

MEMORANDUM

TO: USDA EMPLOYEES PARTICIPATING IN THE DEFERRED RESIGNATION PROGRAM (DRP)

FROM: USDA OFFICE OF ETHICS (Click on link here: [Ethics Advisors](#))

RE: ETHICS GUIDANCE FOR THOSE USDA EMPLOYEES PARTICIPATING IN THE DRP

This document summarizes and provides a helpful Q&A section on the Government ethics rules that apply to U.S. Department of Agriculture (USDA) employees who have selected and been accepted into the DRP with fully executed DRP agreements in effect. This information identifies statutes and regulations that restrict or otherwise affect the activities of USDA employees while you are Administrative Leave status and continue as U.S. Government employees. Please note that Office of Ethics Advisors are acting on behalf of the United States Government and not as your own personal representatives.

Summary: USDA employees who accept the DRP will be placed in an Administrative Leave status. During this time -- just as with any other leave status -- USDA employees remain employees and remain subject to the Federal ethics rules (5 C.F.R. Section 2635.102(h)). **If you are an SES, SL, ST, or SSTS who files a Public Financial Disclosure Report (OGE-278), you must timely file your 2025 Annual OGE-278 Report on or before May 15, 2025 (or receive an extension), and also a separate final, Termination OGE-278 Report within 30 days of leaving your position to avoid a \$75,540 non-filing penalty administered by the U.S. Department of Justice (DOJ). This penalty can double to up to \$151,080 for not filing the 2025 Annual and Termination OGE-278 reports. Please ensure that the USDA Office of Ethics has your personal e-mail address so that we can assist you with this important filing requirement.** **NOTE:** This filing requirement and penalty do **not** apply to GS-level employees who file the OGE-450 Confidential Financial Disclosure Report. OGE-450 filers are **not** required to file a final OGE-450 report when leaving a filing position (5 C.F.R. Section 2634.903(e)).

I. THE FEDERAL ETHICS RULES STILL APPLY.

The following summarizes the ethics-related issues that USDA employees who accept the DRP may encounter prior to official separation from federal service (generally, on or before September 30, 2025):

A. Representation Restrictions.

Criminal statutes (18 U.S.C. §§ 203 and 205) prohibit Federal employees – even while on Administrative Leave -- from representing any non-federal entity, employer, or client before any Federal employees in any Federal department, agency, or Federal Court. This ban applies

regardless of whether you are compensated or uncompensated (see 18 U.S.C. §§ 203 & 205). For example, in most instances, you would **not** be able to serve as an on-site contractor at a Federal facility, since doing so necessarily requires communicating with Federal employees on behalf of the contractor, i.e., representing the contractor before Federal government officials.

B. Financial Disclosure Filer Status.

1. **Public (OGE-278) Filers** – USDA Public Filers who have signed the USDA DRP agreement must continue to work with the USDA Office of Ethics to submit or complete any unsubmitted or submitted OGE-278 report, including OGE-278 Periodic Transaction Reports (OGE 278-T). Moreover, the Ethics in Government Act requires public filers to submit a separate Termination OGE 278 report no later than 30 days following their separation from Federal service, e.g., the DRP agreement final status effective date (generally, September 30, 2025). **OGE-278 filers who do not file their Annual OGE-278 and Termination OGE-278 Reports can face a penalty of up to \$75,540 per non-filed report (or up to \$151,080 for not filing both OGE-278 reports) and will still be required to file any unsubmitted OGE-278 reports.**

NOTE: Upon separation from Federal government service, employees remain subject to all applicable post-Federal government employment restrictions (see 18 U.S.C. Section 207).

2. **Confidential (OGE-450) Filers** – Employees who file the OGE-450 confidential financial disclosure report are **not** required to file the report while on Administrative Leave as part of the DRP, as long as the individual is not performing any official duties. Such employees must continue to work with the USDA Office of Ethics to submit any previously unsubmitted or complete submitted reports for certification.

NOTE: Upon separation from Federal government service, employees remain subject to all applicable post-Federal government employment restrictions (see 18 U.S.C. Section 207).

