

and substantially or which is his or her official responsibility. (18 U.S.C. 205).

§ 73.735-703 Statutory prohibitions related to employment by a foreign government.

Employees, including officers in the Public Health Service (PHS) Commissioned Corps and retired officers of the Regular Commissioned Corps of the PHS, may not, without the consent of Congress, be employed by a foreign government or agency of a foreign government (Art. I, Sec. 9, U.S. Const.). Congress has consented to such employment by Reserve Commissioned Officers of the PHS not on active duty and by Retired Regular Commissioned Officers (37 U.S.C. 801, note) if approved under regulations of the Department of State. 22 CFR part 3a.

§ 73.735-704 Professional and consultative services.

(a) Employees may engage in outside professional or consultative work only after meeting certain conditions. Except as provided in §§ 73.735-705 and 73.735-706 for activities discussed in those sections, the conditions which must be met are:

(1) The work is not to be rendered, with or without compensation, to organizations, institutions, or state or local governments with which the official duties of the employee are directly related, or indirectly related if the indirect relationship is significant enough to cause the existence of conflict or apparent conflict of interest; or

(2) The work is not to be rendered for compensation to help a person, institution, or government unit prepare or aid in the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between the institutions or government units and the Federal Government. All requests to perform consultative services, either compensated or uncompensated, for institutions or government units which have recently negotiated or may in the near future seek a contract or grant from this Department must be carefully appraised to avoid any conflict or apparent conflict of interest.

(b) Advance administrative approval in accordance with § 73.735-708 of this subpart must be obtained. Such approval is required whether or not the services are for compensation, and whether or not related to the employee's official duties.

(c) For the purpose of this section, "professional and consultative work" is performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, or hospital which requires the exercise of judgment and discretion in its performance and is primarily intellectual in nature as opposed to manual, mechanical or physical work.

(d) Membership on a Board of Directors, Board of Regents, Board of Trustees, Planning Commission, Advisory Council or Committee, or on any similar body which provides advice, counsel, or consultation, shall be considered outside consultative services for which advance administrative approval is required.

§ 73.735-705 Writing and editing.

(a) Employees are encouraged to engage in outside writing and editing whether or not done for compensation, when such activity is not otherwise prohibited. Such writing and editing, though not a part of official duties, may be on a directly related subject or entirely unrelated. Certain conditions must be met in either case, however, and certain clearances or approvals are prescribed according to the content of the material as set forth in paragraphs (b) through (e) of this section.

(b) Conditions applying to writing and editing done not as a part of official duties.

(1) The following conditions shall apply to all writing and editing whether related or unrelated to the employee's official duties:

(i) Government-financed time or supplies shall not be used by the author or by other Government employees in connection with the activity; and

(ii) Official support must not be expressed or implied in the material itself or advertising or promotional material, including book jackets and

§ 73.735-706

covers, relating to the employee and his or her contribution to the publication.

(2) If the writing or editing activity is unrelated to the employee's official duties or other responsibilities and programs of the Federal government, the employee must:

(i) Make no mention of his or her official title or affiliation with the Department, or

(ii) Use his or her official title or affiliation with the Department in a way that will not suggest or convey official endorsement of the work.

(3) If the writing or editing activity is related to the employee's official duties or other responsibilities and programs of the Federal government, the employee must:

(i) Make no mention of his or her official title or affiliation with the Department, or

(ii) Use his or her official title or affiliation with the Department and a disclaimer as provided in paragraph (c) of this section, or

(iii) Submit the material for clearance within the operating component, under procedures established by the component. When clearance is denied at any lower level, the employee shall have recourse for review up to the head of the principal operating component. This clearance will show there are no official objections to the activity and the employee may then use his or her official title or affiliation with the Department usually without a disclaimer.

(c) *Disclaimers.* (1) Except where the requirement for disclaimer is waived as a result of official clearance, disclaimers shall be used in all writing and editing related to the employee's official duties or other responsibilities and programs of the Federal government:

(i) In which the employee identifies himself or herself by official title or affiliation with the Department, or

(ii) When the prominence of the employee or the employee's position might lead the public to associate him or her with the Department, even without identification other than name.

(2) Disclaimers shall read as follows unless a different wording is approved by the Assistant General Counsel, Business and Administrative Law Divi-

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

sion, Office of the General Counsel: "This (article, book, etc.) was (written, edited) by (employee's name) in (his or her) private capacity. No official support or endorsement by (name of operating component or of Department) is intended or should be inferred."

(d) *Advance approval.* Advance approval is required in accordance with § 73.735-708 of this subpart when one or more of the following conditions apply:

(1) Any Government information is used which is not available on request to persons outside the Government;

(2) Material is written or edited which pertains to subject matter directly related to an employee's official duties; (This includes editing for scientific or professional journals which is related to his or her official duties.)

(3) Material is written or edited which pertains to any Government-sponsored research or other studies for which clinical case records or other material of a confidential nature are used or to which access is limited for persons outside the Government. Such use will not be permitted unless made under safeguards established by the operating component to retain the confidentiality of the material, and such use is determined to be in the public interest.

§ 73.735-706 Teaching, lecturing, and speechmaking.

(a) Employees are encouraged to engage in teaching and lecturing activities which are not part of their official duties when certain conditions are met. These conditions, which apply to outside teaching and lecturing (including giving single addresses such as commencement and Memorial Day speeches) whether or not done for compensation, are:

(1) No Government-financed time, or Government supplies not otherwise available to the public, are used in connection with such activity;

(2) Government travel or per diem funds are not used for the sole purpose of obtaining or performing such teaching or lecturing;

(3) Such teaching or lecturing is not dependent on specific information which would not otherwise be available to the public;