

NSF MANUAL

NUMBER 15

CONFLICTS OF INTEREST AND
STANDARDS OF ETHICAL CONDUCT

National Science Foundation
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Arlington, VA 22230

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About This Manual.

This Manual explains conflict-of-interests rules and standards of conduct for employees of the National Science Foundation.

"You" -- the NSF Employee. The principal audience for this Manual is the NSF employee. It is therefore addressed directly to you. Except where provisions plainly indicate otherwise, "you" includes every paid or unpaid NSF employee -- permanent civil service employees; visiting scientists, engineers, and educators; and persons working at the NSF under the Intergovernmental Personnel Act. It includes rehired annuitants. It includes part-time or intermittent employees and temporary consultants; but not Special Government employees, who work or will work for the Government no more than 130 days a year.

What is expected of you. You should have general familiarity with this Manual, and you should be especially familiar with the summary in §1. If you are a program officer, or you are otherwise involved in handling proposals or administering awards, you should also become familiar with "AVOIDING CONFLICTS IN HANDLING PROPOSALS AND AWARDS."

Ethics Counselors. A senior attorney in the Office of the General Counsel (OGC) is the Foundation's Designated Agency Ethics Official (DAEO) and principal ethics counselor. Another senior attorney serves as the alternate DAEO. Other OGC staff also serve as ethics counselors. The DAEO and the alternate exercise overall responsibility for NSF's ethics program and for liaison with the US Office of Government Ethics (OGE). Whenever you have a conflict-of-interests problem or question and cannot find a clear answer in this Manual or other NSF ethics Manuals, consult an ethics counselor.

Conflicts Officials. They are NSF employees (usually Division Directors or Deputy Division Directors) designated by Assistant Director and staff office head to provide Guidance to their staffs in resolving conflict-of-interest issues arising in the handling of proposals and awards.

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PART I -- INTRODUCTION

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§1 Summary.

This section summarizes the principal conflicts rules that you are expected to observe. [Bracketed references direct you to the more detailed provisions of this Manual.] --

(a) Acts affecting your financial interests. [§20] You must not be personally involved as a Federal employee in handling any proposal, award, or other matter in which you, a member of your immediate family, a business partner, or an organization of which you are or may become a part has a financial interest. You also have a derivative financial interest when you own securities or other interests in a firm that would be financially affected by the matter. Section 20(g) contains important exemptions.

(b) Acts involving other relationships. [§21] You must obtain permission from a conflicts official before participating in any matter involving specific parties any time you determine that a reasonable person with knowledge of the relevant facts would question your impartiality in the matter.

(c) Representational restrictions and involvements with NSF awards during NSF service. [§§30-35] During your Federal employment you must not represent private parties in dealings with any Federal official on any proposal, project, or other matter. This restriction does not prevent you from being involved as a researcher or educator with proposals submitted to the Government. Also this restriction does not preclude you from contacting the Government on personal matters such as audits of your individual tax return or personnel decisions that affect you.

Caution. While you are an NSF employee, both your activities under NSF awards and your ability to submit a proposal to NSF are limited. [§34].

(d) Avoiding conflicts while seeking employment. [§§40-44] If you are seeking employment, you may not participate as an NSF employee in any matter involving specific parties the outcome of which would have a direct and predictable impact on the prospective employer's financial interests. But if you have gone beyond merely seeking employment and have actually begun negotiating, the required disqualification is broader. You may not participate in any matter (whether it involves specific parties or not) the outcome of which would have a direct and predictable impact on the prospective employer's financial interests. If you are a Procurement Official on an ongoing procurement exceeding \$100,000, you must notify your supervisor and OGC about any employment contact with a bidder.

(e) Outside activities. [§50] You must have written permission from your immediate supervisor before accepting any outside employment (with or without compensation) with an entity that does business, or may be reasonably expected to do business, with the Foundation. In addition, you must obtain written permission from an ethics counselor in OGC before participating as a policymaking officer for any research or educational institution, scientific society, or professional association.

(f) Outside compensation. [§§35 and 51] You may not receive compensation from an NSF award. You must not seek or accept any contribution or supplement to your Government salary for doing any part of your NSF job. You must not seek or accept compensation for representational services by you or anyone else in connection with any matter in which the Government is a party or has a direct interest.

(g) Travel contributions. [§§53 and 54] Section 53 explains the approval requirements for accepting non-Federal contributions for your official travel to attend meetings and similar functions. Section 54 explains the restrictions on accepting contributions for your off-duty travel.

(h) Misuse of inside information. [§54] You must not use nonpublic information for your private benefit or make it available for the benefit of others.

(i) NSF-supported conferences. [§55] Section 55 establishes ground rules for your participation in conferences and workshops supported by the Foundation.

(j) Miscellaneous. [§56] Section 56 explains in detail (and should be consulted for) restrictions on--

Misuse of your office for private gain;

Fundraising activities;

Misuse of Government property;

Misuse of official time;
Serving as an expert witness;
Payment of taxes and debts; and
Gambling.

(k) Gifts. [§§60-64] Absent applicable exceptions, you may not receive a gift, favor, or noncommercial loan from those with business ties to NSF or from a lower paid NSF employee. (Section 63 imposes special rules on receipt of gifts from foreign governments.)

(l) Political activity (Hatch Act). [§§70-72]

If you are anyone other than a Career SES employee [§71], you may not:

Run for public office in partisan elections.

Solicit political contributions.

Encourage or discourage political activity of anyone having business with NSF.

Use your official authority for political purposes;

If you are a Career SES employee [§72], stricter restrictions apply and you may not:

Run for public or party office, except in nonpartisan elections and certain local elections.

Participate in election campaigning, except in nonpartisan elections and certain local elections.

Take an active part in leading or managing a political party.

Use your official authority or influence for political purposes.

(m) Financial disclosure. [§§80-84]

If you are an executive level or SES employee, you are a "senior employee" and must file with OGC public financial disclosure reports (SF 278).

Otherwise, if you serve as a program officer, grants or contracts officer or equivalent, an auditor or investigator, a lawyer, or the like, you must file with OGC confidential financial disclosure reports (OGE 450).

If you fit in neither of these categories, no general financial disclosure is required of you.

If you are required to file SF 278s or OGE 450s, you may ask for them when needed; but normally NSF will send them to you automatically.

§2 Underlying Purposes and Considerations.

(a) Conflicts sensitivity. This section outlines the primary sources of conflicts of interest and explains other considerations that underlie the conflicts rules. If you are sensitive to those considerations and identify situations in which someone might at least think that you have a conflict of interest, you will not likely violate the conflict-of-interests rules. When you do identify such a situation, of course, you can and should consult this Manual and other NSF publications; and, if the manuals are not clear and dispositive, consult with an ethics counselor in OGC.

(b) Effect of conflicts of interests. You and the NSF should avoid or minimize actual or apparent conflicts of interest for two principal reasons.

- (1) The success of the NSF in performing its functions depends on the effectiveness of its decision-making processes. If judgments are warped or biased because of conflicting interests, that effectiveness is compromised.
- (2) The NSF must earn the confidence of the scientific, engineering, and educational communities, of the Congress, and of the general public in the integrity, effectiveness, and evenhandedness of its decision-making processes. It will not do so if these processes are seen to be compromised by conflicts of interest.

(c) What is a conflict of interests? A conflict of interests is a clash between an official's concern for the public interest and his or her private interests or allegiances. The examples that follow deliberately present *borderline* situations that are not clear-cut; and they do not illustrate specific rules you must follow. The pertinent rules appear elsewhere.

