United States Department of Agriculture
Office of Ethics – Farm, Conservation, & Rural Programs Branch
Guidance: Request for Prior Approval of Outside Activity / Employment

Definition of Employment 5 C.F.R. 8301.102(b): "Employment" means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses. It also includes, irrespective of compensation, the following outside activities. (1) Providing personal services as a consultant or professional, including service as a witness or as an attorney; and (2) Providing personal services to a ***for-profit*** entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice or counsel.

Serving as a Trustee: The interests of a private non-profit are attributable to an employee serving as a trustee under 18 U.S.C. § 208 the employee would have to disclose this position on his/her financial disclosure form. Employees only need to seek prior approval for trustee positions that are either: 1) compensated; or 2) with a for-profit entity.

Compensated Positions Exempt from Completing Outside Employment Application (Examples are not all-inclusive)

Athletic Programs (Coach, referee, Sports Instructor, gym) **Bail Bondsmen** **Boy/Girl Civic Clubs Leaders** (Girl Scouts, Boy Scouts) **Cashier /Stock Person** (department stores home improvement, supermarkets) **Day Laborer** (Construction, farming, landscape)	**Delivery Drivers** **Desk Clerks/ Waiter/ Bartender)** (Hotel, Restaurants, Cashiers, Valet) **Distributors / Vendors / Sales Staff** (Juice Bowl Distributor, Ushers, Video Sales, Pampered Chef, Amway, Travel & Tours) **Food Service Industry** (Fast Food Restaurants) **First Responders** (Fire Department, EMS)	**Lawn & Garden Maintenance** (Gardner, landscaper) **Musicians / Entertainment Venues** (Music teachers, concert staff, ushers) **Novelty Acts / Adult Entertainment** (Exotic dancers, snake charmers, magicians) **Radio - Television Broadcaster** **Religious Establishments** (Staff, part-time workers) **Sanitation Worker** **Tax Preparers**

Uncompensated positions *with **non-profit** entities would not require prior approval under the regulation*. Examples follow:

- Nature Conservancy, non-profit, Board Member
- Friends of National Public Radio, non-profit, Treasurer

Professional Services and the Scope of the Prior Approval Requirement: 8301.102(b)(1) requires prior approval for positions where an employee is providing personal services as a consultant or professional, regardless of whether the positions are compensated. The USDA Office of Ethics has interpreted "professional services" to mean those services that require a professional license (e.g. work as a physician, lawyer, Certified Public Accountant, real estate agent, appraiser, etc.). Examples follow:

- American Realtors Association, non-profit, President (real estate license required for position)
- National Association of Certified Public Accountants, non-profit, Treasurer (CPA license required for position)

Recusal from Acting in Official Capacity Based Upon Outside Activity or Employment:

Although your position may be "exempt" from the requirement to request prior approval; you are still responsible for recusing yourself from taking any action related to outside activities or employment in your official capacity:

Under 18 U.S.C. § 208, You are prohibited from participating personally and substantially in any particular matter that would have a direct and predictable effect on your financial interests or those of certain other persons or organizations (including trusts) identified in section 208.

Under 5 C.F.R. 2635.502(e), Unless you are specifically authorized to do so by the agency designee, you must not participate in any particular matter involving specific parties where you or the agency designee have concluded that the financial interest of a member of your household, or the role of a person with whom you have a covered relationship, is likely to raise a question in the mind of a reasonable person about your impartiality.

Under 5 C.F.R 2635.702, You shall not use your public office for private gain, for the endorsement or any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom you are affiliated in a nongovernmental capacity, including but not limited to persons with whom you may seek employment or business relations.

Who Is Required to Complete this Form?

- All FSA, NRCS, and RD Federal employees who file the **OGE Form 450** or the **OGE Form 278** (except Special Government Employees).
- All FSA Federal employees not covered by provisions at 5 CFR 8301.102 must submit Outside Employment Form in accordance with **5 CFR 8301.103** before engaging in outside employment with or for persons who the FSA employee knows or reasonably should know is:
  - An FSA program participant or borrower; and
  - Directly affected by decisions made by the particular office in which the FSA employee serves.

Outside Employment Prior Approval Process:

National / Field Offices: Employee completes form and submits to the employee's Immediate Supervisor. Supervisor forwards to the Approving Agency Official for final approval. The Approving Agency Official forwards the completed form to OE-Farm for review and concurrence.

