

### § 73.735-1003

careful in all personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his or her Government work.

(3) Refrain from using information not generally available to those outside the Government for the special benefit of a business or other entity by which the consultant is employed or retained or in which he or she has a financial interest. Information not available to private industry should remain confidential in the consultant's hands and not be divulged to his or her private employer or clients. In cases of doubt whether information is generally available to the public, the consultant should confer with the person for whom he or she provides services, with the office having functional responsibility for a specific type of information, or, as appropriate, with the officials designated in § 73.735-202 to give interpretive and advisory service.

(4) Where requested by a private enterprise to act for it in a consultant or advisory capacity and the request appears motivated by the desire for inside information, make a choice between acceptance of the tendered private employment and continuation of his or her Government consultancy. He or she may not engage in both.

(5) Not use his or her position in any way to coerce, or give the appearance of coercing, anyone to provide a financial benefit to him or her or another person, particularly one with whom the consultant has family, business, or financial ties.

(6) Not receive or solicit anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties if the acceptance would result in loss of complete independence or impartiality in serving the Government. All consultants are subject to the restrictions in § 73.735-506 of this part concerning gifts and decorations from foreign governments.

(b) Consultants may engage in other employment so long as there is no real or apparent conflict between the consultant's private employment and his or her official duties. See § 73.735 Subpart G. The regular employment of a

### 45 CFR Subtitle A (10-1-07 Edition)

consultant who is a special Government employee is not considered outside work for purposes of Subpart G. Also, the limitation in § 73.735-701(f) regarding the amount of an honorarium that may be received does not apply to special Government employees.

(c) A consultant who has questions about conflicts of interest or the application of the regulations in this part to him or her or to his or her assigned work should make inquiry of the person for whom services are provided. That person may direct the consultant to the Department Ethics Counselor or a deputy ethics counselor for interpretive and advisory services as provided in § 73.735-202.

#### § 73.735-1003 Conflicts of interest statutes.

(a) Each consultant should acquaint himself or herself with sections 203, 205, 207 and 208 of title 18, United States Code, all of which carry criminal penalties related to conflicts of interest. The restraints imposed by the four criminal sections are summarized in paragraphs (b) and (c) of this section.

(b) 18 U.S.C. 203 and 205.

(1) These two sections in general operate to preclude a person who works for the Government, except in the discharge of his or her official duties, from representing anyone else before a court or Government agency in a matter in which the United States is a party or has a direct and substantial interest. The prohibition applies whether or not compensation is received for the representation. However, if the individual is a special Government employee, this restriction applies only if:

(i) The representation involves a matter in which the individual has at any time participated personally and substantially in the course of his or her Government employment; or

(ii) The individual has served the Department for more than 60 days in the immediately preceding period of 365 days, and the matter is one which is pending before the Department. This second restraint applies whether or not the matter is one in which the individual participated personally and substantially in his or her Government employment. These two provisions

apply to a special Government employee on days when he or she does not serve the Government as well as on the days when services are rendered, and they apply to both paid and unpaid representation.

(2) To a considerable extent the prohibitions of sections 203 and 205 are aimed at the sale of influence to gain special favors for private businesses and other organizations and at the misuse of governmental position or information. In accordance with these aims, a consultant, even when not compelled to do so by sections 203 and 205, should make every effort in his or her private work to avoid any personal contact with respect to negotiations for contracts or grants with the component of the department in which he or she is serving, if the subject matter is related to the subject matter of his or her consultancy or other service. This will not always be possible to achieve where, for example, a consultant has an executive position with his or her regular employer which requires him or her to participate personally in contract negotiations with the department or agency he or she is advising. Whenever this is the case, the consultant should participate in the negotiations for his or her employer only after advising the responsible Government official of his or her involvement in other matters in the Department. In other instances an occasional consultant may have technical knowledge which is indispensable to his or her regular employer in his efforts to formulate a research and development contract or a research grant, and for the same reason, it is in the interest of the Government that the consultant should take part in negotiations for his or her private employer. Again, the individual should participate only after advising the responsible Government official of the relevant facts.