- (1) You might use your government position to further your personal interests, in conflict with the public interest.
- (2) Outside affiliations or relationships could affect the objectivity of your judgments as a public official.
- (3) Gifts or favors from those interested in agency decisions could affect the objectivity or integrity of your contribution to those decisions.

(d) Inside access and influence. A special concern that underlies many of the conflicts rules is that your insider's access to other Federal officials and your inside influence with them might allow you to sway their decisions or actions where you or those with whom you have ties are interested.

(e) Conflicts that require prohibition or disqualification. Some conflicts of interest would so warp the performance of a Government agency or damage its credibility that they simply cannot be allowed to occur. (If a proposal from a member of your family or from your home institution comes into your program, for instance, you would clearly have to disqualify yourself from handling it.) Most Federal conflict-of-interest laws and a few conflicts rules special to the NSF deal with conflicts or potential conflicts of this sort. They therefore either flatly prohibit you from doing certain things that could give rise to such conflicts or disqualify you from participating in matters where you have a potentially serious conflict.

(f) Other conflicts. By no means are all conflicts of interest so serious and clear that flat prohibition or disqualifications are appropriate. Many conflicts, though real, are subtle, even remote. The seriousness of others so depends on circumstances of the particular case that unvarying rules would be impractical. There are also countervailing considerations. When we flatly prohibit Federal employees from doing things others who are not Federal employees are free to do, we tend to make Federal employment unattractive and so reduce the competence of Government. If we disqualify officials from being involved with particular matters we may remove those who are best qualified by expertise or experience to make the required judgments or effect the required actions. For these reasons, the conflicts laws and regulations do not automatically disqualify you from all potential or actual conflicts. In many cases -- when situations are not serious enough to require flat prohibitions or disqualifications or not easily enough identified by general rules -- the conflict laws and regulations empower agency ethics officials to make the calls.

§3 General Standards of Ethical Conduct.

The rules summarized in section 2 are based on the following fourteen principles contained in Executive Order 12674 (as amended) that says you should:

- (1) Consider public service as a public trust, requiring you to place loyalty to the Constitution, the laws, and ethical principles above private gain;
- (2) Hold no financial interests that conflict with the conscientious performance of your duties;
- (3) Engage in no financial transactions using nonpublic Government information nor allow the improper use of such

information to further any private interest;

- (4) Unless an exception applies, solicit or accept no gift or other item of monetary value from a person or entity seeking official action, doing business with, or conducting activities regulated by the Foundation, or whose interests may be substantially affected by the performance of your duties;
- (5) Put forth honest effort in performing your duties;
- (6) Make no unauthorized commitments or promises of any kind purporting to bind the Government;
- (7) Avoid using public office for private gain;
- (8) Act impartially and give no preferential treatment to any private party or individual;
- (9) Protect and conserve Federal property and use it only for authorized activities;
- (10) Engage in no outside employment or activities, including seeking or negotiating for employment, that conflict with your official Government duties and responsibilities;
- (11) Disclose waste, fraud, abuse, and corruption to appropriate authorities;
- (12) Satisfy in good faith your obligations as a citizen, including all just financial obligations, especially those -- such as Federal, state, or local taxes -- that are imposed by law;
- (13) Adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, or handicap; and
- (14) Endeavor to avoid any actions creating the appearance that you are violating the law or other ethical standards.

§4 Familiarity with Statutory and Regulatory Provisions.

(a) You are legally responsible for acquainting yourself with each statute that relates to your conduct as an NSF and Federal employee. Principal among these are the criminal laws on bribery, graft, and conflicts of interest contained in 18 USC §§ 201-209. This Manual covers them (except for §207, which contains the post-employment rules). This Manual also covers:

- (1) The financial disclosure requirements of the Ethics In Government Act of 1978, as amended (5 U.S.C. App.);

- (2) Executive Order 12674 (as modified by E. O. 12731), which prescribes standards of ethical conduct for Government officers and employees;
- (3) The Standards of Ethical Conduct for Employees of the Executive Branch issued by the US Office of Government Ethics (OGE) at 5 CFR Part 2635;
- (4) The Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation issued jointly by the Foundation and OGE at 5 CFR Part 5301;
- (5) The Rules of Practice for the National Science Foundation issued at 45 CFR Part 680;

[NOTE: Items (3), (4) and (5) are especially important and copies are available for your review in OGC or on the Division of Human Resources Management home page under "Employment, The Conflict-of-Interests Manual."]

- (5) The Employee Responsibilities and Conduct regulations issued by the Office of Personnel Management at 5 CFR, Part 735;
- (6) The Hatch Act provisions covering political activity at 5 USC §7321, *et seq*;
- (7) The "procurement integrity" provisions of the Office of Federal Procurement Policy Act (41 USC §423) and the implementing regulations (48 CFR §3.104);
- (8) The restrictions on gifts to superiors (5 USC §7351) and on solicitation or receipt of gifts from certain specified prohibited sources (5 USC §7353); and
- (9) The provisions on receipt and disposition of foreign gifts and decorations (5 USC §7342).

If you conscientiously follow this Manual and the other NSF ethics manuals, as appropriate, you should have no trouble with those provisions.

§5 Key Terms.

Except where provisions plainly indicate otherwise, certain terms are used throughout this Manual in standard meanings:

"Award" means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

"Proposal" means an application for an award and includes a bid.

"Administering awards" means handling requests for award

amendments, for increments to continuing grants, for no-cost extensions, for award closeouts, for administrative approvals, or for assessments of progress.

"Institution" means any university, college, business firm, research institute, professional society, or other organization. It includes all parts of a university or college, including all institutions in a multi-institution state or city system. It includes any university consortium or joint corporation such as AUI, AURA, or JOI, Inc., but not the universities that belong to such a consortium. Those are separate institutions for conflict-of-interest purposes.

"Program officer" includes program managers, assistant and associate program managers, program directors, and assistant and associate program directors.

You are on "official duty" and "conducting official business" when:

- (1) You act or speak on behalf of the Foundation or as its representative -- for example, in response to a request addressed to the Foundation or to you by reason of your NSF position;
- (2) You deliver a speech, write or edit a paper, or perform some other activity which primarily relates to or addresses your NSF duties or NSF policies, programs, or operations; or
- (3) You are on official training under 5 USC §4111.

The fact that you prepared or performed activities outside of normal duty hours or while on leave does not determine whether you were on "official duty".

PART II -- IMPARTIALITY IN ACTING FOR NSF

§20 Acts Affecting Your Financial Interests.

§21 Acts Involving Other Relationships.

§20 Acts Affecting Your Financial Interests.

(a) No acting as a Federal employee where you have a financial interest -- basic rule. You must not be personally involved as a Federal employee in handling any proposal, award, or other matter in which you, a member of your immediate family, a general business partner, or an organization of which you are or may become a part has a financial interest.

BE CAREFUL: Violation of this rule may also result in a violation of a criminal statute.

(b) Extraordinary payment from a former employer. If you received an extraordinary severance payment exceeding \$10,000 from a former employer before entering Government service, you must not be personally involved during your first two years of Federal employment in handling any matter in which that former employer is a party or represents a party. If you have any doubt about a payment from a former employer, consult an ethics counsellor in OGC.

