

# USDA Office of Human Resources Management

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## Q&A VSIP

11/25/11

**Questions: If I receive a VSIP, can I take a job on a Contract with a Federal agency?**

**Response:**

Title 5 U.S.C. 3524(b) requires repayment of the VSIP if a former employee accepts any employment for compensation with the Government of the United States within 5 years of the date of the separation on which the payment is based. The individual must repay the entire amount of the VSIP to the agency that paid the VSIP before the individual's first day of reemployment. Re-employment includes services provided by the former employee under personal service (or other direct contract) with the U.S. Government (other than an entity in the Legislative branch). Exceptions to the repayment provision are listed in 5 U.S.C. 3524(c).

Employees are advised that the Office of the General Counsel (OGC) cannot provide individual advice to those who contemplate taking the VSIP as to whether a particular contract or proposed contract with a Federal agency requires repayment of the VSIP upon re-employment. There are many variations of contractual relationships and therefore OGC cannot advise on all situations.

There are, however, some general rules of thumb that employees should take into consideration when contemplating employment under a contract that might be paid for by a Federal agency.

First, grants and cooperative agreements with the Federal Government generally do not constitute personal services or other direct contracts.

Second, the formal analysis of what constitutes a personal service contract is complex. In some contexts what might look like a personal services contract would not be considered to be a personal services contract for purposes of the VSIP repayment requirement because the actual contract is between the government and a third party contractor (e.g. consulting firm) and not the employee. The bottom line is that employees should look at whether the Federal agency, or a private company, is writing their paycheck. If the Federal agency is writing your check, the VSIP repayment requirement will apply. If Acme Consulting Company is writing your check, the VSIP repayment requirement generally will not apply except as described below.

Third, if the employee accepts the VSIP, establishes his/her own business and subsequently contracts with the Federal Government within 5 years of separation this *may* constitute a personal services or other direct contract. Employees should be cautious in establishing businesses that could be perceived as established solely for the purpose of evading the VSIP repayment requirement. For example, if you establish John Doe, Inc., you are the only employee, and you provide consulting services back to your former agency in the same subject area in which you were employed previously, that would be problematic even though the check would be paid to John Doe, Inc., and not John Doe directly. On the other hand, if you were an information technology specialist for your agency, you go into the catering business with others as Acme Catering, Inc., and your business happens to receive a contract from your prior agency, that likely would not be problematic. You have completely changed your occupation, and you are not trying to evade the VSIP repayment requirement to go back and essentially resume your prior job.