

## Table of Applicable Authorities for Outside Activities Analyses

Applicable Authority	Summary of Authority	Key Questions
<p>18 USC 203</p> <p><b>Bar on Receipt of Compensation for Representational Services</b></p> <p><b>Note-More limited restrictions apply to SGEs.</b></p>	<p>An employee may not receive compensation for the representation of anyone before any agency or court of the US (and certain other entities) on a matter in which the United States is a party or has a direct and substantial interest. This prohibition applies whether the employee renders the representation himself or shares in compensation from someone else's representation.</p>	<p>Will the activity be compensated?</p> <p>Will the compensation be in consideration for a representation before an agency or court of the US (or other specified entity)?</p> <p>Will the representation be in connection with a matter in which the US is a party or has a direct and substantial interest?</p> <p>Do any of the exceptions at (d)-(f) apply?</p>
<p>18 USC 205</p> <p><b>Bar on Representations Before the Government</b></p> <p><b>Note-More limited restrictions apply to SGEs.</b></p>	<p>An employee may not act as an agent or attorney for prosecuting any claim against the US nor may he receive any gratuity or share in consideration for his assistance in prosecuting such claim.</p> <p>An employee may not act as an agent or attorney or otherwise represent anyone before an agency or court of the US (and certain other entities), with or without compensation, on a matter in which the United States is a party or has a direct and substantial interest.</p>	<p>Will the activity involve a claim against the US?</p> <p>Will the activity be compensated?</p> <p>Will the activity involve the employee making a representation before an employee of a federal agency or court (or other specified entity)?</p> <p>Will the representational activity be on behalf of a third party?</p> <p>Will the representational activity be in connection with a matter in which the US is a party or in which it has a direct and substantial interest?</p> <p>Do any of the exceptions at (d)-(i) apply?</p>

<p>18 USC 208</p> <p><b>Bar on Acting in Matters Affecting a Financial Interest</b></p>	<p>An employee is prohibited from participating personally and substantially in a particular government matter if that matter will have a direct and predictable effect on the employee's own financial interest or on the interests of others that are imputed to him under the statute.</p>	<p>Will the federal employee be serving the outside entity as an:  officer  director  trustee  general partner, or  employee?</p> <p>Has the employee already negotiated for or does he have an arrangement for employment with the outside entity?</p> <p>Does the employee work on matters or is he likely to work on matters that could affect the interests of the outside entity?</p> <p>Does the employee work on matters that could affect his own financial interest in the outside activity (e.g. a consulting or other fee for service)?</p> <p>Does any exemption under 5 CFR part 2640 apply?</p>
<p>18 USC 209</p> <p><b>Bar on Receiving Salary or a Supplementation of Salary from Any Source but the Government</b></p> <p><b>*Note-This statute does NOT apply to SGEs.</b></p>	<p>An employee is prohibited from receiving any salary or contribution to or supplementation of salary from anyone but the Federal government as compensation for services as a government employee.</p>	<p>Is the outside activity compensated?</p> <p>Is it truly an "outside activity" and not an official duty activity?</p> <p>Does the outside activity involve services that are the same as the employee's official duties?</p> <p>Are there any "benefits" being offered in consideration for services?</p> <p>Are those benefits "customary" or are they specific to or contingent upon government service?</p> <p>Do any statutory "exceptions" apply?</p>

<p>5 CFR 2635.201-205</p> <p><b>Gifts from Outside Sources</b></p>	<p>An employee is prohibited from soliciting or accepting a gift from a prohibited source, or that is given because of his official position.</p>	<p>Is the item or benefit a gift?</p> <p>Is the outside entity a prohibited source?</p> <p>Is the gift a result of an outside business or employment activity of the employee?</p> <p>Is the gift being offered or enhanced because of the employee's official status?</p>
<p>5 CFR 2635.502</p> <p><b>Impartiality in Performing Official Duties</b></p>	<p>An employee should not participate in a particular matter involving specific parties in which he knows a person with whom he has a covered relationship is or represents a party if a reasonable person would question his impartiality.</p>	<p>Does the employee have a covered relationship with the outside entity?</p> <p>Does the outside entity appear before the agency?</p> <p>Does the employee work on, or is he likely to work on, government matters that involve the outside entity?</p>
<p>5 CFR 2635.702-705</p> <p><b>Misuse of Position</b></p>	<p>An employee shall not use his public office for his own private gain or for the private gain of others with whom he is affiliated in a nongovernmental capacity.</p> <p>An employee shall not use or permit the use of his position, title or authority to: induce or coerce a benefit; to imply that his agency or the government sanctions or endorses his personal activities; or to endorse any product, service or enterprise.</p> <p>An employee shall not misuse: nonpublic information; government property; or official time.</p>	<p>Is there any indication that the employee used his government position to obtain the outside position?</p> <p>How will the employee be identified in connection with the outside activity?</p> <p>Will the employee use any nonpublic information?</p> <p>Will any use of government time or government property be involved/permitted?</p>
<p>5 CFR 2635.802</p> <p><b>Conflicting Outside Employment and Activities</b></p>	<p>An employee shall not engage in outside employment or any outside activity if:</p> <p>It is prohibited by statute or regulation; or</p> <p>If it would require the employee's disqualification from matters so central or critical to the</p>	<p>Is the proposed employment or activity prohibited by agency statute or regulation?</p> <p>Would the outside activity create any disqualifications for the employee under the conflict of interest or impartiality provisions?</p>

