

Subpart F – Employee Participation in NRCS Programs

405.60 Purpose

This subpart provides specific direction regarding actions that must be taken to ethics rules violations when an employee applies to participate in an NRCS program or NRCS-assisted program.

405.61 Background

A. Unless issued a specific written determination of substantial conflict pursuant to 5 CFR Section 2635.403(b), NRCS employees may have a personal financial interest in an NRCS program or NRCS-assisted program.

B. Employees must understand the ethics rules and requirements of participating in NRCS programs. Disqualification to avoid conflicts or interests or the appearance of partiality is the responsibility of the individual employee.

C. To avoid ethics violations and ensure the integrity of NRCS program delivery, employees must comply with the prohibitions against conflicting interests and other ethics provisions found in this subpart.

405.62 Definitions

Ethics terms are defined in 5 CFR Part 2635 and the USDA Ethics Supplemental Regulations, 5 CFR Part 8301.

405.63 Responsibilities

A. Overview

- (1) Employees who plan to apply or have applied to an NRCS program or NRCS-assisted program should complete the “[Applying for USDA Programs](#)” training module in AgLearn.
- (2) Employees should contact their supervisor, State ethics contact, and/or USDA Office of Ethics (OE) Ethics Specialist before applying for programs.

B. Employee Responsibilities

- (1) An employee must not participate in any official particular matters that will have a direct and predictable effect on the employee’s financial interest or imputed interests.
- (2) An employee may not participate in any particular matter involving specific parties as part of NRCS duties where a reasonable person may question their impartiality.
- (3) An employee who applies (or plans to apply) to participate in an NRCS program must not perform precontract functions with respect to competing applications.
- (4) An employee who becomes aware of the need to disqualify themselves from performing official duties should notify their supervisor in writing.
- (5) Section 405.131, “Technical Assistance Matrix for Ethical Program Delivery,” will assist employees and supervisors to understand the impact of these requirements when employees participate in NRCS programs or NRCS-assisted programs. The chart lists major NRCS functions involved in servicing program applicants and reflects the minimum extent to which an NRCS employee who has applied to participate in an NRCS program in a personal

capacity is disqualified from performing substantive NRCS functions in their official capacity.

- (6) The geographic scope from which an NRCS employee who applies to participate in an NRCS program must be disqualified varies by NRCS program. For example, in States where Environmental Quality Incentives Program (EQIP) dollars are competed for by county, the minimum extent of disqualification from performing precontract NRCS functions is countywide. In States where EQIP dollars are competed for on a statewide basis, then the minimum extent of disqualification from performing precontract NRCS functions is statewide.
- (7) Examples:
 - (i) Maria, an area conservationist over three counties, farms in one of the counties in her area and applies to participate in EQIP. She must not work on any EQIP applications with which her application is competing during that same signup for EQIP dollars. In this State, operations compete for EQIP funding by county, which means that Maria must not process applications in the same county in which she farms. However, she may perform her regular duties for program applicants during that same signup in the other two counties in her area.
 - (ii) Howard, an area conservationist over three counties, and his spouse's employer plan to apply for EQIP in one of his counties. Because Howard has a covered relationship with his spouse's employer, he must not work on any EQIP applications with which that application is competing during that same signup for EQIP dollars. In this area, there is one funding pool for all three counties, which means that Howard must not process applications in his entire area.
 - (iii) Rosie, a district conservationist, attends a local work group meeting as part of her official duties. The group discusses resource priorities for the next EQIP signup. Rosie takes notes to submit to her supervisor. When she sends the email, she provides some input on whether she thinks the group's recommendations are a good idea. Because Rosie has now participated in program development for that specific signup, she may not apply.
- (8) Representation.—18 U.S.C. Section 205 prohibits employees from acting as an agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest. If an employee has an operation that is a separate legal entity (i.e., an LLC, corporation, etc.), he or she is prohibited from acting as an agent for that operation. They may sign an application on behalf of the incorporated entity, or engage in routine application business, but must not communicate with the agency in event of any dispute. Employee are encouraged to contact their USDA OE Ethics Specialist with questions.

C. Supervisor Responsibilities.—It is the supervisor's responsibility to effectively manage NRCS programs and human resources while ensuring compliance with the conflict of interest provisions when the supervisor is aware that an employee is participating in an NRCS program. To ensure this, supervisors will adjust work assignments to avoid conflicting interests. Disqualification remains the employee's responsibility, and only at the point of disqualification are employees required to disclose their contracts or applications. The ethics rules do not provide any authority for the agency to require all employees to disclose their current contracts and applications.

405.64 Disqualification Requirements and Exceptions

- A. Disqualification to avoid conflicting interests is the responsibility of the individual employee with the personal interest at issue. Supervisors must not tell employees to ignore these requirements.
- B. Disqualification refers to the employee being disqualified from participating in official NRCS duties because of a personal conflicting interest. It does not refer to disqualification from participation in an NRCS program or other non-Federal activity.
- C. Ethics regulations provide limited authority for NRCS to authorize certain exceptions to the disqualification requirements. No exemptions may be issued except upon determination by the OE.
- (1) Authority to issue waivers to the criminal conflict of interest statute under 18 U.S.C. Section 208(b)(1) or 5 CFR Section 2635.605(a) belongs to the designated agency ethics official and waivers may only be issued with the concurrence of the Office of Government Ethics. Waivers are a last resort and will always be denied if any other possible remedy exists.
 - (2) The Director of the OE may, in consultation with the State Conservationist, issue authorizations pursuant to 5 CFR Section 2635.502(d). This authority may be used to allow an employee to participate in a matter that does not violate 18 U.S.C. Section 208(a), but that does raise an impartiality question.

405.65 Prohibiting Employee Participation

The OE will exercise the authority to make determinations of substantial conflict for the purpose of prohibiting an employee from participating in an NRCS program pursuant to 18 U.S.C. Section 208.

405.66 Limitations on the Use of this Directive

The subpart summarizes certain ethics rules prohibiting conflicting interests to generally explain their application when an employee participates in an NRCS program or NRCS-assisted program. It does not mention all elements of the rules. Omitted elements may qualify or limit the extent to which the conflicting interest provisions discussed herein apply in specific situations.