

USDA OFFICE OF ETHICS

Science Ethics Branch

Letters of Recommendation/Support

5 C.F.R. § 2635.702, Misuse of Position, Subsection (b), prohibits a Federal employee from creating the appearance of Governmental sanction or endorsement of his or another's personal activities.

Therefore, a Federal employee may sign a letter of recommendation using his/her official title and/or agency letterhead only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he/she has dealt in the course of Federal employment or whom he/she is recommending for Federal employment.

Official Title and Agency Letterhead May Not Be Used:

- to write a letter recommending a personal friend or relative;
- to write a letter recommending a colleague being considered for tenure;
- to write a letter recommending a contractor, vendor, or supplier of goods or services;
- to write a letter recommending a grant applicant in support of a grant application to the USDA or another Federal agency;

Such a letter may violate the anti-representation statutes. USDA employees may write letters representing their own opinions regarding an individual only if they are personally familiar with the applicant. This means that the knowledge gained about the individual must not have been gained through Federal employment.

Employees may provide a factual letter that simply verifies that a contract or project was completed and that the individual or organization accomplished objectives agreed upon under the terms of the contract or project in a successful manner. However, in order to avoid accusations of favoritism, agencies choosing to issue these types of letters must be consistent and prepared to issue such letters in response to every request.

****The Cooperative State Research, Education, and Extension Service (CSREES) provides funding opportunities: competitive, formula-funded and special line-item grants. CSREES maintains an internal policy of prohibiting employees from writing letters to support grant applications. Please check with your Ethics Advisor for additional guidance.***

TENURE RECOMMENDATIONS

An employee may not participate in internal University deliberations or decisions concerning tenure, including service as a member of a tenure committee. Given that the granting of tenure falls within the internal business of the University and given the importance which tenure status has upon the financial interests of the candidate and the University, Agency managers should presume that the University, in asking the employee to participate in its tenure deliberations, seeks the employee's involvement in his/her official capacity and the Agency manager must then ensure that any such involvement be limited in a manner that best protects the interests of the Federal Government.

When authorized in advance by the Agency, an employee may provide the University with an appropriate statement concerning that employee's evaluation of the professional qualifications of a University tenure candidate. Factors to consider in determining whether an evaluation is appropriate may include the following:

- The University sends a request directly to the Agency for the employee's statement;
- The employee's statement expresses a factual evaluation of the candidate's credentials based on official collaborations;
- The evaluation would be based upon observations that the Agency employee made during his/her official duties as a Federal employee; and
- ***The statement avoids language making a tenure recommendation.***

IMMIGRATION SUPPORT LETTERS

18 U.S.C. § 205 prohibits Federal employees from acting as an agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest.

The Office of Government Ethics (OGE) has recently clarified that Federal employees who write and submit letters to the Federal Government in support of an alien applying for a change in immigration status does not typically violate 18 U.S.C. § 205.

A Federal employee is not generally considered the agent of the alien for purposes of 18 U.S.C. § 205 when drafting and submitting such support letters. The opinion emphasizes that there must be the exercise of some control by the principal over the agent for the statute to apply.

If, however, the alien exerts control over the employee in drafting and submitting the letter (e.g., controlling the content of the letter), the employee would be considered the alien's agent for that purpose and would violate 18 U.S.C. § 205.

The writing of an immigration support letter implicates 5 C.F.R. § 2635.702, in that the Federal employee may only sign a letter of recommendation using his/her official title and/or agency letterhead in response to a request for a character reference based upon the Federal employee's *personal (official) knowledge* of the ability or character of an individual with whom he has dealt in the course of Federal employment.

If an employee has no official dealings with the individual seeking a letter, the author of the letter is typically free to write his/her personal opinion on personal letterhead regarding the alien's abilities and character.

For additional information, contact your Ethics Advisor at:

<http://www.usda-ethics.net/science/agency.htm>

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