

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him \$50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of \$50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) *Former employer* includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) *Waiver of disqualification.* The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

Subpart F—Seeking Other Employment

SOURCE: 81 FR 48688, July 26, 2016, unless otherwise noted.

§ 2635.601 Overview.

This subpart contains a recusal requirement that applies to employees when seeking non-Federal employment with persons whose financial interests would be directly and predictably af-

ected by particular matters in which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee not participate personally and substantially in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of a person "with whom the employee is negotiating or has any arrangement concerning prospective employment." See § 2635.402 and § 2640.103 of this chapter. Beyond this statutory requirement, this subpart also addresses issues of lack of impartiality that require recusal from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations. In addition, this subpart contains the statutory notification requirements that apply to public filers when they negotiate for or have agreements of future employment or compensation. Specifically, it addresses the requirements of section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Public Law 112-105, 126 Stat. 303, 5 U.S.C. app. 101 note, that a public filer must submit a written statement identifying the entity involved in the negotiations or agreement within three business days after commencement of such negotiations or agreement and must submit a notification of recusal whenever there is a conflict of interest or an appearance of a conflict of interest.

§ 2635.602 Applicability and related considerations.

(a) *Applicability.* (1) To ensure that an employee does not violate 18 U.S.C. 208(a), section 17 of the STOCK Act, or the principles of ethical conduct contained in § 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment must comply with the applicable recusal requirements of §§ 2635.604 and 2635.606 if particular matters in which the employee will be participating personally and substantially would, to the employee's knowledge, directly and predictably affect the financial interests of a prospective employer or of a person with whom the

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employee has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part. In addition, a public filer who negotiates for or has an agreement of future employment or compensation must comply with the requirements of § 2635.607.

(2) An employee who is seeking employment with a person whose financial interests are not, to the employee's knowledge, affected directly and predictably by particular matters in which the employee participates personally and substantially has no obligation to recuse under this subpart. In addition, nothing in this subpart requires an employee, other than a public filer, to notify anyone that the employee is seeking employment unless a notification is necessary to implement a recusal pursuant to § 2635.604(b). A public filer who negotiates for or has an agreement of future employment or compensation must comply with the notification requirements in § 2635.607. An employee may, however, be subject to other statutes that impose requirements on employment contacts or discussions, such as 41 U.S.C. 2103, which is applicable to agency officials involved in certain procurement matters. Employees are encouraged to consult with their ethics officials if they have any questions about how this subpart may apply to them. Ethics officials are not obligated by this subpart to inform supervisors that employees are seeking employment.

Example 1 to paragraph (a): Recently, an employee of the Department of Education submitted her resume to the University of Delaware for a job opening that she heard about through a friend. The employee has begun seeking employment. However, because she is not participating in any particular matters affecting the University of Delaware, she is not required to notify anyone that she has begun seeking employment.

Example 2 to paragraph (a): The employee in the preceding example has been approached about an employment opportunity at the University of Maryland. Because the University of Maryland has applied for grants on which she has been assigned to work in the past, she wants to make certain that she does not violate the ethics rules. The employee contacts her ethics official to discuss the matter. The employee informs the ethics official that she is not currently partici-

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pating in any particular matters affecting the University of Maryland. As a result, the ethics official advises the employee that she will have no notification obligations under this subpart. However, the ethics official cautions the employee that, if the employee is assigned to participate in a particular matter affecting the University of Maryland while she is seeking employment with the University, she must take whatever steps are necessary to avoid working on the grant, in accordance with § 2635.604.

(b) *Related restrictions—(1) Outside employment while a Federal employee.* An employee who is contemplating outside employment to be undertaken concurrently with the employee's Federal employment must abide by any limitations applicable to the employee's outside activities under subparts G and H of this part, including any requirements under supplemental agency regulations to obtain prior approval before engaging in outside employment or activities and any prohibitions under supplemental agency regulations related to outside employment or activities. The employee must also comply with any applicable recusal requirement of this subpart, as well as any applicable recusal requirements under subpart D or E of this part as a result of the employee's outside employment activities.

(2) *Post-employment restrictions.* An employee who is contemplating employment to be undertaken following the termination of the employee's Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. The regulation implementing the Governmentwide post-employment statute, 18 U.S.C. 207, is contained in part 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 2104.

(3) *Interview trips and entertainment.* Where a prospective employer who is a prohibited source as defined in § 2635.203(d) offers to reimburse an employee's travel expenses, or provide other reasonable amenities incident to employment discussions, the employee

may accept such amenities in accordance with § 2635.204(e)(3). Where a prospective employer is a foreign government or international organization, the employee must also ensure that he or she is in compliance with the Foreign Gifts and Decorations Act, 5 U.S.C. 7342.

§ 2635.603 Definitions.

For purposes of this subpart:

(a) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

Example 1 to paragraph (a): An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2 to paragraph (a): An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

Example 3 to paragraph (a): An employee at the Department of Energy volunteers without compensation to serve dinners at a homeless shelter each month. The employee's uncompensated volunteer services in this case are not considered an employment or business relationship for purposes of this subpart.

(b) An employee is *seeking employment* once the employee has begun seeking employment within the meaning of paragraph (b)(1) of this section and until the employee is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if the employee has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a) and section 17 of the STOCK Act, the term *ne-*

gotiations means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was for the sole purpose of requesting a job application; or

(iii) Made a response, other than rejection, to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1 to paragraph (b): A paralegal at the Department of the Army is in his third year of law school. During a discussion with his neighbor, who is a partner in a large law firm in the community, the neighbor invited him to visit her law firm. The paralegal took her up on the offer and met with an associate at the firm. The associate shared with the paralegal her experiences looking for a legal position, discussed what she does in her position at the law firm, and explained why she chose her current law firm. There was no discussion of possible employment with the firm. The Army paralegal is not seeking employment at this time. The purpose of the visit was informational only.

Example 2 to paragraph (b): An employee of the Defense Contract Audit Agency (DCAA) is auditing the overhead accounts of an