

Ethics Office guidance regarding adjunct or affiliate status with universities and research institutes

Adjunct or affiliate status with universities and research institutes is typically granted to USGS employees on the basis of their official USGS job duties and scientific research. The linkage between the adjunct/affiliate status and their USGS positions means that USGS employees have restrictions on their interactions with universities and research institutions that their colleagues do not.

This guidance has been prepared by the Ethics Office to explain what USGS employees **MUST** do, what they **MAY** do and what they **MAY NOT** do when they interact with universities or research institutes in their adjunct or affiliate capacities. This guidance is intended to support collaborative efforts between USGS employees and universities/research institutes to the maximum extent possible, while at the same time maintaining compliance with applicable ethics rules, regulations and statutes.

Supervisors and managers must determine whether the use of official time to engage in adjunct or affiliate activity constitutes an appropriate use of Government time and resources.

Please send comments, recommendations or concerns regarding this guidance to the Ethics Office via e-mail (nbaumgartner@usgs.gov), fax (703-648-4132) or phone (703-648-7474).

USGS employees MUST:

- 1) Be transparent and open regarding their adjunct and affiliate relationships with universities and research institutes.
- 2) Make full (and continuing) disclosure of their USGS affiliation to third party entities.
- 3) Ensure that the websites of universities and research institutes which USGS employees hold adjunct or affiliate status clearly reflect they are USGS employees.
- 4) Obtain supervisory approval to use official time to engage in adjunct and affiliate activity.
- 5) Keep the interests of the USGS paramount.
- 5) Remember to wear their Federal employee "hat" at all times.
- 6) Protect the intellectual property they create as Federal employees.

7) Follow USGS Fundamental Science Practices (FSP) (see SM Chapters 502.1, 502.2, 502.3 and 502.4). FSP must be followed when USGS resources are utilized or when USGS affiliation is acknowledged in a publication. The requirement to follow FSP does not change when employees serve in an adjunct or affiliate capacity at a university or research institute.

8) Maintain scientific integrity (see SM Chapter 500.25) <http://www.usgs.gov/usgs-manual/500/500-25.html>.

USGS employees MAY:

1) Serve as advisors to graduate students or participate on Ph.D. thesis committees, with supervisory approval.

2) Present special seminars, give guest lectures, assist with labs (and engage in similar activities), with supervisory approval.

3) Utilize official time (with supervisory approval) to collaboratively develop course materials with a university employee, present course lectures and labs (must be less than 50% of the lectures and labs) and provide input regarding test questions related to the subject of the lectures and labs but MAY NOT be listed in the course catalog as a university instructor; be involved in grading exams, papers or labs; or be responsible for the issuance of grades to students. The course syllabus may contain an explanation that a USGS employee will be presenting a certain number of the lectures or labs, but must contain information that the primary contact for the course is a university employee.

4) Collaborate with their university or research institute colleagues on research, with supervisory approval, but must follow USGS Fundamental Science Practices if the result of the collaboration is a written product.

5) Be a co-Principal Investigator (PI) with university or research institute colleagues on research projects with supervisory approval (so long as the university or research institute co-PI signs the funding request and only university or research institute staff control the funds). Consultation with an Administrative Officer or the Office of Policy Analysis may be necessary to determine if a cooperative agreement between the USGS and the university or research institute is needed.

6) Teach a university course in their off-duty capacity, so long as they obtain approval from the Ethics Office via a USGS Form 9-1510, Request for Ethics Approval of Outside Work or Activity, before engaging in the activity. Note: Receiving compensation for teaching a course that is related to USGS duties is only permitted when the course is part of the curriculum of an accredited university or college. A USGS employee must be able to respond "Yes" to the following certifications on page 2 of the Form 9-1510 in order for his/her Form 9-1510 to be approved by the Ethics Office.

