

Office of Government Ethics

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**Letter to a Federal Employee
dated October 4, 2000**

This is in response to your letter dated August 25, 2000, requesting an opinion on whether you may assist taxpayers in completing their tax returns and preparing "offers of compromise" without violating the provisions of 18 U.S.C. § 205. While this Office cannot give you permission to engage in outside employment, we can provide you with the following general information about restrictions on executive branch employees' outside activities.

Before discussing 18 U.S.C. § 205, we would like to discuss the general provisions that could apply to your situation. The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), 5 C.F.R. part 2635, contains various provisions that affect a Government employee's ability to engage in outside activities. As provided in Subpart H of the Standards of Conduct, an employee shall not engage in an outside activity that conflicts with his official duties. 5 C.F.R. § 2635.802. An activity conflicts with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation; or, if, under the standards set forth in sections 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Under 5 C.F.R. § 2635.803, an agency may issue supplemental standards which require employees of the agency to obtain prior approval before engaging in outside employment. To discuss your agency's requirements, you should contact the Designated Agency Ethics Official's office at [your] Department.

Even if your outside employment is not prohibited under the Standards of Conduct, 18 U.S.C. § 205 prohibits a Federal employee from acting as agent or attorney for anyone other than the United States before any department, agency, court, or certain other Federal entities concerning any particular matter in which the United States is a party or has a direct and substantial interest. This means that you may not represent taxpayers before the Internal Revenue Service (IRS). However, it does not prohibit you from assisting them in preparing their income tax returns. Our understanding is that by simply signing another's income tax return

as the preparer, you are not acting as an agent but simply stating a fact. However, if the taxpayer is subsequently called to an audit, you may not act as the individual's representative in that proceeding. While you may attend the audit and answer direct factual questions, you may not argue any theories or positions as a way of explaining how or why various decisions were made in preparing the return. The latter would be prohibited by section 205 because you would then be representing the taxpayer in the audit.

While we are not familiar with the specifics involved in preparing "offers of compromise," you may provide behind-the-scenes assistance as well as make routine inquiries about the status of the "offer" without violating 18 U.S.C. § 205. However, if the "offer" arises out of a matter which is in controversy between the taxpayer and the IRS, you must not advocate the taxpayer's position in any communications you have with the IRS.

You enclosed with your inquiry an IRS Form 8821 which, as you point out, on its face indicates that it is not an authorization for representation. It appears that a taxpayer would complete the form to permit you to receive confidential information on his or her behalf. If this description is accurate, you will not be directly communicating with the IRS and you will not violate 18 U.S.C. § 205 when the form is filed. However, according to the form's instructions, you have the option of receiving the confidential files or visiting an IRS office to inspect the information. If you choose to visit an IRS office, you may not attempt to influence or advocate on behalf of the taxpayer. You may review the standard information contained in the taxpayer's confidential file or request routine information, but you may not attempt to correct any erroneous information in the file or discuss any matter that is an actual or potential controversy.

Finally, if you do engage in outside employment, you must also consider Subpart G of the Standards of Conduct which relates to the proper use of Government property and official time. Under 5 C.F.R. § 2635.704, an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Similarly, under 5 C.F.R. § 2635.705 unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use his official time in an honest effort to perform official duties and shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation. Therefore, you are prohibited from engaging in your outside employment on Government time or using Government resources.

We hope you find this information of assistance.

Sincerely,

Marilyn L. Glynn
General Counsel