C. **Disqualification or recusal.** Federal employees may not work in your official capacity on a matter that will affect a prospective or current non-Federal employer or client (see 18 U.S.C. § 208). Generally, employees who are seeking or have an arrangement for employment with any non-Federal entity while still a Federal employee may be required by federal regulations to recuse or disqualify from working on certain particular matters involving that non-Federal entity. **However, recusal is not necessary if the individual is on administrative leave and not performing any official USDA duties, since there is no potential to participate in matters affecting such an entity.**

D. **Use of government resources.** Ethics rules prohibit the use of government resources, time, title, authority or position for other than official or authorized purposes. For example, if you retain a government issued device pending separation, it may not be used

for other than official Government purposes (see 5 C.F.R. §§ 2635.702-705). Additionally, you may not use your official government position, title, or authority to obtain a benefit for a non-federal entity. For example, if you are asked to speak at a fundraising event for a non-profit organization while you are on Administrative Leave status, you may only do so in your personal (unofficial) capacity, but without referent to your USDA title or position and not wearing a government uniform.

E. Hatch Act (Partisan Political Activities). USDA employees must abide by the Hatch Act, which governs the political activity of Federal employees even in their personal capacity. USDA employees may not engage in any political fundraising and may not use their official USDA titles in connection with any political activity, even if the activity is otherwise permissible under the Hatch Act. For example, in your personal capacity, as a private citizen, you may endorse a political candidate; however, you may not endorse a political candidate in your official USDA capacity.

F. Post-Government Employment Restrictions. After your official separation (generally post-September 30, 2025), employees working for a non-Federal entity must abide by Federal laws and regulations governing post-government employment activities with non-federal entities. See 18 U.S.C. § 207 and 5 C.F.R. Part 2641. General post-government employment FAQs and guidance can be found on the USDA Ethics website in the “[Rules of the Road](#)” Section.

To provide further clarification about the Ethics rules that apply to those taking the DRP and entering Administrative Leave Status, we are providing the following Questions and Answers to common questions.

QUESTIONS AND ANSWERS:

Outside Employment & Activities

Q1 -- Am I allowed to have outside employment while in deferred resignation / administrative leave status?

A1 -- Yes, you may have a non-federal job in your personal capacity and accept compensation, but you must still abide by the Federal ethics laws and regulations while you are on DRP because Administrative Leave is a Federal employment status. This means that you may not represent any non-Federal employer or clients before any agency. See 18 U.S.C. Section 203 and 205. The **representation ban** means that, if you are on Administrative Leave status with USDA, you may **not** represent, communicate, or appear before any Federal employees on behalf of your new non-Federal employer or clients. Put another way, when you are working for your new non-Federal employer or clients, the representation ban prohibits you from communicating with any Federal agency employee on matters where the U.S. government is a party or has a direct and substantial interest. This communication ban is very broad and includes:

- Talking, or
- E-mailing or texting or writing a letter, or
- Meeting in person (either one on one or in a group meeting), or
- Meeting virtually, e.g., on Zoom, Teams, or any other communications platform, or
- Communicating or appearing in any other way before Federal employees, on behalf of any non-Federal employer or client.

This restriction permits you to work for an employer; you just need to ensure that you are working completely and totally behind the scenes and are not appearing before or communicating with Federal agency employees. **Again, this ban extends to the entire Federal government and not just to USDA.**

Q2 --What restrictions do I face with my outside employment and volunteer activities?

A2 -- Even in your personal capacity, while you are on Deferred Resignation (Administrative Leave Status), you remain subject to the criminal representational conflict of interest statutes at 18 U.S.C. § 203 and § 205 — these laws prohibit your representation of any other person or entity before the Federal Government, with or without compensation. Together, these two laws generally prevent you from acting as agent or attorney, either compensated or uncompensated, for any other person or organization in a particular matter in which the United States is a party or has a direct and substantial interest. So, if your duties will involve you contacting or communicating with the United States government on behalf of another (such as your new non-federal employer or on behalf of clients), you should proceed cautiously and think twice about accepting such a job.

An important word about compensation from your non-federal employer. The following guidance is from a [publication](#) created by the U.S. Office of Government Ethics. While you are a Federal employee (even while on Administrative Leave status), 18 U.S.C. § 203, a criminal statute, prohibits you from receiving or seeking to receive any compensation (including legal fees, partnership share, bonuses, or other payments) for representational services to others, before any department, agency, or court, in matters where the United States is a party or has an interest.