C. Certifications: Questions or requests for guidance should be directed to the USGS Ethics Office. ALL questions below must be answered with a Yes or No.		
17. I understand that participating in an official matter (including providing recommendations or advice) that could directly affect the financial interests of the outside entity, company, State/local government, individual, or organization could violate 18 U.S.C. § 208, a criminal conflict-of-interest ethics statute.	Yes	No
18. I understand that I must disqualify (recuse) myself from participation in official matters that could directly affect the financial interests of, or give the appearance of a lack of impartiality toward, the outside entity, company, State/local government, individual, or organization for which I will perform the outside work or activity. If the outside work or activity prevents me from accomplishing my Federal job, I understand I may be required to stop the outside work or activity.	Yes	No
19. I understand that 18 U.S.C. §§ 203 and 205 generally prohibit a Federal employee from representing an outside entity, company, State/local government, individual, or organization before any Federal agency, court, or officer.	Yes	No
20. I will be in a non-duty or authorized leave status when I perform the outside work or activity.	Yes	No
21. I will not use any Government facilities, equipment, or supplies in furtherance of the outside employment or activity except as authorized by DOI Limited Personal Use policies.	Yes	No
22. I will not use or disclose any nonpublic information as part of this outside work or activity.	Yes	No
23. I will neither use, nor permit others to use, my official title or position in conjunction with the outside work or activity, except as permitted by 5 C.F.R. 2635.807(b).	Yes	No
24. If there is a significant change in the nature or extent of my outside work or activity, or in my official duties with the USGS, I will submit a revised request for approval to engage in outside work or activity.	Yes	No
25. I understand that approval to engage in outside work or activity does not relieve me of my obligation to comply with all applicable laws and regulations governing employee conduct and ethics.	Yes	No

7) Accept benefits from a university or research institute that clearly further USGS interests. Benefits that may be accepted include, but are not limited to: university or research institute library privileges, internet access, e-mail, parking, gym access for USGS employees, and free/reduced tuition for work-related courses, etc.

Note: Free or reduced tuition for USGS employees for courses that are related to current or future job duties are accepted pursuant to the Government Employees Training Act, 5 U.S.C. 4111.

8) Provide reports and analysis to university staff regarding the quality of students' work.

9) Make recommendations regarding students to university faculty.

10) Mentor university students. Note: it is a matter of supervisory discretion to permit the use of some official time, or none at all, for this purpose. Accomplishment of the USGS mission must remain the paramount.

USGS employees MAY NOT:

1) Teach a university course in his/her official capacity.

NOTE: Such teaching may be permitted through an Intergovernmental Personnel Act agreement (OF-69) for full salary reimbursement from the university, which is further explained below. Note: Specific legislative authority enables Cooperative Research Unit (CRU) scientists to teach university courses as part of their official USGS duties. See 16 U.S.C. § 753a, Cooperative Research and Training Units Act.

2) Be listed in the course catalog as a university instructor; be involved in grading exams, papers or labs; or be responsible for the issuance of grades to students. The course syllabus may contain an explanation that a USGS employee will be presenting a certain number of the lectures or labs, but must contain information that the primary contact for the course is the university employee.

3) Accept benefits (i.e. "perks") from a university or research institute that are personal (i.e., that cannot be clearly articulated as providing a benefit to the USGS). Perks that do not benefit USGS may not be accepted. Examples of what may not be accepted include, but are not limited to: campus faculty club memberships, free/reduced/discounted athletic event tickets, free/reduced tuition for family members, metropolitan transit fare subsidies for university employees, and discounts at university bookstores for items purchased for personal use.

Note: The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635, contains numerous exemptions and exceptions to the rule that Federal employees may not accept gifts that are offered because of their official positions or by prohibited sources, i.e., an entity that does business with, or wants to do business with, the USGS. If an exemption or exception applies, the perk may be accepted.

4) Control university or research institute funds. Doing so creates a conflict of interest and subjects USGS employees to potential personal liability for breach of fiduciary

duties to the university or research institute and subjects the USGS to potential liability.

5) Receive compensation from any non-Federal source for performing USGS duties. This violates 18 U.S.C. § 209, a criminal ethics statute.

6) Accept travel expenses from the university or research institute. This restriction means that USGS employees may not “sign over” reimbursement checks from a university or research institute to the USGS. Reimbursement must be to the USGS via check or electronic funds transfer. The receipt of travel expenses from the university or research institute by the USGS must be disclosed and properly documented.

7) Take official actions that benefit their own financial interests [or the financial interests of people or organizations whose financial interests are attributed to them, i.e., spouses, minor children, or organizations in which they serve as officers or members of boards of directors]. This would violate 18 U.S.C. § 208, a criminal ethics statute. If the spouse of a USGS scientist works at a university or research institute as a scientist in the same or related field, this fact must be disclosed to their supervisor, so that conflicts of interest (or the appearance of partiality) can be avoided.

8) Use their university or research institute affiliation (i.e., not their USGS affiliation) to be a PI or co-PI on a research project.

9) Direct funds to a university or research institute to avoid USGS overhead charges.

10) Represent the university or research institute (or any other third party) to a Federal agency. This would violate 18 U.S.C. § 205, a criminal ethics statute. For instance, a USGS scientist may not, in his/her adjunct or affiliate status, apply for a Federal grant representing the university or research institute. They may be listed as a co-Principal Investigator (with full disclosure of their USGS affiliation), but may not sign the grant request documents.