States Offices: Employee completes form and submits to immediate Supervisor. Immediate Supervisor forwards to the Approving Agency Official (State Executive Director / State Conservationist / State Director). The Approving Agency Official forwards the completed form to the State Ethics Contact for forwarding to OE-Farm for review and concurrence.

Note: *If a significant change in the nature of the outside employment or your official position occurs, a new request for prior approval of your outside activities or employment must be submitted.*

United States Department of Agriculture
USDA Office of Ethics (Form USDA OE-101)

REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY

USDA Supplemental Standards of Conduct
(5 CFR 8301.101-102)

☐ Initial Request ☐ Revised Request	DATE

Part I - EMPLOYEE INFORMATION

1. EMPLOYEE'S NAME (Last, First, MI)		
2. AGENCY/PROGRAM (Address)	TELEPHONE, FAX & E-MAIL Phone: Fax: E-Mail:	
3. TITLE OF POSITION	4. GRADE/STEP	5. SALARY $
6. FINANCIAL DISCLOSURE FILING STATUS ☐ Public (SF 278) ☐ Confidential (OGE 450) ☐ Other		
7. NAME OF IMMEDIATE SUPERVISOR	SUPERVISOR'S TELEPHONE, FAX & E-MAIL Phone: Fax: E-Mail:	

Part II - OUTSIDE ACTIVITY INFORMATION

1. **Nature of Outside Activity** - Indicate the type of activity for which you request prior approval, and describe the specific duties or services to be performed:

☐ Professional or Consultative Activity ☐ Teaching, Speaking, Writing or Editing ☐ Board Service

☐ Expert Witness ☐ Other

Describe in detail specific duties or services to be performed :

If you will provide personal services directly to multiple clients, customers, or others, as a self-employed individual or as an independent contractor, alone or jointly with others, check the box below and specify the type of activity or business in which you propose to be engaged. Identify any partners or others with whom you will provide services to. Estimate the total number of clients, customers, or others, to whom you would provide services during the activity period.

☐ Self-Employed Activity/Sole Proprietor Activity **Type of Activity/Business:**

If a written invitation was received for this activity, attach a copy. For activities involving teaching, speaking, or writing, provide a syllabus, outline, summary, synopsis, draft, or similar description of the content and subject matter involved in the course, speech, or written product (including, if available, a copy of the text of any speech) and the proposed text of any disclaimer that indicates *the views expressed do not necessarily represent the views of USDA or the United States*. **Check the applicable boxes** indicating that these materials are attached. If you are unable to provide this information or will be delayed in submitting the attachments, please explain below.

☐ Written Invitation (includes e-mail) ☐ Subject Matter of Activity ☐ Text of Disclaimer

Explain:

2. Outside Employer or Other Entity - Identify the outside employer or entity and the nature of the entity's business for which the proposed activity will be performed. Provide the name and title of a contact person. In Items 3 and 4, provide address and contact information for the outside employer or entity.

OUTSIDE EMPLOYER OR ENTITY NAME AND NATURE OF BUSINESS	
CONTACT PERSON	TITLE

3. Outside Employer or Entity Address and Phone Number

ADDRESS	Phone:	Fax:
	E-mail:	

4. Location - Indicate the City and State where the activity or service will be performed.

CITY: STATE:

5. Travel - Indicate whether travel is involved, and if so, whether the transportation, lodging, meals, or per diem will be at your own expense or provided by the outside employer or entity in-kind or through reimbursement. Describe arrangements and provide estimated costs of items to be furnished or reimbursed by the outside employer or entity.

○ Yes: If "YES" Select One From Drop Down Menu Estimated Amount: $

○ No

Describe:

6. Time - Provide details with respect to the duration of the activity. This request must be resubmitted for approval upon a significant change in the nature of the outside activity or in your official position.

a. Period Covered *(Duration of Activity)*	**b. Estimated Time Devoted to the Proposed Activity**
From: To:	Hours per day Days Per Week Weeks Per Year

c. Will work be performed entirely outside of your normal tour of duty?

Yes No (If "no," estimate the number of hours or days that you will be absent from work and indicate the type of leave to be requested.)

7. Compensation

Indicate whether the activity is compensated, and if so, answer the questions below.