(c) Proposals and awards. In handling proposals and awards, you will not violate this section as long as you abide by the requirements on handling proposals and awards described in the OGC Guide, *Avoiding Conflicts in Handling Proposals & Awards.*

(d) Matter. (i) This term encompasses deliberations, decisions or actions that do not involve formal parties as well as those that do. It applies to:

Grants, contracts, cooperative agreements, memoranda of understanding, or loans;

Applications for permits, licenses, or the like;

Requests for rulings or similar official determinations;

Claims;

Investigations or audits;

Charges or accusations against individuals or firms;

Adjudicatory hearings; and

Court cases.

(ii) It also applies to matters that do not involve parties, such

as:

Determinations to establish or disestablish a particular program or set its budget level for a particular fiscal year;

Decisions to undertake or terminate a particular project;

Decisions to open or not open a contract to competitive bidding;

General policy or rulemaking -- including, for example, decisions on particular NSF rules or formal policy, such as adoption or amendment of a resolution by the National Science Board, promulgation or amendment of an NSF regulation or circular, amendment of standard grant or contract terms, or changes to NSF manuals or policy documents; and

Agency positions on particular legislative or regulatory proposals.

The term, however, does not extend to the consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. (If you are at NSF on a leave of absence from an institution of higher education, see subsection (g)(4)).

(e) Immediate family. Only your spouse and minor children are considered members of your "immediate family" under this section.

(f) Organization of which you are or may become a part. You are a part of an organization if you are an officer, director, trustee, general partner, or employee, or if you received from it within the last year any remuneration or income for outside teaching, speaking, or writing, including any contribution for off-duty travel (or related) expenses. You "may become" part of an organization if you are negotiating with it or have an arrangement with it concerning a future position as an officer, director, trustee, general partner, or employee. If you intend to seek employment, see PARTS IV and V of this Manual.

(g) Exemptions. Notwithstanding subsection (a):

(1) You may handle matters affecting the holdings of a diversified mutual fund;

(2) You may handle matters affecting the holdings of the federal government Thrift Savings Plan, a State or local government pension plan, or other diversified employee benefit plan;

(3) As specified in (i) and (ii), below, you may handle

matters affecting companies or other entities in which you and your immediate family own modest amounts of stocks, bonds, or other securities. The securities must be listed on a US stock exchange or traded through NASDAQ, be issued by a registered investment company, or be long-term Government bonds or municipal bonds:

(i) You may handle matters involving specific parties affecting companies or other entities in which you, your spouse, and minor children own stocks or other securities worth no more than \$15,000 (total, in all effected parties).

(ii) If the matter does not involve specific parties, but is a broader policy matter (described in subsection (d)(ii) above), you may participate if you and your household own no more than \$25,000 in an entity that is part of the affected class. If you and your immediate family have holdings in more than one such entity, you may participate in the matter if the combined value of all such holdings is no more than \$50,000.

(4) If you are at NSF on a leave of absence from an institution of higher education, you may handle broad policy matters (described in (d)(ii) above) that affect the university from which you are on leave, if the matter affects the university as part of a group of entities that will be similarly affected.

(5) You may handle matters affecting one campus of a State multi-campus university system if you are employed at a separate campus of that university and your position at the separate campus does not involve multi-campus responsibilities.

(6) You may handle matters affecting holdings of a sector mutual fund (or funds):

(i) If you and those whose interests are statutorily imputed to you own no more than \$50,000 (total) in shares of sector funds in the same affected sector; or

(ii) If the affected holdings are not in the fund's area of concentration.

(7) You may handle matters where your financial interest in the issues arises from your Government salary, or your Social Security or Veterans' benefits; but you may not be involved in making decisions or recommendations that specifically affect your own salary or benefits, or those of your immediate family or general partner.

(8) If you and your immediate family hold policies with a

mutual insurance company, you may handle a matter affecting that company, as long as the matter does not affect the company's ability to pay claims under such policies or pay the cash values of the policies.

(9) You may handle matters affecting securities held for investment by a tax-exempt organization in which you hold an unpaid position; the exemption applies only in cases where the matter affects the organization's investments (as opposed to the organization itself), and where you are not making investment decisions for the organization.

(10) You may handle matters affecting companies or other entities in which your general business partner owns securities (as opposed to matters affecting the general partner) when the value of the securities is no more than \$200,000. Also, if you are a limited partner in a large partnership, you may handle matters affecting any financial interest of the general partner.

(h) Individual waivers. Subsections (a) and (b) may be waived where the interest is so insubstantial as to be unlikely to affect the integrity of your services to the Government. If you think such a waiver is called for, consult an ethics counselor in OGC. The ethics counselor will advise you and will make a recommendation to the official who would have to issue such a waiver.

§21 Acts Involving Other Relationships.

(a) Assuring impartiality. Relationships not covered by section 20 may still result in conflicts of interests. You must obtain permission from a conflicts official before participating in matters involving specific parties any time you determine that a reasonable person with knowledge of the relevant facts would question your impartiality in the matter. In particular, you must obtain a determination from a conflicts official if:

The matter is likely to affect the financial interests of a member of your household, or

You have a covered relationship with a party to the matter or with someone who represents a party.

(b) "Covered relationship." You have a "covered relationship" with:

(1) A person from whom you are merely seeking employment;

NOTE: If you are actually negotiating with a person or organization concerning prospective employment, you must also follow the rule in section 20(a).

(2) A person, other than a prospective employer, with whom

you have or seek a business, contractual, or other financial relationship (other than a routine consumer transaction);

- (3) A member of your household or a relative or other individual with whom you have a close personal relationship [see also paragraph (8)(A), below];
- (4) Any organization with which your spouse, parent, or dependent child is, or seeks to be, connected;
- (5) Any organization with which you were connected within the last year; or

NOTE: For purposes of paragraphs (4) and (5) you are "connected" to an organization if you serve it as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.

- (6) Any organization (other than a political party) in which you are an active participant.

NOTE: Your participation in an organization is "active" if, for example, you chair a committee or subcommittee, act as a spokesperson, or help direct the organization's activities. In addition, significant time spent promoting the organization's specific programs or coordinating its fundraising efforts indicates active participation. Membership, committee membership, paying dues, donating money, soliciting financial support from others, and the like, do not in themselves constitute active participation.

- (7) Any institution with which you are affiliated through:
 - (A) Current membership on a visiting committee or similar body. [This relationship is automatically disqualifying when the particular department, school, or faculty that the body advises originated the subject proposal or where a proposal from the department, school or faculty formed the basis for an award.];
 - (B) Current enrollment as a student, or enrollment of a member of your household; or
 - (C) Receipt and retention of an honorarium or other form of compensation, award, or off-duty travel payment from the institution within the last twelve months. [This relationship is automatically disqualifying unless the payment or award was received before beginning Government service.].

- (8) An investigator, project director or other person

identified as a party to a proposal or award and with whom:

(A) You have a family relationship as sibling, parent, spouse, or child. [Any such relationship is automatically disqualifying.];

(B) You have been a thesis advisor or thesis student;

(C) You collaborated on a project, book, article, report or paper within the last 48 months; or

(D) You co-edited a journal, compendium, or conference proceedings within the last 24 months.

PART III -- REPRESENTATIONAL RESTRICTIONS AND
INVOLVEMENTS WITH PROPOSALS AND AWARDS DURING NSF
SERVICE

Subpart A. The Representational Restriction Generally
Subpart B. Involvement With Proposals and Awards During NSF
Service

Subpart A. The Representational Restriction Generally

§30 Basic Rule.