There are two important points to remember about the prohibition imposed by 18 U.S.C. § 203:

- The compensation prohibition applies if the representational services are provided during the time that you are an Executive Branch employee, regardless of whether you receive the payment during or after Government service.
- **The compensation prohibition applies whether you provide the representational services yourself or someone else provides them.** Keep in mind that there are some very specific and limited exceptions that might potentially apply, depending on your specific circumstances. One exception would generally allow you, with agency approval, to represent – with or without compensation – your parents, spouse, children, and certain

others with whom you have a fiduciary relationship (such as serving as a guardian, trustee or executor).

To further assist employees, we encourage you to click on the links below and view these publicly available resources (video and presentation slides) created by the U.S. Office of Government Ethics (OGE).

Video and PowerPoint - 18 U.S.C. § 203: Receipt of Compensation for Representational Services

In this 1-hour video broadcast, OGE's Ethics Law and Policy Branch discuss 18 U.S.C. § 203, which prohibits compensation for certain representational activities. This session presents an overview of the elements, as well as provides examples that illustrate the nuances of the prohibition. It will also explain how the prohibition applies not only to current employees, but also to those who are entering government service and leaving government service. **Click on links below to access:**

[Course Webpage](#)

[Course PowerPoint](#)

IMPORTANT NOTE: 18 U.S.C. § 203, if violated, imposes criminal liability upon both you and your nonfederal employer. So, this is an area where you will want to discuss this statute with your new employer, if you are taking non-federal employment while you are in an Administrative Leave status on DRP.

In addition, while you are Administrative Leave status, you may not fundraise on behalf of an organization if you will be soliciting funds from prohibited sources to the Department (5 C.F.R. § 2635.808(c)). You also may not misuse your federal position by using or allowing the use your USDA title, authority, or resources in furtherance of your outside activity (see 5 C.F.R. Part 2635, Subpart G). Because you are working or volunteering in your *personal* and non-USDA capacity, you may not speak or act on behalf of USDA or the Federal government. You should use a disclaimer when speaking in a personal capacity (e.g., "These are my personal opinions, not USDA's") to avoid confusion. Additionally, any biography that you use should include at least two other biographical details about yourself and should not give undue prominence to your USDA position.

Remember that you may not share non-public government information (5 C.F.R. 2635.703). Non-public information is information that you have gained by reason of your Federal employment and that you know or reasonably should know has not been made available to the general public. It includes information that you know or reasonably should know: (1) is routinely exempt from disclosure under FOIA, 5 U.S.C. § 552, or otherwise protected from disclosure by statute, Executive order, or regulation; (2) is designated as confidential by an agency; or (3) has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Q3 -- Can I volunteer my time with outside organizations?

A3 -- Yes, but you may not represent any outside organization back to the United States on any

matter in which the U.S. is a party, represents a party or has a direct and substantial interest (see [18 U.S.C. § 205](#)).

Q4 -- I was invited to participate in a meeting or conference in my official USDA capacity. May I now do that in my personal capacity?

A4 – No, you may not convert an invitation extended to you in your official capacity into something that you do in your personal capacity instead. The invitation was issued to a representative of the USDA, not to you in your personal capacity. You may not hold yourself out as a USDA representative while you are in DRP Administrative Leave status.

Q5 -- May I work for a government contractor?

A5 – It depends on what you expect to do for the nonfederal organization and what you did for USDA while you were on official duty and whether you are a lawyer with State Bar obligations. No matter what, while you are on the DRP and remain a Federal employee in an Administrative Leave status (generally until September 30, 2025), you will be subject to the restrictions under the criminal representational conflict of interest statutes ([18 U.S.C. §§ 203](#) and [205](#)) and the prohibition against sharing non-public information ([5 C.F.R. § 2635.703](#)).

The first statute, 18 USC § 203, specifically prohibits accepting compensation derived from representing outside organizations on a particular matter where the United States is a party or has an interest. “Particular matters” include things such as applications, contracts, grants, litigation, claims, etc. Note Section 203 applies equally to representational services you provide personally and to representational services provided by another person. That means the statute would prohibit your ability to share in compensation the nonfederal organization receives for its representation of clients, customers, etc., before US federal agencies or courts. . In other words, you need to arrange to be paid from monies the nonfederal organization received that do not stem from its representational activities before the United States or in matters where the United States was a party or has an interest. Because this criminal statute imposes liability on both you, the Federal employee, and the new nonfederal employer (see 18 U.S.C. § 203(a)(2)), it is important to discuss this law with your new employer and its legal counsel. If your prospective outside job will not require you to interact with federal personnel, the representation rules would not come into play.

