

## DIGEST OF OUTSIDE ACTIVITY PROVISIONS

### **Outside Earned Income Prohibition**

*E.O. 12674, § 102; 5 C.F.R. § 2635.804*

Senate confirmed Presidential appointees (PAS) cannot receive any earned income for outside employment, or for any other non-governmental activity, performed during the course of that appointment.

### **Outside Earned Income Limitation**

*5 U.S.C. App. 4, § 501(a); 5 C.F.R. § 2636.304*

Non-career SES appointees, and certain other non-career employees paid at a rate of basic pay of \$131,239 or more per year, are subject to a \$28,845 cap on outside earned income for calendar year 2020 (The figure changes annually and is calculated at 15% of the pay rate for Executive Schedule Level 11, as of January 1, and is prorated for employees who serve only part of the year.) Outside activities must not conflict with assigned duties. Certain outside activities are prohibited, and others must be authorized in advance on HHS Form 520 and reported annually on an HHS Form 521. Consult 5 C.F.R. §§ 5501.106 and 5501.109. Travel and hotel expenses paid in conjunction with an approved outside activity are not earned income for purposes of the 15% cap. In addition, the provision does not apply to rents, royalties, or income derived from investments where the individual's services are not a material factor in the production of income, e.g., a commercial real estate limited partnership.

### **Restrictions on Professional Employment, Affiliations, and Teaching**

*5 U.S.C. App. 4, § 502(a); 5 C.F.R. §§ 2636.305 - 2636.307*

Non-career SES appointees, and certain other non-career employees earning a rate of basic pay of \$131,239 or more per year, cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with a firm that renders professional services; serving as an officer or member of the board of any association or corporation; or teaching without prior approval.

### **Ban on Compensated Teaching, Speaking and Writing Related to Official Duties**

*5 C.F.R. § 2635.807*

Except for certain authorized teaching activities, no employee may accept compensation for speaking or writing that relates to official duties or where the invitation to engage in the activity was tendered by a prohibited source or extended primarily because of the employee's official position.

### **Honoraria Ban**

*5 U.S.C. App. 4, § 501(b)*

Following a Supreme Court decision invalidating the honoraria ban for certain employee categories, the Department of Justice determined that non-PAS employees may receive compensation for an outside appearance, speech, or article, provided that the subject matter is unrelated to the employee's official duties. (Any honorarium offered or accepted as a bribe or salary supplementation for official services remains prohibited by the criminal code, 18 U.S.C. §§ 201, 209.)