§31 Representational Dealings.

§32 Exception; Representing Organizations of Federal
Employees.

§30 Basic Rule.

(a) In General. During your Federal employment you must not represent private parties in dealings with any Federal official on any proposal, project, or other matter. Nor may you receive compensation for anyone else's representation of private parties in such dealings.

(b) Terms and effect. The above wording of this restriction has been simplified substantially from the underlying criminal statutory wording, to make it easier to understand. In the process, the restriction has also been deliberately overstated, with exceptions and "escape hatches" left out, so that your initial reaction will be to interpret them conservatively. Section 31 fills in critical concepts.

(c) Proposals and awards. Subpart B is devoted entirely to the application of the current-employee representational restriction to proposals and awards.

(d) Consultation. If in doubt about any of the rules in this part, consult an ethics counselor in OGC.

§31 Representational Dealings.

(a) The restriction applies to representing private parties in dealings with NSF officials or other Federal officials. The dealings covered are encompassing and include any formal appearance before an official; any meeting with an official; and any letter, phone call, or other communication with an official.

(b) Contacts as a representative without intent to influence the officials contacted are not prohibited. Nor are contacts as a representative in connection with a routine request not involving a potential controversy. For example, you may ask a question about the status of a particular matter, as long as there is no implicit attempt to influence the process or the outcome. You may request publicly available documents.

You may communicate with an official to impart purely factual information as long as the communication has no connection with an adversary proceeding.

(c) You are not prohibited from helping those who represent a private party with Federal officials, as long as you do not yourself make an appearance or otherwise communicate with the officials. You may advise the representatives, may make suggestions about whom they should contact and what they should say, and may even draft documents and letters, as long as you do not personally sign or transmit them.

BE CAREFUL: What is permitted under Federal law may be prohibited by rules of professional ethics, particularly if you are a lawyer.

(d) Where the basic representational restriction refers to dealings with "Federal officials", that term covers officials of a Federal Executive-branch or administrative agency and officials of Federal courts or administrative tribunals. It does not, however, encompass Members of Congress, their staffs, or other officials of the legislative branch.

(e) During your Government service, you may naturally represent your office, the NSF, or the Government (or anyone else, for that matter) with other Federal officials if the representation is part of your official duties.

(f) The restriction covers "matters" (like grants, contracts, investigations, and the like) that have specific identifiable parties; and it also covers "matters" that do not involve specific parties. See §20(d).

§32 Exception; Representing Organizations of Federal Employees.

Section 30 does not prohibit you from representing, before the Government, any non-profit cooperative, voluntary, professional, recreational, or similar organization or group, if a majority of the organization's members are current Federal employees or their spouses or dependent children; except when the subject of the representation:

- (1) Is a claim against the United States Government; or
- (2) Involves a grant, contract, or other agreement (including a request for any such an agreement) providing for the disbursement of Federal funds to the organization.

Subpart B. Involvement With Proposals and Awards During NSF Service

§33 General; Restricted Representational Activities vs. Permitted Research or Educational Activities.

§34 When You Are or Would Be Principal Investigator.

§35 Compensation or Reimbursement of Expenses from Awards.

§33 General; Restricted Representational Activities vs. Permitted Research or Educational Activities.

(a) Basic representational restriction. During your Federal employment you must not represent anyone other than the Federal Government in dealings with any Federal official on any proposal or project.

Example: You have been on the physics faculty at the University of Wyoming and have been principal investigator on grants from the NSF and from the Department of Defense. You come to the NSF for a two-year stint as a section head. While you are away a colleague acts as principal investigator on both your grants. During your stint at the NSF the Department of Defense grant is about to expire. The substitute principal investigator files a new proposal with DOD. She asks you to call the DOD program officer, with whom you have great credibility from past dealings, to vouch for her excellence and to urge that he continue to fund the Wyoming work. You may not do so.

(b) Restricted representational dealings. If you write, call, visit, or otherwise communicate with an official, you have "dealt" with the official. Those dealings are representational if you try to influence the official to suggest, recommend, not recommend, approve, or disapprove:

An award;

An award amount;

A budget or particular budget item;

Particular award terms or conditions;

An award amendment, increase, or extension;

An administrative approval; or

Any other action affecting a proposal or award.

(c) Research and educational activities. Although you should be careful not to violate section 34, you would not engage in "representational dealings" by:

Participating in research or other work supported under an award from the NSF or another Federal agency;

Being listed as an investigator in a proposal or award;

Preparing a proposal that will be submitted to the NSF or another Federal agency (but you must do so entirely on your own time); or

Communicating with officials of the NSF or another Federal agency, with no intent to influence them, to request routinely available and non-controversial information, such as the status of the decision process on a proposal.

BE CAREFUL with the last activity particularly; it would be easy to fall into trying to influence actions of the officials involved. If you can, let someone else make the presentation or request. If in any doubt, consult an ethics counselor in OGC.

§34 When You Are or Would Be Principal Investigator.

(a) Retention of ties to research etc., permitted. Many scientists, engineers, and educators interrupt active research and teaching careers to spend a year or two at the NSF as "rotators" and then return to research and teaching, usually at the same institution from which they came. Many such rotators (and a few permanent employees) who have been principal investigators under NSF awards before coming to the NSF, retain some interest or association with the work. If you have been the principal investigator under an NSF award, you are not precluded from retaining ties to the work under the award after you become an NSF employee. Subject to the restrictions on outside employment explained in Part V, you may stay in contact with those who are continuing the work in your laboratory or on your project. You may continue to supervise graduate students. And you may visit and work in the laboratory on your own time for these purposes.

(b) Substitute principal investigator. Before you come to the NSF, however, the NSF requires that you and your institution designate, subject to NSF approval, a substitute principal investigator -- i.e., another person who will be responsible for the work and equipment and will represent the project and the institution in any dealings with NSF officials while you are at the NSF.

(c) Suspension of work on an NSF award. Appointment of a substitute principal investigator is unnecessary if all work under an award is to be completely suspended while you are at the NSF. If the work is to be suspended, you and your institution should so inform the NSF by letter before your NSF employment begins. Work under the award may be resumed when you complete your NSF employment, and its term may be extended to account for the time lost during your NSF employment.

(d) Renewal proposals. (1) NSF will entertain no proposal on which you would be a senior investigator or equivalent, unless it is a proposal for continuation or extension of support for work on which you played that role before coming to NSF. Any proposal for continuation of NSF support at essentially the same level (with reasonable allowance for inflation) will normally be considered a proposal for continuation or extension if it would support your work and your laboratory or group (if any) in the same general field of science, engineering, or education, notwithstanding that the focus of the work may change in response to research opportunities or educational needs.

(2) Someone other than you must submit any such proposal for continuation or extension of NSF-supported work and handle all negotiations with NSF. If work under a resulting award would begin before you leave the NSF, a substitute principal investigator must be named. If the work would not begin until after you leave the NSF, you may be named as principal investigator, but a substitute negotiator must be named.

(e) Your involvement or interest to be open. The appointment of a substitute principal investigator (or a substitute negotiator) is not intended to conceal or obscure your continued involvement or interest in the project. Just the opposite: your involvement or interest should be made unmistakably plain. This will ensure that any proposal or other award-related application will be given the special attention and special handling as called for in the OGC Guide, *Avoiding Conflicts in Handling Proposals & Awards*.