Yes No

a. Method or Basis of Compensation (Check all boxes that apply)

Fee Honorarium Retainer Salary Advance Royalty Stock Stock Options Other

Non-Travel Related Expenses (describe)

b. Payor

If any compensation will be received from a payor other than the employer or entity to which personal services will be provided, identify the payor and explain.

c. Funding Source

Indicate whether any compensation is derived from a USDA grant, contract, cooperative agreement, or other source of federal funding or if the services to be performed are related to an activity funded by USDA regardless of the specific source of the compensation.

Yes *(If "yes," describe)* No

d. Grantee, Contractor or Other Status

For activities involving the provision of consultative or professional services (including teaching), indicate whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, a USDA grant, contract, cooperative agreement, or other funding relationship.

Yes *(If "yes," describe)* No

Part III - OFFICIAL DUTY INFORMATION

1. Nature of Official Duties
Describe the principle duties and responsibilities of your current position. ***Attach a copy of your current position description.***

☐ Position Description Attached

2. Relationship of Official Duties to Outside Activity
Do any of your official duties relate in any way to the proposed activity?

○ No, none of my official duties relate in any way to the proposed outside activity.

○ Yes, my official duties relate to the proposed activity in the following manner:

Explain:

3. Effect of Official Duties on Outside Employer or Entity
In performing your official duties, could either your actions or the matters upon which you may be called upon to work affect the interests of the employer or entity for which the proposed activity will be performed?

○ No, performance of my official duties will not have any effect upon the interests of the employer or entity.

○ Yes, performance of my official duties will have the following effect upon the interests of the employer or entity:

Explain:

4. Assignments Involving Outside Employer or Entity
Have you performed official duty assignments or had other official interactions that involved the employer or entity for which the proposed activity will be performed?

○ No, I have performed no such official duty assignments and have had no such other official interactions

○ Yes, I have either performed such official duty assignments or have had such other official interactions. These assignments and interactions are as follows [indicate approximate dates of assignments and interactions]:

Explain:

5. Employee Certification
I certify that I have read and understand the notice provided in **Part VII** and that the statements made and information provided on this form are complete and accurate to the best of my knowledge. I understand that I am performing this activity in my personal capacity and that my participation is not derived from my Federal position, title or authority; does not entail official positions or policies of USDA; and will not occur on official time nor involve the expenditure of appropriated funds.

I acknowledge that, pursuant to **5 CFR 8301.102(c)**, I must resubmit a request for prior approval upon a significant change in the nature of the outside activity or in my official position.

EMPLOYEE SIGNATURE	DATE

Part IV - SUPERVISOR REVIEW/RECOMMENDATION

1. Summary of Applicable Law

As a supervisor, your obligation and the duty of the employee seeking the outside arrangement are first and foremost to USDA and the successful accomplishment of its mission. If the outside activity is approved, it is part of your supervisory responsibilities to monitor the employee's compliance with applicable ethics laws and regulations.

An outside activity conflicts with official duties if it is prohibited by statute or regulation; or it would require the employee's recusal from matters so central or critical to the performance of his or her official duties that the employee's ability to perform the duties of his or her position would be materially impaired. Such a recusal would likely be required where the outside activity involves an employer or entity that is regulated by, does business with, receives grants or other benefits from, or is otherwise substantially impacted by the programs, policies and operations of the employee's agency.

Consider the following when reviewing this request:

- Do the circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of their official position rather than inherent expertise on the particular subject matter? How was this expertise acquired?
- Was the invitation to engage in the activity extended to the employee, directly or indirectly, by a person or entity who has interests that may be affected substantially by the performance or nonperformance of the employee's official duties?
- Will the information conveyed through the activity draw substantially on ideas or official data that are nonpublic information?
- Does the subject matter relate to any matter(s) to which the employee is presently assigned or has been assigned during the previous one-year period; or to any ongoing or announced policy, program or operation of the agency?
- Is the employee being asked to apply previously published work to specific scenarios posed by a private entity? In this circumstance, it is important to consider whether the employee is continuing to conduct research in the same area as his or her published findings.

If you determine that the subject area of the activity is too closely related to the employee's official duty, and the activity is not appropriate as an outside activity, a separate analysis must be conducted before consideration should be given to whether or not the activity would be more appropriately performed as an official duty. You must conclude that the employee seeking approval to engage in the activity in their official capacity is the appropriate person to represent USDA with respect to that subject matter. It is part of USDA's mission to disseminate information; however, agencies must be careful not to give preferential treatment to one entity, allowing that entity to have an advantage because of the exclusive receipt of government information. Consult your Agency Ethics Official for additional guidance.

