Office of Government Ethics

§ 2635.702

may not participate in an assignment to re-
view a grant application submitted by the
university.

[57 FR 35042, Aug. 7, 1992, as amended at 62
FR 48748, Sept. 17, 1997; 64 FR 13064, Mar. 17,
1999]

§ 2635.606 Disqualification based on an
arrangement concerning prospective employment or otherwise after
negotiations.

(a) Employment or arrangement con-
cerning employment. An employee shall
be disqualified from participating per-
sonally and substantially in a par-
ticular matter that has a direct and
predictable effect on the financial in-
terests of the person by whom he is em-
ployed or with whom he has an ar-
rangement concerning future employ-
ment, unless authorized to participate
in the matter by a written waiver
issued under the authority of 18 U.S.C.
208 (b)(1) or (b)(3), or by a regulatory
exemption under the authority of 18
U.S.C. 208 (b)(2). These waivers and ex-
emptions are described in §2635.402(d).
See also subparts B and C of part 2640
of this chapter.

Example 1: A military officer has accepted
a job with a defense contractor to begin in
six months, after his retirement from mili-
tary service. During the period that he re-
mains with the Government, the officer may
not participate in the administration of a
contract with that particular defense con-
tractor unless he has received a written
waiver under the authority of 18 U.S.C.
208(b)(1).

Example 2: An accountant has just been of-
fered a job with the Comptroller of the Cur-
rency which involves a two-year limited ap-
pointment. Her private employer, a large
corporation, believes the job will enhance
her skills and has agreed to give her a two-
year unpaid leave of absence at the end of
which she has agreed to return to work for
the corporation. During the two-year period
she is to be a COC employee, the accountant
will have an arrangement concerning future
employment with the corporation that will
require her disqualification from participa-
tion in any particular matter that will have
a direct and predictable effect on the cor-
poration’s financial interests.

(b) Offer rejected or not made. The
agency designee for the purpose of
§2635.502(c) may, in an appropriate
case, determine that an employee not
covered by the preceding paragraph
who has sought but is no longer seek-
ing employment nevertheless shall be
subject to a period of disqualification
upon the conclusion of employment ne-
gotiations. Any such determination
shall be based on a consideration of all
the relevant factors, including those
listed in §2635.502(d), and a determina-
tion that the concern that a reasonable
person may question the integrity of
the agency’s decisionmaking process
outweighs the Government’s interest
in the employee’s participation in the
particular matter.

Example 1: An employee of the Securities
and Exchange Commission was relieved of
responsibility for an investigation of a
broker-dealer while seeking employment
with the law firm representing the broker-
dealer in that matter. The firm did not offer
her the partnership position she sought.
Even though she is no longer seeking em-
ployment with the firm, she may continue
to be disqualified from participating in the in-
vestigation based on a determination by the
agency designee that the concern that a rea-
sonable person might question whether, in
view of the history of the employment nego-
tiations, she could act impartially in the
matter outweighs the Government’s interest
in her participation.

Subpart G—Misuse of Position

§ 2635.701 Overview.

This subpart contains provisions re-
lating to the proper use of official time
and authority, and of information and
resources to which an employee has ac-
cess because of his Federal employ-
ment. This subpart sets forth standards
relating to:
(a) Use of public office for private
gain;
(b) Use of nonpublic information;
(c) Use of Government property; and
(d) Use of official time.

§ 2635.702 Use of public office for pri-
vate gain.

An employee shall not use his public
office for his own private gain, for the
endorsement of any product, service or
enterprise, or for the private gain of
friends, relatives, or persons with
whom the employee is affiliated in a
nongovernmental capacity, including
nonprofit organizations of which the
employee is an officer or member, and
persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative’s consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company’s filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm’s export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend’s agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated 18 U.S.C. 203.

(b) Appearance of governmental sanction. Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by §2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

(c) Endorsements. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:

(1) In furtherance of statutory authority to promote products, service or enterprises; or

(2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency’s mission.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and
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§2635.703 Use of nonpublic information.

(a) Prohibition. An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;

(2) Is designated as confidential by an agency; or

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Example 1: A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate Federal securities statutes as well as this section.

Example 2: A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.

Example 3: An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. The Federal Acquisition Regulation in 48 CFR parts 3, 14 and 15 restricts the release of information specifically protected by 41 U.S.C. 423.

Example 4: An employee of the Nuclear Regulatory Commission inadvertently included a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee’s disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.

Example 5: An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

explain the advantages of procurement from the United States company.

Example 3: The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed images of this type in television commercials portraying it as a “trustee of the environment for future generations.”

Example 4: An Assistant Attorney General may not use his official title or refer to his Government position in a book jacket endorsement of a novel about organized crime written by an author whose work he admires. Nor may he do so in a book review published in a newspaper.