(f) Purposes of "substitute" requirements. The appointment of a substitute principal investigator or substitute negotiator ensures against unthinking violation of the restrictions on representational dealings with NSF officials. It serves this purpose by flagging proposals or awards affected by the restrictions and by identifying someone else with whom NSF officials can properly discuss or negotiate. Designation of a substitute principal investigator also identifies another person to be responsible for the work and equipment, and it reminds all concerned that during your NSF service your primary attentions must be devoted to your NSF duties.

(g) Proposals and Awards of Other Agencies. The "substitute principal investigator" and "substitute negotiator" requirements described in this section are specific to the NSF. But the basic restriction on representational activities will likely apply Government-wide. If you are or would be a principal investigator under a project proposed to or supported by another Federal agency, you are strongly urged to contact that agency's Designated Agency Ethics Official or other ethics counselors for advice.

§35 Compensation or Reimbursement of Expenses From NSF and Other Federal Awards.

(a) Compensation from NSF awards. While you are an NSF employee, you may not receive from an NSF award, either directly or indirectly, any salary, consulting fee, honorarium, or other form of compensation for your services. In other words, you may not receive money for your services in connection with a project, a conference, or other work that was supported in whole or in part by funds provided from an NSF award.

(b) Expenses from NSF awards. While an NSF employee, you may receive no reimbursement of expenses from an NSF award, except as authorized in section 52.

(c) Other Federal awards. You may neither seek nor accept any payment contingent on anyone else's representational activities in connection with Federal awards. When authorized by PART V, you may accept payment from a contractor or grantee for performing other than representational work on an award from another Federal agency, but not an NSF award.

PART IV -- AVOIDING CONFLICTS WHILE SEEKING
EMPLOYMENT

§40 Disqualifications.

§41 Exceptions.

§42 Potential Disqualification After You Are No Longer
Seeking or Negotiating for Employment.

§43 Special Rules on Employment Discussions with Competing
Contractors.

§44 Interview Trips.

§40 Disqualifications.

(a) Basic rules. (1) If you are seeking employment, you may not participate as an NSF employee in any matter involving specific parties the outcome of which would have a direct and predictable impact on the prospective employer's financial interests.

(2) If you have gone beyond merely seeking employment and have actually begun negotiating, the required disqualification is broader. You may not participate as an NSF employee in any matter (whether it involves specific parties or not) the outcome of which would have a direct and predictable impact on the prospective employer's financial interests.

(b) "Seeking" and "Negotiating" for Employment. (1) You will be considered to have begun "seeking" employment if you have made **any** communication regarding possible employment with a prospective employer. This includes submitting an unsolicited resume. You are no longer seeking employment if either you or the prospective employer rejects the possibility of potential employment or if two months have passed since you submitted an unsolicited resume and you have received no indication of interest.

(2) You are considered to have begun "negotiating" if you and a prospective employer are discussing the possibility of reaching an agreement about your future employment. Negotiating is not limited to discussions of specific terms and conditions of employment or a specific position. You are no longer negotiating if either you or the prospective employer clearly rejects the possibility of employment.

(c) "Matters" covered. (1) For purposes of paragraph (a)(1) "Matter involving specific parties" includes any:

Grant, contract or other agreement;

Application for a permit, license, or the like;

Request for a ruling or other official determination;

Claim;

Investigation or audit;

Charge or accusation against an individual or firm;

Adjudicatory hearing; and

Court case.

(2) For purposes of paragraph (a)(2), the term "matter" includes matters that do not involve specific parties, as well as those that do, and includes all items listed in section 20(d).

(d) Employment agencies / search firms. You are considered to be seeking employment with a prospective employer when you contact an employment agency or other intermediary:

If an intermediary acting for a prospective employer tells you who the employer is; or

If an intermediary you are using tells you that your resume will be submitted to the prospective employer.

§41 Exceptions.

The disqualification when seeking employment required in section 40(a)(1) may be lifted if your conflicts official determines in writing that the Foundation's interest in your participation in the matter outweighs concerns that a reasonable person may question the integrity of NSF's programs and operations. But if you have actually begun negotiating for employment the disqualification required in section 40(a)(2) may be lifted by a written statutory waiver only where the interest involved is found to be so insubstantial as to be unlikely to affect the integrity of your service to the Government. Contact an ethics counselor in OGC if you wish to request such a waiver. The ethics counselor will advise you and will make a recommendation to the official who must issue the waiver.

§42 Potential Disqualification After You Are No Longer Seeking or Negotiating for Employment.

If you have been disqualified from handling matters because you have been negotiating for or seeking employment, your conflicts official has discretion to continue to disqualify you for a period of time from handling certain matters after you are no longer seeking or negotiating for employment.

§43 Special Rules on Employment Discussions with Competing Contractors.

If you are personally participating in an ongoing NSF contract procurement of over \$100,000, you must report in writing to your supervisor and to the Designated Agency Ethics Official in OGC any contacts with or by a bidder or offeror regarding possible non-Federal employment. Also, you must either reject the possibility of such non-Federal employment or recuse yourself from further involvement in the procurement until the Foundation specifically authorizes you to resume such participation.

§44 Interview Trips.

If you abide by the rules described in this Part, you may accept travel expenses and other reasonable amenities incident to job interviews occurring on your own time, even if the prospective employer is a "prohibited source" described in section 60(a).

PART V -- OUTSIDE EMPLOYMENT, COMPENSATION,
INCOME, ETC.

- §50 Outside Employment ("Moonlighting") and Income
- §51 Compensation.
- §52 Contributions for Official Travel From Non-Federal Sources.
- §53 Off-Duty Travel
- §54 Misuse of Inside Information.
- §55 Participation in NSF-Supported Conferences and Workshops.
- §56 Miscellaneous Restrictions.
- §57 Fundraising Activities.

§50 Outside Employment ("Moonlighting") and Income.

(a) Permitted within limits. While not on official duty, you may work for private firms or organizations either for pay or as a volunteer, within limits established by the rest of this Part or by any employment agreement with NSF. Be sure that you understand all those limits before undertaking any such outside work. Limits unrelated to compensation (e.g. service on a visiting committee) apply whether or not you work for pay. Remember that outside activities may create conflicts with the performance of your NSF duties. You must disqualify yourself (or obtain a waiver or other determination) whenever an outside activity would require such disqualification under the conditions specified in PART II. All outside employment must be done on your own time, not during official duty hours.

(b) Permission required.

(1) In General. You must have written permission from your immediate supervisor to accept any outside employment or business relationship involving the provision of personal services with a person or organization that does business, or may reasonably be expected to do business, with the Foundation. Disputes may be taken up the chain of supervision; your Assistant Director or Office Head makes the final decision. An ethics counselor in OGC may be consulted for guidance. "Outside employment" includes teaching or lecturing; service on a visiting committee; regular self-employment, including consulting; and other compensated service at any for-profit, non-profit, or governmental organization.

(2) Policymaking or administrative work for certain organizations. You must obtain written permission from an ethics counselor in OGC before participating as a policymaking officer for any research or educational institution, any scientific society, or any professional association. Whenever a major policy question is presented by a request for such approval, you or an ethics counselor may raise the matter with the General Counsel and, if appropriate, with the Director or

Deputy Director of the Foundation.

§51 Compensation.

(a) Basic restrictions on outside compensation. In addition to the restriction on receipt of compensation from an NSF award, two other basic rules restrict compensation (not including reimbursement of expenses) that you can accept from sources other than your Federal salary:

No extra compensation for official duty. You must not seek or accept any contribution or supplement to your Government salary for doing any part of your NSF job.

