

the particular circumstances of the reporting individual (including his or her ability to resolve the problem), and other factors which the reviewing official deems relevant. In no case, however, should the date be later than 90 days after the reporting individual is notified of the reviewing official's opinion.

(d) If steps for assuring compliance with applicable laws and regulations are not taken by the date set in paragraph (c) of this section, the matter shall be referred to the Department Ethics Counselor.

§ 73.735-904 Resolution of apparent or actual conflicts of interest.

(a) Disqualification from participating in a particular matter or category of matters is an appropriate method for resolving apparent or actual conflicts of interest when the interest or activity giving rise to the problem:

(1) Bears a direct or indirect relationship to particular, identifiable duties of the employee involved; and

(2) Is not so substantial as to affect or give the appearance of affecting the integrity of the services which the Government may expect of the employee. Whenever disqualification is employed to resolve an apparent or actual conflict of interest, the disqualified employee shall sign a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity. The reviewing official shall keep a file of all such disqualification statements and shall monitor compliance with these statements on a regular basis.

(b) *Change of assignment* is an appropriate method for resolving apparent or actual conflicts of interest when the interest giving rise to the problem bears a direct or indirect relationship to particular, identifiable duties of the employee involved, and those duties constitute a significant portion of the employee's position.

(c) *Waiver* under 18 U.S.C. 208(b) is an appropriate method for resolving apparent or actual conflicts of interest when:

(1) The employee seeking the waiver reported the financial interest that bears some relationship to his or her

official duties, and the reviewing official, in consultation with a deputy ethics counselor or the Department Ethics Counselor, determines that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee; or

(2) By general rule or regulation published in the FEDERAL REGISTER, the Department has exempted the financial interest from the requirements of 18 U.S.C. 208 and this part as being too remote or too inconsequential to affect the integrity of the Government officers' service.

(d) A *trust* containing a financial interest which may give rise to an apparent or actual conflict of interest is an appropriate method of resolving such conflicts when:

(1) The trust is qualified under section 202(f) of the Ethics in Government Act of 1978 (Pub. L. 95-521), as amended, and subject to the regulations of the Office of Government Ethics; or

(2) In the opinion of the Department's Ethics Counselor, it is sufficiently independent of the employee involved so that the integrity of the employee's services to the Government are not compromised.

(e) *Divestiture* is an appropriate method for resolving actual conflicts of interest when the nature of the financial interest is such that the conflict of interest cannot be adequately resolved by any of the methods set forth in paragraphs (a), (b), (c), and (d) of this section.

(f) *Terminating* an appointment as a method for resolving an actual conflict of interest should be used only when it is clear that no other remedy can be found which would be acceptable to both the Department and the employee. Generally, this method will be employed only in the most extreme cases. Such a termination would be subject to adverse action.

Subpart J—Provisions Relating to Experts, Consultants and Advisory Committee Members

§ 73.735-1001 Coverage.

(a) For purposes of this subpart the title "consultant" will be used to include those who are appointed to serve

§ 73.735-1002

as experts, consultants or members of advisory committees. All persons who serve as an employee of the Government in the capacity of a consultant are covered by the provisions of this subpart irrespective of:

- (1) The title by which designated;
- (2) The statutory authority under which services are obtained;
- (3) The duration of the period for which services are obtained;
- (4) Whether services are obtained by appointment or invitation and acceptance;
- (5) Whether services are compensated or rendered without compensation;
- (6) Whether or not services are obtained pursuant to a statute excepting employees or special Government employees from conflict of interest statutes.

(b) When the service is for less than 130 days in a service year, experts, consultants, and advisory committee members are included in the group of employees designated by law (18 U.S.C. 202) as "Special Government employees."

§ 73.735-1002 Ethical standards of conduct.

(a) Like other Federal employees, an individual serving in a consultant capacity must conduct himself or herself according to ethical behavior standards of the highest order. In particular, such an individual must:

(1) Refrain from any use of office which is, or appears to be, motivated by a private gain for himself or herself or other persons, particularly those with whom he or she has family, business, or financial ties. The fact that desired gain, if it materializes, will not take place at the expense of the Government makes his or her actions no less improper.

(2) Conduct himself or herself in a manner devoid of any suggestion that he or she is exploiting Government employment for private advantage. A consultant must not, on the basis of any inside information, enter into any speculation or recommend speculation to members of his or her family or business associates, in commodities, land, or the securities of any private company. This injunction applies even though the consultant's duties have no

45 CFR Subtitle A (10-1-02 Edition)

connection whatever with the Government programs or activities which may affect the value of such commodities, land, or securities. He or she should be careful in all personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his or her Government work.

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

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

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

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

(b) Consultants may engage in other employment so long as there is no real

or apparent conflict between the consultant's private employment and his or her official duties. See § 73.735 Subpart G. The regular employment of a consultant who is a special Government employee is not considered outside work for purposes of Subpart G. Also, the limitation in § 73.735-701(f) regarding the amount of an honorarium that may be received does not apply to special Government employees.

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

§ 73.735-1003 Conflicts of interest statutes.

