

Ethics Brown Bag Series: Outside Activities

What is an “Outside Activity”

- Paid or Unpaid employment outside Exlm
- Service as an expert witness
- Participation in a professional organization
- Paid or unpaid teaching, speaking, and writing
- Fundraising activities
- Pro Bono/Volunteer Work

What is “Employment”

- Any form of non-Federal employment, business relationship, or activity involving the provision of personal services by an employee.
 - Includes, but is not limited to:
 - Officer/director
 - Agent
 - Attorney
 - Consultant
 - Contractor

What is NOT “Employment”

- Does **NOT** include Nonprofit:
 - charitable
 - religious
 - professional
 - social, fraternal
 - educational
 - recreational
 - public service or civic organization
- **UNLESS** such activities involve the:
 - **Provision of professional services** or advice or;
 - Are for **compensation** other than reimbursement of expenses.

What is NOT “Employment” Cont.

- Homeowners' associations
- Parent-teacher associations or organizations
- Religious education/schools
- Community volunteer youth sports, or other, coaching,
- Community or religious-affiliated mentoring or volunteering,
- Alumni associations
- Community pool or recreation associations

Examples

- You are the coach for your daughter's little-league soccer team in Alexandria, VA. The parents decide to chip in and give you \$100 for every Saturday morning game and \$50 for each practice.
- Is this employment?

Examples

- Same example except the City of Alexandria pays you \$1000 to manage the soccer league for one season.
- Is this employment?

Conflicting Outside Employment

- The RULE:
 - An employee shall not engage in outside employment or any other outside activity that **conflicts** with his/her **official duties**

Conflicting Outside Employment Cont.

- An activity conflicts with an employee's official duties:
 - If it is prohibited by statute or by an agency supplemental regulation; or
 - If the employee's ability to perform the duties of his position would be materially impaired
- Further, employees must endeavor to avoid any actions that create an **appearance** of a conflict

Conflicting Activities— Bank policy

- The Skinny:
 - Outside employment will not be permitted where the **duties and activities involved** are the **same or substantially the same** as those performed by the employee at the Bank, and where the outside employer could be in a position to do business with the Bank in those areas of activity .

Examples

- An Environmental Protection Agency employee's principal duty is to write regulations relating to the disposal of hazardous waste.
- May the employee continue to serve as president of the nonprofit environmental organization that routinely submits comments on such regulations?

Examples Cont.

- A Loan Officer in Trade Finance underwrites Ex-Im loans by PNC bank for certain exporters.
- May the employee telework from his home on the weekends for PNC bank in PNC's business development office?

Examples Cont.

- A Congressional Affairs Ex-Im employee works regularly with the House Financial Services Committee staffers on legislative issues.
- May he wait tables at HFSC social events in the evenings?
- How about during normal working hours?

Speaking, Teaching, Writing

- General Rule:
 - An employee shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.

Speaking, Teaching, Writing Cont.

- Exemptions:
 - Writings and prepared or extemporaneous speeches that are on subjects unrelated to the Bank and to employees' official duties.
 - Course(s) taught by employee if the course is offered as part of the regularly established curriculum of
 - An institution of higher education,
 - An elementary or secondary school,
 - A program of education or training sponsored and funded by the Federal Government or
 - A State or local government.

Speaking, Teaching, Writing, Cont.

- In speaking and writing, employees are expected to disassociate themselves **explicitly** from the Bank and from their official positions.
- However, when the subject matter of such writing **relates to** the Bank or the Employee's work at the Bank **you must**:
 - Assure accurate presentation of facts
 - Avoid the misrepresentation of Bank policies;
 - Avoid the use of any confidential business, non-public or privacy information;
 - Assure, when appropriate, that employees' opinions clearly differentiate from Bank policy.

Examples

- A program analyst at the EPA analyzes proposed EPA regulations.
- Could he receive royalties from a book that focuses on specific EPA regulations or otherwise on its programs and operations?
- What if the book was about the history of the environmental movement in the United States which contained brief references to the creation and responsibilities of the EPA?

Examples Cont.

- The Director of the Division of Enforcement at the Commodity Futures Trading Commission is a well-known stamp collector.
- May he give a series of four lectures on how to assess the value of American stamps to the international society of philatelists?

Examples Cont.

- A National Institutes of Health scientist's principal area of Government research is the molecular basis of the development of cancer.
- May she be compensated for a book she has recently published on her research at the Agency?
- What if the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole?

Fundraising in Official Capacity, On Duty

- Fundraising means the raising of funds for a nonprofit organization through
 - Solicitation, or
 - Participation in the conduct of an event
- The CFC is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations.
- Does not apply to the collection of gifts-in-kind, such as food, clothing and toys

Fundraising in a Personal Capacity Off Duty

- An employee may engage in fundraising in his personal capacity provided that he does not:
 - Personally solicit funds or other support from
 - a subordinate or
 - from any person known by the employee to be a prohibited source.
 - Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort

Pro Bono/Volunteer Work

- The USG **encourages** federal employees to provide legal and other volunteer service
- Certain restrictions exist if the work:
 - requires the recusal of the employee from significant aspects of the employee's official duties (5 C.F.R. 2635.802(b));
 - creates an appearance that the employee's official duties were performed in a biased or less than impartial manner (5 C.F.R. 2635.502);
 - creates an appearance of official sanction or endorsement (5 C.F.R. 2635.702(b))
- With limited exceptions, outside activities may not include the representation of third parties before or against the federal government. See 18 U.S.C. Sec. 205.

Pro Bono/Volunteer Work

- For Attorneys
 - Need **retainer agreement**, which sets out the agreed scope of work and making explicit that the attorney is acting in his or her own individual capacity and not on behalf of Ex-Im Bank. The client must countersign the retainer letter in acknowledgement of this fact.
 - Must obtain **malpractice Insurance** (or have it provided to you by a non-profit entity)
 - Have the **proper license or authorization** to practice law.
 - *(See Rule 49(c) which permits US Government attorneys who are not members of the DC Bar to handle pro bono cases in the District of Columbia provided that certain requirements are met.)*
- Limited use of Government Resources is allowed
- Paid time off may be permitted

Approval Process

- Must submit a request to OGC, through Supervisors
 - Upon commencing work at the Bank;
 - In advance of beginning a new outside employment at any time during the year; and
 - For renewal, on an annual basis, by January 15 of each calendar year.
- Additionally, employees must report any reportable amounts of income received from outside activities and employment on their new, annual, and termination financial disclosure reports, as applicable.

Questions?

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