom the employee himself or herself would normally report. The employee must concurrently direct such subordinate to take such action as may be appropriate in the matter, and without thereafter revealing to the disqualified employee in any way any aspect of the particular matter.

(b) Nothing herein precludes the employee from disposing of such disqualifying financial interest, thereby wholly eliminating the conflict of interest. In some circumstances, where the employee may not obtain an exception under § 10.735-217, or may not disqualify himself or herself and refer or assign the matter to another employee, the performance of duty may even require divestiture.

(c) Where a supervisor has reason to believe that a subordinate employee may have a conflicting financial interest, the supervisor should discuss the matter with the employee. If the supervisor finds that a conflict of interest