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

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

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

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

(ii) The individual has served the Department for more than 60 days in the immediately preceding period of 365 days, and the matter is one which is pending before the Department. This second restraint applies whether or not

the matter is one in which the individual participated personally and substantially in his or her Government employment. These two provisions apply to a special Government employee on days when he or she does not serve the Government as well as on the days when services are rendered, and they apply to both paid and unpaid representation.

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

(3) Section 205 permits both the Government and the private employer of a special Government employee to benefit, in certain cases, from his or her performance of work under a grant or

§ 73.735-1004

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

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

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

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

45 CFR Subtitle A (10-1-02 Edition)

in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section.

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

§ 73.735-1004 Requesting waivers or exemptions.

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

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

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

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

Department of Health and Human Services

§ 73.735-1005

The campuses of the University of California.

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

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

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

The campuses of the State University of New York.

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

The campuses of the University of Tennessee.

The separate universities comprising the University of Texas System.

The separate universities comprising the University of Wisconsin System.

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

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

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

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

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

The University of Illinois, Illinois State University, Western Illinois University,

Southern Illinois University, and the Illinois Community Colleges.

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

The University of Iowa, and Iowa State University.

The University of Kansas, Kansas State University, Wichita State University, Fort Hays State University, Pittsburg State University, and the Kansas Technological Institute.

Louisiana State University, and other Louisiana State owned institutions of higher education.

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

The University of Michigan, Michigan State University, and Wayne State University.

The University of Minnesota, the Minnesota State University System, and the Minnesota Community College System.

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

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

The State University of New York System, and the City University of New York System.

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

Pennsylvania State University, the University of Pittsburgh, Temple University, Lincoln University, and the other State owned colleges and universities in Pennsylvania.

The University of Texas System, the Texas A&M System, the Texas State University System, the University System of South Texas, the Lamar University System, the University of Houston System, East Texas State University, Stephen F. Austin State University, West Texas State University, Midwestern University, North Texas State University, Texas Southern University, Texas Woman's University, Texas Tech University and Pan American University.

The University of Utah and Utah State University.

[46 FR 7369, Jan. 23, 1981, as amended at 51 FR 15627, Apr. 25, 1986]

§ 73.735-1005 Salary from two sources.

Special Government employees are not subject to 18 U.S.C. 209 which prohibits other employees from receiving any salary, or supplementation of Government salary, from a private source as a compensation for services to the

§ 73.735-1006

Government. This Department will not knowingly pay per diem to a consultant who also receives per diem pay for the same day from another Government agency (in or outside the Department). Erroneous payments in contravention of this provision will be subject to collection, and any consultant who willfully collects double payments may be barred from further employment.

§ 73.735-1006 Reporting financial interests.

(a) Consultants who will work more than 60 days in a calendar year are subject to the provisions of title II of the Ethics in Government Act of 1978 when their rate of pay is equal to or greater than the basic rate for GS-16, Step 1. Such consultants are covered by the reporting requirements of § 73.735-901 of these regulations.

(b) Consultants not subject to the Ethics in Government Act shall file statements of financial interests as provided by § 73.735-902 of these regulations.

§ 73.735-1007 Political activity.

Consultants who serve intermittently are subject to the political activity restrictions of Subchapter III of Chapter 73 of Title 5 U.S.C. and Civil Service Rule IV only on days on which service is rendered and then for the entire 24 hours of such service day. Other consultants are subject to these restrictions at all times.

Subpart K—Special Government Employees Other Than Consultants

§ 73.735-1101 General provision.

Individuals who are designated as special Government employees because of the nature of their services but who are not serving as a consultant, expert, or advisory committee member are subject to the provisions of Subparts B through I of these regulations. However, the provisions of 18 U.S.C. 205, 206, 207, and 208 apply to them only as described in Subpart J. Also, the limitation in § 73.735-701(f) on the amount of an honorarium that may be received does not apply.

45 CFR Subtitle A (10-1-02 Edition)

Subpart L—Disciplinary Action

§ 73.735-1201 General provisions.

(a) Violations of the regulations contained in the Part may be cause for disciplinary action which could be in addition to any penalty prescribed by law. (For a list of some offenses for which disciplinary action may be taken and “The Code of Ethics for Government Service,” the violation of which may also result in disciplinary action, see Appendixes A and B of this Part).

(b) The type of disciplinary action to be taken must be determined in relation to the specific violation. Those responsible for recommending and for taking disciplinary action must apply judgment to each case, taking into account the general objectives of meeting any requirements of law, deterring similar offenses by the employee and other employees, and maintaining high standards of employee conduct and public confidence. Some types of disciplinary action which may be considered are:

- (1) Admonishment
- (2) Written reprimand
- (3) Reassignment
- (4) Suspension
- (5) Demotion
- (6) Removal

(c) Suspension, demotion, and removal are adverse actions; and when such actions are taken, applicable laws, regulations, and policies must be followed.

[46 FR 7369, Jan. 23, 1981, as amended at 53 FR 4409, Feb. 16, 1988]

Subpart M—Reporting Violations

§ 73.735-1301 Responsibility for reporting possible criminal violations.

An employee who has information which he or she reasonably believes indicates a possible offense against the United States by an employee of the Department, or any other individual working on behalf of the Department, shall immediately report such information to his or her supervisor, any management official, or directly to the Office of the Inspector General. Offenses covered by the preceding sentence include, but are not limited to, bribery,