No compensation in connection with any matter involving the Government. You must not seek or accept any compensation for representational services by you or anyone else in connection with any matter (including an award) in which the United States is a party or has a direct interest.

BE CAREFUL: Breaking these rules would be a Federal crime.

(b) Pensions and other employee benefits. These rules do not preclude you from continuing to participate in a bona fide pension or other employee benefit plan maintained by a former employer. Check with an ethics counselor in OGC.

§52 Contributions for Official Travel from Non-Federal Sources.

(a) Advance approval required. You may not (except under subsection (f)) accept any payment for official travel to attend a meeting or similar function from any non-Federal source without obtaining advance approval from the Foundation. A meeting or similar function includes a seminar, conference, speaking engagement, training course, or similar event.

(b) Approval procedure. An Official Travel Order (NSF Form 381) and the relevant portions of NSF Form 1311 must be prepared in advance for any travel expenses described in subsection (a) for which costs will be borne either in kind or through reimbursement to NSF by a non-Federal source. All such contributions must be approved in advance by your Assistant Director or Staff Office Director. If you are an Assistant Director or Staff Office Director, they must be approved in advance by the Deputy Director. After the trip you must complete the final portions of NSF Form 1311 and return it to the Division of Financial Management with a completed travel voucher.

(c) Policy against contributions from awardees. The Foundation strongly discourages acceptance of travel contributions described in subsection (a) from NSF awardees. Departures from this policy should be rare. This policy does not apply to arrangements for approved independent research or to

travel contributions from foreign governments or from international or multinational organizations.

(d) Non-solicitation. You must not directly or indirectly solicit travel contributions from a non-Federal source. But if asked or offered payment, you may explain NSF's authority to accept payments.

(e) Contributions. Non-Federal sources may pay NSF (not you) for approved travel, subsistence, and related expenses by check or similar instrument made payable to NSF. Or they may provide services in kind -- airline tickets, prepaid hotel rooms, and the like. Either way, the maximum rates specified in the travel regulations do not necessarily apply, but payments or in-kind services must be comparable to those offered to or purchased by other similarly situated individuals attending the event.

(f) Approved payments from §501(c)(3) organizations. With the written approval of an ethics counselor in OGC, you may accept payments in cash or in kind of travel expenses for attendance at an official meeting (or similar event) from a nonprofit 501(c)(3) organization or a state government, if the ethics counselor determines that no conflict of interests exists under rules established by the Office of Personnel Management. (Remember, many non-profit organizations do not qualify under 501(c)(3).)

(g) Official Travel Not Involving a Meeting or Similar Event. Under NSF's gift acceptance authority, you may, without regard to subsections (a) through (e), accept in-kind contributions (not money) from private sources when you are traveling on official NSF business; or NSF may pay your expenses and be reimbursed or paid by the non-Federal source.

(h) Payments Out of NSF Award. Contributions you receive under this section may not be paid wholly or in part from an NSF award. However, you may accept meals and lodging (but not travel tickets) if you are attending a conference, symposium, or other meeting funded by NSF at which meals and lodging are offered to everyone attending the meeting and alternative arrangements for meals and lodging are unavailable or would cause an unusual inconvenience.

(i) Reduce Your Per Diem. If you accept meals or lodging "in kind" while on official travel, your per diem must be reduced accordingly.

§53 Off-Duty Travel.

If you are on leave or off-duty, and you are not representing the Foundation, the restrictions in section 52 do not apply. You may accept payment of travel and related expenses resulting from your outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of

your NSF status. But if you accept such expenses in connection with outside teaching, speaking, or writing, you will be disqualified under section 20 for one year from involvement in any NSF matter affecting the institution's financial interests. In no case may you accept services in kind or reimbursement for off-duty travel expenses if the funds would come wholly or partly from an NSF award.

§54 Misuse of Inside Information.

(a) No misuse of inside information. If your Government job gives you access to information not generally available to the public, you must not use that information for your private benefit or make it available for the private benefit of any other person or institution.

(b) Consulting, lecturing, etc. about the NSF. You must not receive anything of monetary value for consulting, lecturing, writing, or public discussion that concerns the responsibilities, programs, or operations of the NSF or that draws on official information not generally available to the public.

(c) Waivers. The Director, the Deputy Director, or an assistant director may waive application of these rules and authorize use of non-public information in the public interest. Any such authorization must be in writing. Consult an ethics counsellor in OGC.

§55 Participation in NSF-supported conferences and workshops.

You may participate in a conference, workshop, or similar event supported by NSF funds, as long as you receive no compensation or honorarium for doing so. You may not serve as an organizer, director, or proceedings editor for such an event, unless its purpose is to plan, assess, or publicize NSF programs. Nor, ordinarily, should you chair a session or give a paper except to describe NSF programs or NSF needs. You may discuss arrangements with the organizers or directors, but obviously should not use influence that derives from your NSF position for your private gain or advancement or that of your family, friends, or outside business associates.

§56 Miscellaneous Restrictions.

(a) Misuse of Your Office for Private Gain. You must not use (or permit the use of) your Government position or title for your own private gain; for the unauthorized endorsement of any product, service, or enterprise; or for the private gain of friends, relatives, or organizations (including non-profit organizations) with which you are associated in a nongovernmental capacity; or in a manner that could reasonably be construed to imply that the Foundation sanctions your personal activities or those of another.

(b) Letters of Recommendation. You may sign a letter of recommendation using your official title only in response to a request for an employment recommendation or character reference if based on your personal knowledge of the ability or character of an individual with whom you have dealt in the course of your Federal employment or if you are recommending the individual for Federal employment.

(c) Fundraising Activities. You may engage in off-duty fundraising in your personal capacity for (nonpolitical) charitable organizations; but you must not personally solicit from:

A subordinate, or

Any person or organization you know to be a "prohibited source" described in section 60.

You must not use, nor permit others to use, your NSF title, position, or official authority to further the fundraising effort. You must also avoid fundraising at NSF except as authorized for the Combined Federal Campaign.

(c) Misuse of Government property. You should protect and conserve Government property and you must not use it, or allow its use, for unauthorized purposes. Government property includes, office supplies, Government mail and phone services, computers, copying equipment, records, vehicles, and the like.

(d) Misuse of official time. Unless specifically authorized otherwise, you must use your official time only in an honest effort to perform official duties. You must not request a subordinate to use official time to perform nonofficial or unauthorized activities.

(e) Serving as an expert witness. Absent permission from the General Counsel, you may not serve (with or without compensation) as an expert witness, except for the Government, in any proceeding before a Federal court or agency in which the Federal Government is a party or has a direct and substantial interest. Subject to OGC approval, you may serve as a witness to facts when subpoenaed by an appropriate authority.

(f) Payment of taxes and debts. You are expected to pay your taxes and your just debts properly and on time. ("Just debts" means those you acknowledge or that have been reduced to final judgment. NSF will not try to determine the validity or amount of any disputed debt.)

(g) Gambling. You must not gamble in a Government office or while on duty. This includes participating in a sports pool or a lottery not officially sanctioned by the NSF.

PART VI -- GIFTS

§60 Gifts, Loans, and Favors

§61 Awards and Honorary Degrees

§62 Free Attendance at Conferences and Widely-Attended Gatherings

§63 Foreign Gifts

§64 Gifts Between Employees

§60 Gifts, Loans, and Favors.