In addition, if you worked on procurements of \$10 million dollars or more, you may likely be subject to the Procurement Integrity statutes. The Office of Federal Procurement Policy Act, formerly known as the Procurement Integrity Act (PIA), now codified at 41 U.S.C. §§ 2101-07, prohibits former officials of Federal agencies from accepting compensation from that contractor within one year after the employee: (1) served as the procuring contracting officer, source selection authority or evaluation board member, or chief of a financial or technical evaluation team; (2) served as a program manager, deputy program manager, or administrative contracting officer; or (3) personally made certain decisions such as awarding a contract, subcontract,

modification, task or delivery order, establishing overhead, issuing payment, or settling a claim *or* (4) performed designated acquisition services¹ on a procurement in excess of \$10 million that the contractor was awarded either competitively or noncompetitively.

This means that you may not accept monetary compensation (such as a salary) from a government contractor if, during your last year at USDA, you worked on a procurement over \$10 million with that same contractor, and you were either a contracting officer; source selection authority; technical or financial evaluation team chief; program manager; deputy program manager; administrative contracting officer or (3) personally made certain decisions such as awarding a contract, subcontract, modification, task or delivery order, establishing overhead, issuing payment, or settling a claim. The penalties imposed for violating this provision can be instituted against both the former employee and the private sector employer. Specifically, for those USDA procurements (of \$10 million or more) in which you were involved, the Procurement Integrity statute at 41 U.S.C. § 2104(a) imposes a one-year prohibition on a former procurement official's acceptance of compensation from the same contractor that was a party to such procurement. Penalties for violating this statute can be imposed on both the employee and the contractor.

However, it is important to note that Section 2104(b) provides a statutory exemption to Section 2104(a). Section 2104(b) does not prohibit a former official of a Federal agency from accepting compensation from a division or affiliate of the contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract. See, 41 U.S.C. § 2104(b) and FAR 48 C.F.R. Section 3.104-3(d)(1) – 3.104-3(d)(4).

Q6 -- If I accept the deferred resignation offer, may I continue to work and fulfill my USDA duties over the next 7 months, such as attending conferences as an active duty USDA employee, etc.?

A6 – No. You may not hold yourself out as a USDA representative while you are in DRP Administrative Leave status. (Also see Q4 above).

Q7 -- I am an attorney so what special restrictions do I have?

A7 – If you are an attorney working for USDA or admitted to practice even if you don't work for USDA as a lawyer, then you must also be mindful of your State Bar obligations. Using the American Bar Association Model Rules of Professional Responsibility, we remind all current and former government officials who are lawyers that you must abide by Rule 1.11 and may not

¹ Designated acquisition services are: Award of a contract or subcontract in excess of \$10 million; establishing overhead rates in excess of \$10 million; or approving issuance of a contract payment in excess of \$10 million within the last year of your USDA employment.

“switch sides” in the same or substantially related particular matter. You must also abide by Rules [1.6](#) and [1.7](#) while you remain employed by USDA, and by Rule [1.9](#) after you separate from USDA.

You may not reveal attorney-client privileged information nor take adverse positions to the Federal government. Pursuant to the Professional Responsibility rules, the Federal government remains your current client while you are on Administrative Leave status. Some activities that may be off limits to you include advising opposing counsel on how to interpret statutes, regulations, policies, or terms and conditions, discussing litigation strategy, as well as reviewing and revising draft complaints, briefs, and other similar legal documents on behalf of non-Federal organizations concerning matters where the Federal government is a party, represents a party, or has a direct and substantial interest.

Additionally, attorneys have mandatory reporting obligations under [Rule 8.3](#) if they become aware of another attorney engaging in conduct that raises a substantial question as to that attorney’s honesty, trustworthiness or fitness as an attorney in other respects.

You are advised to seek advice from your State Bar Counsel about your professional responsibility obligations as an attorney.

Q8 -- May I accept a job working for the District of Columbia (D.C.) government?

A8 -- Yes, but first you must resign or retire from Federal service before accepting employment with the D.C. government. While you are on DRP administrative leave status, you remain a Federal employee, and you are subject to the “Dual Compensation” statute, [5 U.S.C. § 5533](#). This law strictly prohibits you from receiving pay for more than one civilian position in any calendar week. “Position” means a civilian office (including a temporary, part-time, or intermittent position) in any branch of the federal government and the government of the District of Columbia.