	performance of his duties that it would materially impair his ability to perform his job.	How substantial are those disqualifications?
5 CFR 2635.805 <b>Service as an Expert Witness</b>  <b>*Note-More limited restrictions apply to SGEs.</b>	An employee shall not serve as an expert witness (other than on behalf of the US) with or without compensation, in any proceeding before a court or agency of the US, where the US is a party or has a direct and substantial interest unless authorized.	Does the outside activity involve the provision of services as an expert witness, as opposed to a fact witness?  Will the expert witness testimony be provided before a court or agency of the US?  Is the US a party or does it have a direct and substantial interest in the proceeding?  May authorization be given per 2635.805(c)?
5 CFR 2635.807 <b>Teaching, Speaking and Writing</b>	An employee shall not receive outside compensation for teaching, speaking or writing that relates to the employee's official duties per 2635.807(a)(2)(i).	Will employee receive "compensation" for the teaching, speaking or writing as defined in 2635.807(a)(2)(iii)?  Does the teaching, speaking or writing relate to the employee's duties as defined in 2635.807(a)(2)(i)?  For teaching ONLY, does the activity fall within the exception for certain courses at 2635.807(a)(3)?  How will the employee be identified in connection with the teaching, speaking or writing?
5 CFR 2635.808 <b>Fundraising Activities</b>	Any fundraising <b><u>in the federal workplace</u></b> must be conducted in accordance with 5 CFR Part 950 (the "CFC regulations.")  In addition:  An employee may engage in fundraising in his official capacity if he is authorized to do so according to his agency's	Will the employee be participating in an event where fundraising will take place?  Is the employee's participation in the activity official or personal?  What is the nature of the

	<p>authority to engage in such activity.</p> <p>An employee may engage in fundraising in his personal capacity provided he does NOT:</p> <p>Solicit funds from a subordinate or from anyone known to the employee to be a prohibited source; and</p> <p>Use or permit the use of his title, position or authority to further the fundraising effort.</p>	<p>employee's participation in the activity?</p> <p>Will the employee be engaging in fundraising on behalf of the outside entity?</p> <p>Is the outside entity a prohibited source?</p> <p>Who is being solicited in the fundraising activity?</p> <p>How will the employee be identified in connection with the fundraising activity?</p>
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## Additional Restrictions for Presidential Appointees and Other Non-Career Employees

Applicable Authority	Summary of Authority	Key Questions
<p>5 CFR 2635.804</p> <p><b>Outside Earned Income Limitations</b></p> <p>See also 5 CFR 2636.301-304</p>	<p>A Presidential appointee to a full time non-career position shall not receive any outside earned income for any outside activity performed during that Presidential appointment.</p> <p>Covered non-career employees as defined in 2626.303(a) may not in any calendar year receive outside earned income attributable to that calendar year which exceeds 15 percent of the rate of basic pay for level II of the Executive Schedule.</p>	<p>Is the employee a Presidential appointee to a full time non-career position?</p> <p>Is the employee a covered non-career employee as defined in 2636.303(a)?</p> <p>Is the outside activity compensated?</p> <p>Is the compensation "outside earned income" as defined in 2626.303(b)?</p> <p>What is the amount of the expected "outside earned income?"</p>
<p>5 CFR 2636.305</p> <p><b>Compensation and Other Restrictions Relating to Professions Involving a Fiduciary Relationship</b></p>	<p>A covered non-career employee shall not:</p> <p>Receive compensation for practicing a profession involving a fiduciary relationship, or for affiliating with or being employed by an entity which provides professional services involving a fiduciary relationship.</p> <p>Permit his name to be used by any entity which provides professional services involving a fiduciary relationship.</p>	<p>Is the employee a covered non-career employee?</p> <p>Is the activity compensated?</p> <p>Does the activity involve the provision of professional services involving a fiduciary relationship, as defined in 2636.305(b), either as a sole practitioner or as an employee or affiliate of an entity that provides such services?</p> <p>Will the employee's name be used by the outside entity in connection with the provision of such services?</p>
<p>5 CFR 2636.306</p> <p><b>Compensation Restriction for Service as an Officer or Member of a Board</b></p>	<p>A covered non-career employee shall not receive compensation for serving as an officer or member of the board of any association, corporation or other entity.</p>	<p>Is the employee a covered non-career employee?</p> <p>Is the activity compensated?</p> <p>Does the activity involve service as an officer or member of the board of an outside entity?</p>
<p>5 CFR 2626.307</p> <p><b>Requirements for Advanced Authorization to Engage in Teaching for</b></p>	<p>A covered non-career employee may receive compensation for teaching only when specifically authorized in advance by the</p>	<p>Is the employee a covered non-career employee?</p> <p>Does the activity meet the definition of "teaching" per</p>

<b>Compensation</b>  <b>*Note-only the DAEO or ADAEO may authorize compensation under this part.</b>	designated agency ethics official.	2636.307(b)?  Will the activity be compensated? Does the teaching meet the standards for authorization?
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