

INFORMATION PAPER

AMCCC-G
5 November 2001

SUBJECT: Apparent Conflicts of Interest/Covered Relationships

1. Purpose. To provide information on apparent conflicts of interest/covered relationships.

2. Facts.

a. Appearances of Conflicts. By regulation, employees may not participate in official matters when someone with knowledge of the relevant facts would reasonably question their impartiality. An employee could have an appearance of a conflict of interest when a member of the employee's household or someone with whom the employee has a "covered relationship" is a party to the official matter, or represents a party to that matter. Additionally, an employee who is concerned that other circumstances would raise questions about the employee's impartiality should notify the agency to allow it to determine whether the employee should participate in a particular matter. An employee has a "covered relationship" with:

(1) A person with whom the employee has some sort of business or financial relationship, *e.g.*, a supervisor should not participate in rating or other employment decisions affecting an employee who rents his condominium;

(2) A relative with whom the employee has a close personal relationship;

(3) A prospective or current employer of the employee's spouse, parent, or dependent child (the situation here with respect to the Army employee's spouse or dependent child must be carefully examined to ensure that there is not an actual conflict);

(4) Any organization in which the employee served as an officer, director, or employee within the last year;

(5) An organization in which the employee is an "active participant."

b. Resolutions of Apparent Conflicts of Interest. In cases of an apparent conflict of interest/covered relationship, the employee is **disqualified** from acting on official matters unless the "Agency designee" (the employee's immediate supervisor with the concurrence of the Ethics Counselor or for General Officers in command, the General Officer's Ethics Counselor) determines that in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. The ultimate question is whether the circumstances would cause

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a reasonable person with knowledge of the relevant facts to question the official's impartiality in the matter. Factors to consider are:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

c. Employee Authorizations. If an employee is authorized to participate in a particular matter, the following apply:

- (1) The authorization shall be documented in writing at the agency designee's discretion or when requested by the employee. The best practice is to document all authorizations in writing.
- (2) Once an employee is authorized to participate in the matter, the employee may not then disqualify himself or herself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.
- (3) The authorization protects the employee from any charge that the employee should have been disqualified from participation in the matter. It does not automatically protect the agency decision authorizing the employee's participation from outside attack. *See, e.g., DZS/Morris Knudsen Corp.*, B-281224 et al., Jan. 12, 1999, 99-1 CPD 19. In other words, other statutes and regulations, such as the FAR, may establish higher standards of conduct than the ethics regulations.

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