



# U.S. Department of Commerce

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## **Ethics Briefing for Special Government Employees Serving on a Federal Advisory Committee Act (FACA) or Similar Bodies**

*Ethics Law and Program Office*

Office of the General Counsel

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# SGE & OTHER ADVISORY COMMITTEE MEMBERS

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Any executive branch employee and even an independent contractor may serve as a member of an advisory committee, most members of advisory committees fall into one of three categories:

- **Special Government Employees (SGEs)** are federal employees, who are appointed to a committee to exercise their own individual best judgment on behalf of the Government. It is expected that SGEs will discuss and deliberate in a manner that is free from conflicts of interest.
- **Representatives** are *not* a Government employees; they are appointed to a committee to provide it with the points of view of non-governmental entities or of a recognizable group of persons (e.g., an industry sector, labor unions, or environmental groups, etc.). It is expected that representatives will represent a particular bias.
- **Regular Government Employees** are individuals who are already federal employees, assigned to serve on the committee.



# SPECIAL GOVERNMENT EMPLOYEES (SGES)

- SGEs service is "temporary" Government service (i.e., **not to exceed 130 days during any period of 365 consecutive days with or without compensation**).
  - SGEs provide personal expertise or perspectives that might be unavailable among regular federal employees.
- **SGEs are subject to less restrictive conflict of interest requirements and ethics rules than federal employees** but are subject to more restrictive requirements than non-employees, who generally are not covered by the conflict of interest laws at all.
- If SGEs unexpectedly serves more than 130 days, **they remain an SGE** for the remainder of that period.
  - However, during the next 365-day period, the appointing official will reevaluate whether the SGE should still be designated as an SGE.



# HOW IS A "DAY" COUNTED?

## Special Government Employees

- This is especially important for SGEs who serve on more than one advisory committee, work at more than one agency as an SGE, or perform Government work outside of their usual SGE working day (e.g., doing committee “homework”).
  - Generally, **any part of a day** on which you perform any work for the Government should be counted as a day, regardless of the amount of time worked that day or the nature of the services.
  - Any part of a day in which you substantively serve the Government counts as an entire day.
  - Uncompensated activities limited to strictly administrative matters, uncompensated brief communications, and uncompensated brief periods of reading or other preparation performed at a setting away from a Government workplace, need not be counted.
- For more information, see "[Counting Day of Service for \[SGEs\]](#)" from the Office of Government Ethics.



# A couple of common questions

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- **Do the ethics rules apply to you if you receive no pay from the Government?**
  - **Yes, they do.** The definition of an SGE includes those who serve “without compensation.”
- **Do the ethics rules apply on days when you perform no Government services?**
  - **Yes, they do.** They apply equally on days you serve the Government and on days you do not.



# ETHICS PROGRAM REQUIREMENTS

## Special Government Employees

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- SGEs are required to complete ethics program requirements. This includes **annually**:
  1. Filing a ***new entrant*** financial disclosure report.
    - For most SGEs, this will be the Confidential Financial Disclosure Report (OGE 450) filed electronically through FDonline (Intelliworx).
    - This report must be filed and certified ***before*** SGEs participate in deliberative meetings.
  2. Receiving **live ethics training** *before* participating in deliberative meetings.



# RESTRICTION ON NON-FEDERAL ACTIVITIES

## Special Government Employees

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### SGEs may not:

- be a registered foreign agent;
- represent someone, or receive compensation due to someone else's representational activities (such as a partner's), before a Federal agency or Federal court;
- be paid for teaching or writing about programs, policies, and operations of Commerce;
- be employed by a foreign government, unless your only Federal service is as a member of a Federal advisory committee; or
- engage in political activities during days of Federal service.



# CONFLICTS OF INTEREST STATUTES

## Special Government Employees

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- As an SGE, you are subject to certain criminal conflict of interest statutes, including:
  - 18 U.S.C. § 201: **Bribery** – You may not seek, accept, or agree to receive anything of value in return for being influenced in the performance of your SGE official acts.
  - 18 U.S.C. § 219: **Lobbying** – You may not serve as a representative of a foreign principal that requires registration under the Lobbying Disclosure Act or the Foreign Agent Registration Act.