2. Immediate Supervisor's Statement (MANDATORY)

Describe the extent to which the employee's official duties are related to the proposed activity. If not related, explain:

3. Recommendation

The undersigned supervisor, identified in Part 1, Item 7, has reviewed the employee's responses, obtained additional information where appropriate, and recommends the following action:

☐ **Recommend Approval**

If this box is checked, the supervisor understands that if the outside activity is approved, the employee may be disqualified from performing official duties that involve or affect any outside entity with which the employee has an outside employment, consulting, or similar relationship. If the activity constitutes employment or service as an officer, director, or trustee, or in another fiduciary role, the recusal obligation may extend not only to government matters that specifically involve or affect the outside entity, but to those matters that affect generally the industry or economic sector in which the outside entity operates. The supervisor understands that any work assignments involving specific or general matters from which the employee will be recused must be reassigned to another employee and are not so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his or her position would be materially impaired.

☐ **Recommend Disapproval**

If this box is checked, explain the reason(s) for disapproval in the space provided below.

IMMEDIATE SUPERVISOR'S SIGNATURE	**DATE**

Part V – APPROVING AGENCY OFFICIAL SIGNATURE

1. Name of Approving Agency Official	**2. Title of Approving Agency Official**

APPROVING AGENCY OFFICIAL'S SIGNATURE	**DATE**

Part VI – USDA OFFICE OF ETHICS OFFICIAL REVIEW

1. Name of USDA Office of Ethics Official	2. Title of USDA Office of Ethics Official

3. Ethics Review

Review the employee's answers and the supervisor's recommendation. Indicate whether the activity can be approved or permission must be denied. Explain your reason(s) in the space below and describe any actions deemed necessary to ensure compliance with applicable ethics laws.

- ☐ Request as described may be approved
- ☐ Request may be approved subject to conditions noted in Comments section
- ☐ Request as described must be denied
- ☐ Other disposition noted in Comments section

USDA OFFICE OF ETHICS OFFICIAL SIGNATURE	DATE

4. Comments

Part VII – NOTICES

APPROVAL OF AN OUTSIDE ACTIVITY DOES NOT RELEASE YOU FROM A CONTINUING LEGAL OBLIGATION TO DISQUALIFY YOURSELF FROM OFFICIAL ASSIGNMENTS AFFECTING YOUR OUTSIDE EMPLOYER OR THE ENTITY TO WHICH YOU ARE PROVIDING PERSONAL SERVICES. WHILE PERFORMING AN APPROVED OUTSIDE ACTIVITY, ANY ACTIONS TAKEN IN CONFLICT WITH APPLICABLE ETHICS LAWS MAY SUBJECT YOU TO CRIMINAL PROSECUTION OR DISCIPLINARY PROCEEDINGS.

The Ethics in Government Act, 5 U.S.C. App. § 101, *et. seq*., Executive Order 12674, as amended by Executive Order 12731, Sections 301 and 7301 of Title 5 of the U.S. Code, and Sections 2635.803 and 8301.101 - 102 of Title 5 of the Code of Federal Regulations authorize the collection of this information. The primary use of this information is to allow USDA supervisors and agency ethics officials to make necessary determinations concerning employee requests for prior approval of outside employment or activities in order to prevent a conflict of interest or other violations of the statutes, regulations, and executive orders governing employee conduct. The information is also requested for the purpose of evaluating ethics program administration, as well as the Department's supplemental ethics regulations, to determine their continued adequacy and effectiveness in relation to current agency responsibilities and to ensure that prompt and effective action is taken to remedy violations or potential violations, or appearances thereof, of conflict of interest and related ethics provisions. Additionally, this information may be disclosed : (1) to a federal, state, or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (2) to a court or party in a court or federal administrative proceeding if the Government is a party or in order to comply with a subpoena; (3) to a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration in records management inspections; (5) to the Office of Management and Budget during legislative coordination on private relief legislation; and (6) in response to a request for discovery or for the appearance of a witness in a judicial or administrative proceeding, if the information is relevant to the subject matter.

SAVE FORM PRINT FORM