Q9 -- May I file Freedom of Information Act (FOIA) requests?

A9 – Yes, in your personal capacity (e.g., as a private citizen on behalf of yourself only), you may file a FOIA request for information available under FOIA. You may not file a FOIA request on behalf of another, because you may violate [18 U.S.C. § 203](#) (if compensated) or [18 U.S.C. § 205](#) (even if uncompensated).

Q110 -- May I make presentations about USDA related activities, such as agricultural or forestry topics, grants, or contracts, to the general public?

A10 – In your personal capacity only, not as an USDA representative, you may share your own personal views but you may not share non-public USDA internal information, communicate with (i.e., represent back) any United States official on behalf of a non-Federal entity, or use your USDA title or authority, including the USDA logo or seal, if that would cause a member of the audience

to conclude that you are speaking as a USDA representative or on behalf of the Federal government.

Q11 -- May I advise members of the public on where to find publicly available information about USDA, such as USDA rules, grants, programs, contracts, or policies?

A11 – Yes, you may direct the general public to information available on USDA's public facing websites. That information is publicly available and is not considered non-public.

Q12 -- May I be employed by a foreign government or teach as a professor at a foreign government's national university while I am on Administrative Leave under the Deferred Resignation Program (DRP)?

A12 -- No. Remember that while you are on Administrative Leave, you remain a Federal employee. The Emoluments Clause of the Constitution (Article I, Section 9, Clause 8) generally prevents Federal employees – including those on Administrative Leave -- from accepting presents, emoluments, offices, or titles from foreign governments.

Q13 -- May I start my own consulting business?

A13 -- Yes, but you still must abide by Federal ethics laws and regulations while you are in DRP Administrative Leave status. For example, you may not represent your business or clients back to the Federal government pursuant to 18 U.S.C. § 203 and § 205 (see answer **A2** above), which has particular significance if you want to apply for federal contracts while you are still a USDA employee. If so, then be mindful of Federal Acquisition Rule 3.601, which prohibits a contracting officer from awarding a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. In addition, when you formally separate from USDA (i.e., you resign or retire and are no longer on administrative leave), you will be subject to the post-Federal employment laws at 18 U.S.C. § 207. How these restrictions apply to you will depend upon several factors including whether you were a supervisor at USDA, whether you were a "senior official" at USDA, as that term is defined in 18 U.S.C. Section 207(c), and your duties as a USDA employee.

Personal Speech and Activities

Q14 -- May I share my personal opinions in personal social media or to a news organization?

A14 – Typically, yes, so long as you are clearly speaking in your personal capacity on your own time. Being in administrative leave status does not curtail your rights under the First Amendment, though you are still subject to the prohibitions in the Hatch Act, misuse of position and the representational conflict of interest statutes.

Political Activity

Q15-- Does the Hatch Act still apply to me when I am on administrative leave?

A15 -- Yes.

Q16 -- If I am on Administrative Leave, am I allowed to engage in partisan political activity?

A16 -- Even when on Administrative Leave Status, you are still subject to the Hatch Act, which governs the partisan political activity of federal employees ***even in your personal capacity***. "Political activity" is defined as any activity directed at the success or failure of a candidate for partisan election, a political party, or a partisan political group. Even in your personal capacity, the following prohibitions apply to you, all the time. These are 24/7 restrictions. You may **never** ever:

- **Solicit, ask, accept, or receive partisan political contributions**
- **Run for partisan political office**
- **Use your USDA affiliation or title in connection with political activity**
- **Engage in political activity in the federal workplace, including displaying candidate photos or partisan political items such as paraphernalia or campaign slogans**
- **Use your official authority to interfere with the outcome of an election**
- **Solicit or discourage political activity of anyone with business before USDA**

Employees who are further restricted under the Hatch Act, such as career SES and ALJs, may never engage in partisan campaign management or activity until after they separate from Federal service or leave their career SES position.

Summary: Below, on the next page, is a short visual diagram of the Federal Ethics rules that will apply:

- (1) While you are on Administrative Leave status (DRP), and
- (2) After you end your DRP Administrative Leave status and are no longer a Federal employee (i.e., no longer on the USDA payroll).