# CONFLICTS OF INTEREST STATUTES

## Special Government Employees

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- 18 U.S.C. § 207: **Post-Government Employment Restrictions** – Following your SGE service, you will be subject to certain representational restrictions, which will limit your ability to represent others with the intent to influence the US Government (*not likely to apply to your service*).
  - All SGEs: The lifetime post-employment restriction on any particular matter involving specific parties (where you participated personally and substantially) applies to you.
  - Seek ethics guidance for more specific information on what representational restrictions may apply.



# CONFLICTS OF INTEREST STATUTES

## Special Government Employees

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- 18 U.S.C. § 209: **Supplementation of Salary** – You may not receive salary or supplementation of salary from any source other than the United States for work as an SGE.
  - SGEs may be prohibited from compensation for teaching, speaking, or writing when the activity is related to their SGE service.



# CONFLICTS OF INTEREST STATUTES

## Special Government Employees

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- **Representing Others before Gov't** - You may not communicate or appear, or accept compensation for such representation, on behalf of another back to the Government in connection with “particular matters involving specific parties” (e.g., contracts, grants)
  - In which *you participated as an SGE* through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or
  - Which is pending at DOC, *if you have served in excess of 60 days* in the immediate preceding 365 consecutive days.

18 U.S.C. § 203 and 205



# CONFLICTS OF INTEREST STATUTES

## Special Government Employees

- **Financial Conflict of Interest** - You may not participate in any particular matter that will have a direct and predictable effect on your financial interests or those imputed to you, unless you qualify for a regulatory exemption or receive a written waiver.
- Imputed financial interests:
  - Spouse
  - Minor child
  - General partner
  - Organization in which the individual serves as officer, director, trustee, general partner or employee
  - Person or organization with which the employee is negotiating or has an arrangement concerning prospective employment.
- Because SGEs typically have substantial outside employment and other interests which are often related to the subject areas for which the Government desires their services, issues under section 208 frequently arise.

18 U.S.C. § 208



# CONFLICTS OF INTEREST STATUTES

## Special Government Employees

- *Particular matter* means anything involving deliberations, decisions, or actions that are focused upon the interests of specific persons or entities or an identifiable class of persons or entities. The Government interprets this term broadly.
  - Not broad policy options or considerations directed toward the interest of a large and diverse group of people
  - May involve specific parties (e.g., a contract, grant or case in litigation)
  - May be of general applicability (focused on the interests of a discrete and identifiable class of persons, such as an industry)
- *Direct and predictable effect* means there must be a close causal link between your SGE work and the financial interest.
  - The impact must not be “speculative” or dependent on events that are independent of and unrelated to your SGE work.
  - It is not necessary to know the magnitude of the loss/gain.



# CONFLICTS OF INTEREST STATUTES

## Special Government Employees

- **Financial Conflict of Interest Exception for FACA members working on “Particular Matters of General Applicability”**  
SGEs benefit from a specific exception to the financial conflict rule, which permits SGEs serving on FACA committees to participate in particular matters of general applicability where the disqualifying financial interest arises only from the SGE's non-Federal employment or prospective employment.
- This exception is subject to several important limitations:
  - the matter cannot have a “special or distinct effect” on either the SGE or the SGE's non-Federal employer, other than as part of a class and;
  - the exception does not cover interests arising from the ownership of stock or other financial interests in the employer or prospective employer, and;
  - the non-Federal employment must involve an actual employee/employer relationship as opposed to an independent contractor (such as certain consulting positions).

5 C.F.R. 2640.203(g)



# IMPARTIALITY CONFLICT

## Special Government Employees

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- **Conflict of Interest based on Personal Relationships**

In the unusual event that an SGE's participation as a committee member, involves participating in particular matters involving specific parties (e.g., contract, application, claim), that will have a direct and predictable effect on the financial interests on a member of their household, or a person with whom they have a covered relationship, if they believe a reasonable person would question their impartiality.

