Seeking Outside Employment during a Shutdown (Jan. 11, 2019)

This document provides further information on requirements applying to NASA employees who seek outside employment during a shutdown. NASA employees furloughed during a lapse in NASA’s appropriations may seek outside employment. Further, consistent with previous shutdowns, all U.S. Government ethics laws and regulations continue to apply to furloughed employees.

The NASA Ethics program is unable to advise on or approve outside activities during the shutdown because such actions are not permitted to be performed during a lapse in appropriations. To support an orderly shutdown of extended duration, we are communicating answers to common questions that have arisen in past shutdowns.

Q: May I seek outside employment during the shutdown?

A: Yes, if doing so complies with all Federal laws and regulations. Employees who wish to explore outside employment during the furlough should carefully review Subpart H of the Standards of Conduct for Employees of the Executive Branch, which you can read here: https://www.govinfo.gov/content/pkg/CFR-2002-title5-vol3/xml/CFR-2002-title5-vol3-part2635-subpartH.xml. Accordingly, you should exercise care to not engage in an outside activity that conflicts with your official duties or generates a conflict of interest prohibited by 18 U.S.C. § 208; and not represent outside interests before the Federal Government as prohibited by 18 U.S.C. § 203 and § 205. These and other limitations on outside employment and activities during the furlough are described in Subpart H of the Standards of Conduct for Employees of the Executive Branch referenced above. You also may not work for a NASA contractor, subcontractor, grantee, or party to a NASA agreement on work performed by that entity for NASA, as proscribed by 5 C.F.R. § 6901.103(c), in NASA’s supplemental ethics regulations. Nor may you perform outside activities requiring approval under 5 C.F.R. § 6901.103(d) in NASA’s supplemental ethics regulations you did not obtain prior to the lapse in appropriations because NASA is unable to process such approval requests during this lapse.

Q: As a practical matter, what outside employment opportunities are more likely to be viable for NASA employees during the shutdown?

A: An opportunity that does not involve any of the following circumstances is more likely to meet applicable requirements, subject to specifics of the case and relevant provisions:

- A company, other entity or individual that does or seeks to do business with NASA, such as but not limited to a NASA contractor, subcontractor, grantee or other NASA agreement party.
- An activity involving appearing before or otherwise engaging with or representing the Federal Government.
- The practice of a profession, such that requires professional licensure, or providing professional consulting services.
- An activity related to an employee’s official duties.
- An activity involving NASA’s intellectual property.

Q: What types of employment are specifically prohibited under NASA’s supplemental ethics regulations at 5 C.F.R. § 6901.103(c), even if complying with other laws and regulations?
A: Outside employment with the following parties, as described, is prohibited under 5 C.F.R. § 6901.103(c):

(1) A NASA contractor, subcontractor, or grantee in connection with work performed by that entity for NASA; or

(2) A party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority, if the employment is in connection with work performed under that agreement.

Q: What types of outside employment requires advance approval under 5 C.F.R. 6901.103(d)?

A: The following outside activities require advance approval under 5 C.F.R. § 6901.103(d), so that NASA employees without prior approval to engage in them cannot do so during the shutdown because the legal and supervisory review to approve them is not permitted during a lapse in appropriations:

(1) Teaching, speaking, writing, or editing, unless the subject matter pertains to the private interests of the employee, such as a hobby, cultural activity, or a professional pursuit unrelated to the employee's official duties;

(2) The practice of a profession or the rendering of professional consulting services;

(3) The management or conduct of a business in which the employee or the employee's spouse has an ownership interest, if that business performs, or may seek to perform, work (other than routine consumer transactions) for the Federal Government or for a NASA contractor, grantee, or other party to an agreement with NASA;

(4) Holding State or local public office, whether by election or appointment;

(5) Employment with a NASA contractor, subcontractor, or grantee;

(6) Employment with a party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority;

(7) Serving as an officer, trustee, or member of a board, directorate, or other such body of a for profit organization or of a nonprofit organization that is a prohibited source; or

(8) Employment which involves the practice of a NASA-owned invention or the performance of experimental, developmental, research, design, or engineering work that relates to the official duties of such employee.

Q: What other reference materials are available to guide me?

A: We realize that as furloughed employees pursue outside activities during the shutdown, including both in person interactions and virtual activities such as on social media, various questions NASA ethics officials are unauthorized to address during the lapse in appropriations will arise. In the absence of such advice, we urge furloughed employees to exercise care and remain conscientious of these requirements. Here are some resources that may help provide guidance:
The general principles outlining the basic obligation of public service, as expressed in 5 C.F.R.§ 2635.101, which can be viewed here: https://www.govinfo.gov/content/pkg/CFR-2005-title5-vol3/xml/CFR-2005-title5-vol3-sec2635-101.xml

The Standards of Conduct for Employees of the Executive Branch, which can be downloaded here: https://www.oge.gov/Web/oge.nsf/0/076ABBBFC3B026A785257F14006929A2/$FILE/SOC%20as%20of%2081%20FR%2081641%20FINAL.pdf


Resources on the NASA Ethics Program web page here: https://www.nasa.gov/offices/ogc/general_law/ethics_resources_page.html

NASA’s supplemental ethics regulations here: https://www.govinfo.gov/content/pkg/CFR-2016-title5-vol3/xml/CFR-2016-title5-vol3-part6901.xml