(a) Gifts from prohibited sources. You may not directly or indirectly solicit or accept a gift, favor, or noncommercial loan from a prohibited source. A "prohibited source" is any person or organization that

- (1) Is seeking an award or other official action by NSF,
- (2) Does business or seeks to do business with NSF,
- (3) Conducts activities regulated by NSF,
- (4) Has interests that may be substantially affected by performance of your NSF duties, or
- (5) Is an organization the majority of whose members are described in (1)-(4).

(b) Exceptions. Subsection (a) does not prohibit you from accepting --

Items (not money or securities) worth \$20 or less per occasion, aggregating no more than \$50 per calendar year from any one source;

Gifts clearly motivated by a family relationship or personal friendship;

Regular commercial discounts, including government employee discounts; or

Meals, lodging, transportation, and the like resulting from your outside business or employment, or your spouse's outside business or employment, if the benefits are not offered or enhanced because of your NSF status.

(c) Even if a gift, favor, or loan does not come from a prohibited source, you may not accept it if it is given to you because of your NSF position, except for--

Modest food and refreshments, other than meals; and

Greeting cards and other trivial items such as plaques, certificates, and trophies presented to you.

BE CAREFUL, the exceptions in this section do not allow you to:

Coerce or solicit a gift,

Accept a gift given in return for being influenced in performing your NSF duties, or

Accept gifts so frequently that a reasonable person would believe you are misusing your NSF position.

Even though an exception may permit acceptance of a gift, it is never inappropriate and frequently prudent to decline a gift offered by a prohibited source or because of your official position.

§61 Awards and Honorary Degrees.

(a) Modest awards. You may accept a *bona fide* award, and award-related items (other than money or securities) worth \$200 or less, if the award is given for meritorious public service or achievement by an entity whose interests would not be substantially affected by the performance of your official duties or by an organization the majority of whose members do not have such interests.

(b) Other awards; honorary degrees. You may accept other awards and honorary degrees, and award-related items, **only** with the written approval of an ethics counselor in OGC.

§62 Free Attendance at Conferences and Widely Attended Gatherings.

(a) When you are a speaker. When NSF assigns you to participate as a speaker or panel participant or otherwise to present information on the Foundation's behalf at a conference or other event, you may accept, without special permission, an offer of free (or reduced cost) attendance at the event for the day of your presentation.

(b) Widely attended gatherings. When your supervisor determines that your attendance at a widely attended reception or similar gathering (of mutual interest to a number of parties) is in the Foundation's interest because it would further NSF programs or operations, you may accept an unsolicited offer of free (or reduced cost) attendance at the gathering, either on duty or off duty, as appropriate.

(c) Sponsor must pay. Ordinarily your supervisor may allow you to accept an offer under subsection (b) only if the sponsor pays for your attendance. But if the sponsor has interests that

may be substantially affected by the performance of your official duties (or is an organization the majority of whose members would be so affected), your supervisor must conclude in writing that NSF's interest in your participation outweighs concern that acceptance of the offer may, or may appear to, improperly influence your performance of official duties. In making this determination your supervisor should consider the following factors:

The event's importance to NSF;

The nature and sensitivity of any pending matter affecting the sponsor and the significance of your role in the matter;

The purpose of the event;

The identity of other expected participants; and

The monetary value of the gift.

If someone other than a sponsor wishes to pay, different rules apply; and you must seek approval from an ethics counselor in OGC.

(d) Accompanying spouse. When others in attendance will generally be accompanied by spouses, your supervisor may allow you to accept a sponsor's offer of free (or reduced cost) attendance for your spouse at any event you are authorized to attend under this section.

§63 Foreign Gifts.

(a) You may not accept a gift or decoration from a foreign government, except one with a retail value in the United States of \$285 or less (this amount is adjusted for inflation by the State Department from time to time). If the gift is worth more, you may accept it only if not accepting it would be likely to cause offense or embarrassment. Any gift worth \$285 or more becomes the property of the United States. Consult an ethics counselor in OGC for help in depositing the gift with the State Department.

(b) You may accept travel expenses from a foreign government for travel within one or more foreign countries. If you do, you must report to an ethics counselor in OGC no later than 30 days after your return the circumstances of the travel, the amount, and the name of the foreign government providing it.

(c) Other Foreign Gifts. If you are on official duty in a foreign area (defined in the travel regulations) you may accept food, refreshments or entertainment from an entity other than a foreign government in the course of an official breakfast, lunch, or dinner meeting or event if--

The market value does not exceed the per diem rate for the foreign area specified in the State Department per diem regulations -- if in doubt check with an ethics counselor in OGC; and

Non-US citizens or foreign-entity representatives are participating in the meeting.

§64 Gifts Between Employees.

(a) Basic prohibition. You may not give or solicit another employee to give a gift to any official superior. Nor may you accept a gift from a lower paid employee, unless you are personal friends and are not in a supervisor-subordinate relationship.

(b) General Exceptions. On an occasional basis (such as for birthdays, Christmas, or the like), you may give an official superior-

Items (other than cash) worth \$10 or less,

Refreshments to be shared in the office by several employees,

Customary hospitality at your home, and

Customary "host" and "hostess" gifts.

(c) Exceptions for Special Infrequent Occasions. You may give a gift appropriate to the occasion to an official superior--

Recognizing infrequently occurring personal events like a wedding, illness, or birth or adoption of a child; and

Recognizing events, like retirement, that terminate the superior-subordinate relationship.

(d) Soliciting voluntary contributions. You may solicit nominal voluntary contributions from fellow employees for an appropriate gift to an official superior--

On a special infrequent occasion described in subsection (c), and

On an occasional basis for items like refreshments to be shared in the office by several employees.

BE CAREFUL: No gift allowed by this section may be coerced. A contribution is not considered "voluntary" unless the amount (if any) is determined by the contributor. (But when a contribution for a gift is included in the proportionate cost of a lunch, reception, or similar event, an employee may freely choose to pay that amount in order to attend.)

PART VII -- POLITICAL ACTIVITY

§70 Introduction.

§71 Basic Hatch Act Summary.

§72 Hatch Act Summary for Career SES Employees.

§70 Introduction.

(a) For decades, Congress imposed significant limitations on the ability of the Federal civil service to engage in partisan political activities. However, in 1993 Congress amended the "Hatch Act" to allow most employees to engage in a wider range of political activities. The summary of Hatch Act provisions in §71 applies to you, unless you are a career SES employee. More restrictive rules continue to apply to Career SES employees, who should review §72.

(b) The "Hatch Act" applies even while you are on leave or while you are on detail or assignment to a non-Federal post.

NOTE: The Hatch Act is enforced by the US Office of Special Counsel, which has an information hotline -- 1-800-85-HATCH (854-2824).

§71 Basic Hatch Act Summary.

(a) If you are an employee, other than a career SES employee, you may:

Register and vote as you choose, and express opinions about candidates and issues;

Campaign for or against candidates in partisan elections;

Make campaign speeches for candidates in partisan elections;

Distribute campaign literature in partisan elections;

Run for public office in nonpartisan elections;

Join and be active in political parties or clubs;

Hold office in political clubs and party organizations;

Sign nominating petitions;

Assist in voter registration drives;

Contribute money to political organizations;

Attend political fundraising functions; and

Attend and participate actively at political rallies and events.