(3) Section 205 permits both the Government and the private employer of a special Government employee to benefit, in certain cases, from his or her performance of work under a grant or contract for which he or she would otherwise be disqualified because of having participated in the matter for the Government or because it is pending in a component in which the consultant

had served more than 60 days in the past year. This provision gives the head of a department the authority, notwithstanding any prohibition in either section 203 or 205, to allow a special Government employee to represent before such department or agency either his or her regular employer or another person or organization in the performance of work under a grant or contract. As a basis for this action, the Secretary must first make a certification in writing, published in the FEDERAL REGISTER, that it is required by the national interest.

(4) Section 205 contains two other exemptive provisions, which apply to both special and regular Government employees. See § 73.735-702.

(c) 18 U.S.C. 207 applies to individuals who have left Government service. See Subpart N of these regulations.

(d) 18 U.S.C. 208 bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents a Government employee from participating as such in a particular matter in which, to his or her knowledge, he or she, his or her spouse, minor child, partner, or a profit or non-profit enterprise with which he or she is connected has a financial interest. However, the section permits an employee's agency to grant him or her an ad hoc exemption if the interest is not so substantial as to affect the integrity of his or her services. Insignificant interests may also be waived by a general rule or regulation. The matters in which special Government employees are disqualified by section 208 are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205 and 207. Section 208 therefore extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee, like all government employees, should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section.

## § 73.735-1004

However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may also be exercised where the financial interests involved are minimal in value.

### § 73.735-1004 Requesting waivers or exemptions.

(a) A consultant may present in writing to the official for whom he or she provides services requests for the waivers or exemptions specified in § 73.735-1003. That official will take, or refer the request for, action as appropriate, and will see that the employee receives advice or decision on his or her request.

(b) A file of all waivers or exemptions granted shall be maintained in such manner that information can be given promptly on individual cases or statistics provided upon request. Generally, these records, together with written advice given in connection with less formal requests concerning questions of ethical standards, are kept with the employee's statement of employment and financial interests or financial disclosure report (§ 73.735-1006).

(c)(1) *Waiver for reviewers from certain multi-campus institutions.* Applicability of the prohibitions of 18 U.S.C. 208(a) and this subpart are hereby waived pursuant to a determination that the interest involved is too remote or too inconsequential to affect the integrity of a special Government employee's review of a funding application or contract proposal from one campus of one of the following multi-campus institutions, where the interest consists solely of employment as a faculty member (including Department Chairman) at a separate campus of the same multi-campus institution:

The University of Alabama system consisting of the University of Alabama, the University of Alabama in Birmingham, and the University of Alabama in Huntsville.

The campuses of the University of California.

The system consisting of Colorado State University, the University of Southern Colorado, and Fort Lewis College.

## 45 CFR Subtitle A (10-1-07 Edition)

The Indiana University system consisting of eight universities on nine campuses, with the exception of the system-wide schools: the School of Business; the School of Dentistry; the School of Medicine; the School of Nursing; and the School of Public and Environmental Affairs.

The University of Nebraska system consisting of the University of Nebraska—Lincoln, the University of Nebraska at Omaha, and the University of Nebraska Medical Center.

The campuses of the State University of New York.

The Oregon system of higher education consisting of the University of Oregon, Oregon State University, Oregon Health Sciences University, Portland State University, Western Oregon State College, Southern Oregon State College, Eastern Oregon State College, and the Oregon Institute of Technology.

The campuses of the University of Tennessee.

The separate universities comprising the University of Texas System.

The separate universities comprising the University of Wisconsin System.

(2) *Institutions that are not subject to 18 U.S.C. 208(a) and the subpart, because they are not part of the same organization within the State.* The following State institutions and systems of higher education have been determined to be separate from each other to such a degree that no waiver is necessary in order to permit a faculty member (including Department Chairman) employed by one of the State institutions of higher education to review a funding application or contract proposal from another of the named institutions within that State:

The University of Alabama System and other Alabama State owned institutions of higher education.

The California Community Colleges, the California State Universities and Colleges, and the University of California.

The University of Colorado, Colorado State University, and other Colorado State owned institutions of higher education.

The University of Connecticut, Connecticut State University, the Connecticut Technical Colleges, and the Connecticut Community Colleges.

The University of Illinois, Illinois State University, Western Illinois University, Southern Illinois University, and the Illinois Community Colleges.

The Indiana University and the other Indiana State owned institutions of higher education.