- In essence, SGEs should not participate if it could raise the appearance of a loss of impartiality or where the SGE has concerns that their impartiality will be questioned.

[5 C.F.R. § 2635.502](#)



# IMPARTIALITY CONFLICT

## Special Government Employees

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- **Covered relationship.**

- Persons with whom you have or are seeking business or financial relationships (e.g., prospective employers or clients)
- Household members
- Close relatives
- Employers and clients of your spouse, parents, or children (and their prospective employers and clients)
- Recent former non-federal employers and clients (which includes anyone who was an employer or client within the past year)
- Organizations (other than political parties) in which you are an active participant



# NON-FEDERAL EMPLOYMENT & OTHER OUTSIDE ACTIVITIES

## Special Government Employees

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- SGEs are likely to have employment other than their U.S. Government position. It is important that SGEs consider whether such non-federal employment, or other personal activities, conflict with their Government duties.
- SGEs are required to disqualify themselves from participating on matters in which an outside employer, or an organization in which they serve as an officer or board member, has a financial interest
- SGEs may not serve as an expert witness (un/paid) in Court or before an agency in matters in which you participated as an employee or SGE in the particular matter that is the subject of the proceedings.
- SGE who have served in excess of 60 days in the proceeding 365 days may not serve as an expert, except for the Govt, in a proceeding in which Commerce is a party or has a direct and substantial interest, unless authorized.



# GIFTS

## Special Government Employees

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- Generally, SGEs may not solicit or accept a gift that is offered either:
  - Because of their position as an SGE, or
  - From anyone who has or is seeking business with or action from the Department of Commerce, is regulated by Commerce, or has interests that can be affected by performance of your Federal duties
- Exceptions may apply and permit SGE to accept gifts. For example:
  - based on their outside business or employment relationships
  - from relatives or friends
- What is a gift? Anything with monetary value, but not
  - Items of little intrinsic value intended for presentation only
  - Light refreshments (non-alcoholic)



# MISUSE OF GOVERNMENT RESOURCES

## Special Government Employees

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- SGEs may not use (or allow the use) of:
  - their SGE title/position or Government affiliation for your private gain or the private gain of another, e.g., infer governmental endorsement
  - SGE may refer to your official position as part of general biographical information
- SGE may not disclose or misuse non-public or other protected Government information
- SGEs generally do not provide official statements or speeches on behalf of Commerce. If you are asked to do so, please contact your DFO.



# HATCH ACT

## Special Government Employees

- Federal employees may not engage in partisan political activities while on duty, in an official capacity, while in a federal workplace, using government equipment, or in a government vehicle
  - “Political activity” is any activity directed toward the success OR failure of a political party, partisan political group, or a candidate for partisan political office
- General Restrictions:
  - SGEs may not wear partisan political buttons or engage in political activities while in an SGE status or in a workplace where you are performing your duties
  - Solicit, collect or receive political contributions
- SGEs are covered by the Act only during the time that you are actually performing government business.

5 U.S.C. §§7321 - 7328



## EXPECTATIONS FOR NON-SGE MEMBERS

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- **RGE** are federal employees and subject to the full compliment of government ethics rules and regulations.
  - **REP member** are not subject to any ethics rules and regulations; however, they are expected to:
    - **Avoid misuse of government resource**, whether resources, such as equipment and supplies
    - **Avoid disclosure of nonpublic information** - Depending on the nature of the information, improper use or release may result in criminal charges (such as for misuse of national security information) or civil liability (such as for misuse of business proprietary information or information covered by the Privacy Act).
    - **Avoid misuse of government affiliation** - Representatives may not use their association with the Government, including business contacts obtained through their work with the Government, to obtain personal benefits or favors for themselves, friends, relatives, or business associates.
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Maria G. Colic, Attorney Advisor  
240-751-7778  
[mcolic@doc.gov](mailto:mcolic@doc.gov)

Ethics Law and Program Office  
Phone: 202-482-5384  
[EthicsDivision@doc.gov](mailto:EthicsDivision@doc.gov)