(b) However, you may not:

Run for public office in partisan elections;

Use official authority to interfere with an election;

Engage in political activity while on duty, while in a Government office, or while using a Government vehicle;

Collect political contributions, unless you and the potential donor are both members of the same Federal labor organization (or similar employee organization) and the potential donor is not your subordinate;

Solicit political contributions from the general public; or

Encourage or discourage the political activity of any person who has business before the Foundation.

BE CAREFUL: The new law contains criminal penalties for anyone found guilty of attempting to intimidate or coerce a Federal employee to engage (or not engage) in political activity.

§72 Hatch Act Summary for Career SES Employees.

(a) If you are a career member of the Senior Executive Service, you may:

Register and vote as you choose in any election;

Contribute to a political party or candidate, though you may not be pressured to do so because of your Federal employment;

Be a member of a political party or other political organization. (You may attend party meetings and vote on issues, but you may not be involved in managing or leading the organization -- see subsection (b));

Sign political petitions, including nominating petitions, but you may not circulate such petitions for others to sign; and

Write, call, or visit any Federal, state, or local political official (including, for example, your Congressman) to express your views on any political issue and on how the official should vote or act on the issue.

(b) However, you may not:

Take an active part in leading or managing a political party:

Run for public office, except that:

You may run in an election where no candidate runs representing any national political party. (Currently, this means the Democratic or Republican party, but if another party wins electoral votes in a Presidential election, that could change.)

You may run for office in most of the local political jurisdictions in the Washington, D.C. area if you run as an independent not representing any political party, national or otherwise. (To be sure that your jurisdiction is among those in which this is permitted, check with an ethics counselor in OGC.)

Participate in election campaigning, except that:

You may campaign for a candidate in an election in which no candidate runs as representing any national political party.

If you could be an independent candidate in a local election described above, you may campaign for an independent candidate in such an election.

Use your official authority or influence for political purposes.

PART VIII. -- FINANCIAL DISCLOSURE

§80 Who Must Make Financial Disclosure.

§81 Financial Disclosure Requirements for Senior Employees.

§82 Financial Disclosure Requirements for Other Program Officers, Grants and Contracts Officers, Auditors and Investigators, and Lawyers.

§83 Where to File.

§84 Penalties for Noncompliance; Late Reports.

§80 Who Must Make General Financial Disclosure.

(a) If you are an executive level or SES employee, you are a "senior employee" and must file public financial disclosure reports (Standard Form 278). See section 81.

(b) If you are not a "senior employee", but serve as a program officer, a grants and contracts officer or equivalent, an auditor or investigator, or the like, you must file confidential financial disclosure reports (OGE 450). See section 82.

(c) If you are in neither of these categories, no general financial disclosure is required of you. You may ignore the rest of this Part.

(d) If you are required to file financial disclosure reports, the Foundation will supply you with the necessary forms. You may ask for them when you need them, but normally they will be sent to you automatically, with instructions.

§81 Financial Disclosure Requirements for Senior Employees.

(a) If you are a senior employee you must file an initial financial disclosure report within 30 days after you first come to the Foundation or are promoted into a senior-employee position. You must thereafter file an annual report by May 15 of each year. And you must file a termination report within 30 days after you leave the Government.

(b) The law requires the NSF to make each report you file available to the public within 30 days after you file it. A person who wants to see or copy your report must make a written request to OGC.

§82 Financial Disclosure Requirements for Program Officers, Grants and Contracts Officers, Auditors, and Lawyers.

(a) If you are one of those who must file confidential financial disclosure reports, you must file an initial report within 30 days after you are first appointed to a covered position either by promotion or as a new NSF employee. You must thereafter file a report each year by October 31. No termination report is required.

(b) Your reports will be held in the strictest confidence allowed by law. The Office of the General Counsel will keep them in a locked file and will release them or allow disclosure of information from them only under the Privacy Act or other applicable laws.

§83 Where to File.

You must file your reports with the Office of the General Counsel. An ethics counselor will help with problems or questions that arise in completing the forms, and is required by law to review your report after you file it. The ethics counselor may contact you about any errors you make in filling out the form or about ethics questions that are raised by what you report.

§84 Penalties for Noncompliance; Late Reports.

(a) If you fail to file a required report, fail to include information required to be reported, or report false information, you are subject to disciplinary action. If you do any of those things knowingly or willfully, the law requires the Foundation to report these acts to the Justice Department, which has authority to enforce the disclosure requirements against any knowing or willful violation by suits seeking civil penalties of up to \$10,000.

(b) If you file a public financial disclosure report (SF 278) more than thirty days late, you will be assessed a \$200 late filing fee. Limited extensions of time to file may be granted for good cause. You may request such an extension by contacting an ethics counselor in OGC.

Part IX --Restrictions on Employment after Government Service

This section briefly highlights the restrictions on your employment activities after you leave NSF. OGC's ethics official is available to provide more specific advice on these "post-employment" restrictions, both before and after you terminate NSF employment.

18 U.S.C. § 207

This criminal law does not bar employment with any particular employer. Rather, its restrictions address certain activities that involve, or may appear to involve, the unfair use of prior NSF employment.

- Lifetime Bar - You are barred permanently from trying to influence any Federal agency or court, by communications or appearances on behalf of someone other than yourself or the

United States (i.e., "representational contacts"), on a matter that has parties (such as a contract, grant, or lawsuit), if you have worked on that matter as an NSF employee.

- Supervisory Bar - If the matter was under your official responsibility during your last year of Government service, even if you did not personally participate in it, you are barred from making representational contacts about that matter for two years.
- One Year Cooling Off Period - You are restricted for one year from making any representational contacts to NSF on any matter, regardless of whether the matter involves parties and even if you did not work on the matter.
- If you were involved in certain large procurements or in the administration of contracts, you may not be able to accept compensation from certain contractors for one year.

Summary for Avoiding Trouble

Understanding the Federal ethics laws that govern your conduct while you are looking for a job and after you terminate Government service can be challenging. If you have any questions, you should seek help from OGC's ethics official.

APPENDIX

Related Statutes

The prohibition against lobbying with appropriated funds (18 U.S.C. §1913).

The prohibitions against disloyalty and striking (5 U.S.C. §7311, 18 U.S.C. §1918).

The prohibitions against disclosure of classified information (18 U.S.C. §798, 50 U.S.C. §783) and disclosure of confidential information (18 U.S.C. §1905).

The provision relating to habitual use of intoxicants to excess (5 U.S.C. §7352).

The prohibition against misuse of a Government vehicle (31 U.S.C. §1344).

The prohibition against misuse of the franking privilege (18 U.S.C. §1719).

The prohibition against interference with civil service examinations (18 U.S.C. §1917).

The prohibition against fraud or false statements in a Government matter (18 U.S.C. §1001).

The prohibition against concealing, mutilating, or destroying a public record (18 U.S.C. §2071).

The prohibition against counterfeiting or forging transportation requests (18 U.S.C. §508).

The prohibitions against embezzling Government money or property (18 U.S.C. §641); failing to account for public money (18 U.S.C. §643); and embezzling the money or property of an employee by reason of his employment (18 U.S.C. §654).

The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. §285).

The prohibition against acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. §219).

The prohibition against participation in the appointment or promotion of a relative (5 U.S.C. §3110).

The prohibition against certain personnel practices (5 U.S.C. §2302).

The prohibition against solicitation or receipt of bribes (18 U.S.C. §201).

The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. §211).

The prohibition against conspiracy to commit an offence or to defraud the United States (18 U.S.C. §371).