11) Supervise university or research institute staff. There is significant potential personal liability associated with supervisory functions. USGS employees who act outside the scope of their USGS duties are not covered by the Federal Tort Claims Act. NOTE: Supervision of university or research institute staff may be permitted if a Cooperative Agreement or Intergovernmental Personnel Act (IPA) Agreement exists that specifically addresses job duties that require such supervision.

12) Receive compensation or royalties for writing a book or article in his/her outside capacity that is related to their USGS work or an ongoing program of the USGS. Outside work and activities related to USGS job duties or the USGS mission require prior Ethics Office approval (via Form 9-1510, Request for Ethics Approval of Outside Work or Activity).

13) Knowingly make unauthorized commitments or promises of any kind purporting to bind the Government (see Principle of Ethical Conduct # 6).

14) Sign any document with the university or research institute that commits the USGS to any legal requirements to which it is not permitted to agree, e.g., obligation of funds in violation of Federal appropriations law, open-ended indemnification clauses, "hold harmless" statements, liability insurance, choice of law for settlement of disputes designated in state or foreign courts, etc.

15) Take any action that would negatively impact the ability of the USGS to protect intellectual property created by USGS employees.

16) Disclose non-public information (defined in 5 C.F.R. 2635.703 as information that an employee gains by reason of his/her Federal employment and that he/she knows or reasonably should know has not been made available to the general public).

17) Avoid following USGS Fundamental Science Practices (FSP) by utilizing his/her adjunct or affiliate status (instead of his/her USGS scientist status).

Teaching in official capacity

USGS employees may not engage in teaching semester-long classes in their official USGS capacity, unless the university provides salary reimbursement to the USGS or the USGS has statutory authority that permits teaching in a scientist's official capacity. Intergovernmental Personnel Act (IPA) agreements (OF-69) may be utilized to provide salary reimbursement to the USGS.

31 U.S.C. § 1301(a) states that “[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” According to the Appropriations Law Manual, Volume 1, Chapter 4, “Whether appropriated funds are legally available for something depends on three things: 1. the purpose of the obligation or expenditure must be authorized; 2. the obligation must occur within the time limits applicable to the appropriation; and 3. the obligation and expenditure must be within the amounts Congress has established. Thus, there are three elements to the concept of availability: purpose, time, and amount. All three must be observed for the obligation or expenditure to be legal..... Simply stated, 31 U.S.C. § 1301(a) says that public funds may be used only for the purpose or purposes for which they were appropriated. It prohibits charging authorized items to the wrong appropriation, and unauthorized items to any appropriation.”

Expenditure of appropriated funds (e.g., for employee salaries) must be for a purpose authorized by the agency's appropriation or, if applicable, other federal statutes. Cooperative Research Unit scientists have statutory authority to teach university courses in their official capacities. Otherwise, the USGS does not have specific statutory authority to expend Federal funds to teach at universities.

According to the USGS Office of Policy Analysis, there are several government-wide statutory authorities that may be used to enable a USGS employee to teach while on official duty. One is the Intergovernmental Personnel Act (IPA), an Office of Personnel Management (OPM) program that enables Federal employees to be detailed or assigned (full or part-time) of employees to state/local governments, institutions of higher education, and to certain authorized non-profit entities. To utilize this authority, an IPA Agreement is negotiated and formalized using an Optional Form 69 (OF-69). IPA agreements may be for up to two years (which may be extended for up to two additional years). The IPA also includes authority for Federal agencies to provide training to State or local government employees with or without reimbursement. In some states, faculty members of state sponsored institutions are considered to be employees of the state. When this is the case, USGS employees may provide training to the faculty (but not to students). When training is provided to state/local government employees a training agreement is prepared between the USGS and the state/local government entity requesting the training. More information on the Office of Personnel Management (OPM) Mobility Program is at the OPM website <http://www.opm.gov/PROGRAMS/IPA/Mobility.asp>

A second authority under which a USGS scientist may teach a course is the Government Employees Training Act, which allows Federal employees to provide training to employees of other federal agencies with or without reimbursement.

A third authority is the Foreign Assistance Act, which enables Federal agencies to provide technical assistance, which could include training, to foreign governments and certain international organizations. Under the Foreign Assistance Act, federal agencies may also participate in exchange visitor programs which sometimes include training participants.

Last, a fourth authority is Executive Order 13256 (February 26, 2010) which could enable limited official teaching at a Historically Black College or University (HBCU). The Executive Order does not extend to any other minority or ethnic group.