

other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

- (i) In which the United States is a party;
- (ii) In which the United States has a direct and substantial interest; or
- (iii) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(2) Except as provided in paragraph (b)(2) of this section:

- (i) Serving as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, employee, advisory committee member, or active participant for a prohibited source; or
- (ii) Engaging in teaching, speaking, consulting, or writing that relates to the employee's official duties.

(b) Unless the services are to be provided for compensation, including reimbursement for transportation, lodging and meals:

(1) Prior approval is not required by paragraph (a)(1) of this section to provide services as an agent or attorney for, or otherwise to represent, another Department of Education employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; and

(2) Prior approval is not required by paragraph (a)(2) of this section:

(i) To participate in the activities of a: (A) Social, fraternal, civic, or political entity;

(B) Religious entity that is not a prohibited source; or

(C) Parent-Teacher Association or similar parent organization at the employee's child's school or day care center, other than as a member of a board of directors or other governing body of the school or center, or the educational agency of which it is a part; or

(ii) To provide direct instructional, social, or medical services to students or other individuals.

(c) An employee who is required by paragraph (a) of this section to obtain prior written approval shall submit a written request for approval in accordance with Department procedures.

(d) The cognizant reviewing official shall grant approval unless he or she determines that the outside activity is expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635.

(e) For the purposes of this section:

(1) "Active participant" has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) "Prohibited source" has the meaning set forth in 5 CFR 2635.203(d).

(3) "Relates to the employee's official duties" means that the activity meets one or more of the tests described in 5 CFR 2635.807(a)(2)(i) (B) through (E). It includes, in relevant part:

(i) Activities an employee has been invited to participate in because of his or her official position rather than his or her expertise in the subject matter;

(ii) A situation in which an employee has been asked to participate in an activity by a person or organization that has interests that may be substantially affected by the performance or nonperformance of the employee's official duties;

(iii) Activities that convey information derived from nonpublic information gained during the course of Government employment; and

(iv) Activities that deal in significant part with any matter to which the employee is or has been officially assigned in the last year, any ongoing or announced Department policy, program or operation, or—in the case of certain noncareer employees—any matter that is generally related to education or vocational rehabilitation.

Example 1: A Department employee witnessed an automobile accident involving two privately owned cars on her way to work. Some time later she is served with a subpoena at home to appear in Federal court as a fact witness on behalf of the plaintiff, who was injured in the car accident, in a civil case alleging negligence. The Department employee is not required to obtain prior approval to comply with the subpoena because this civil case is not a matter in which the United States is a party or has a direct and substantial interest.

Example 2: A Department employee would like to prepare Federal tax returns for clients on his own time. He is required to obtain prior approval to participate in this outside activity because it involves the provision of personal services in the preparation of materials for submission to the Internal Revenue Service, an executive branch agency.

Example 3: Arlene, a Department employee, has been asked by a Department colleague to represent him, without compensation, in an equal employment opportunity complaint he filed alleging that his supervisor failed to promote him because he is over 40 years old. Arlene is not required to obtain prior approval under this regulation before providing such representation because it involves services for another Department of Education employee in connection with a personnel administration proceeding. However, under 18 U.S.C. section 205, she may only provide such representation if it is not inconsistent with faithful performance of her duties.

Example 4: A local school board offers a Department employee a paid position as a referee of high school football games. The

employee must seek prior approval to accept this outside employment because the local school board is a prohibited source. If, on the other hand, the employee volunteered to coach soccer, without pay, in a sports program sponsored by the local school board, no prior approval is required because she would be engaging in direct instructional services to students.

Example 5: A Department program specialist in the Office of Elementary and Secondary Education actively pursues an interest in painting. The community art league, where he has taken evening art classes, asks him if he would be interested in teaching an evening course on painting with acrylics. The employee is not required to obtain approval prior to accepting this employment. The community art league is not a prohibited source, and the subject matter of the course is not related to his duties.

Example 6: A Department employee helps organize local tennis tournaments. A national tennis magazine calls and asks her to write a monthly column about recreational tennis in her area. The magazine offers to pay the employee \$500 for each column. The subject matter is not related to her duties, and the employee is not required to seek prior approval to write this column. However, the employee is still subject to all of the Standards of Conduct and other laws that may apply, including the limitation on outside earned income for certain noncareer employees, as well as the prohibition on using Government resources to pursue outside activities and employment.

Example 7: An employee's elderly parent is retired and receiving Social Security benefits. The employee would like to represent his parent in an administrative hearing before the Social Security Administration concerning a dispute over benefits. The employee must obtain prior approval to undertake the activity of representing his parent because he is providing services to his parent in a particular matter in which the United States is a party. Moreover, the services will involve representation before a Federal agency.

TITLE 34—EDUCATION

2. Part 73 of Title 34 is revised to read as follows:

PART 73—STANDARDS OF CONDUCT

Sec.

73.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

73.2 Conflict of interest waiver.

Appendix to Part 73—Code of Ethics for Government Service

Authority: 5 U.S.C. 301, 7301; 18 U.S.C. 208; and E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306.

§ 73.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Department of Education are subject to the executive