

# Ethics Training for Special Government Employees

Office of General Counsel  
Ethics Specialty Team  
Department of Veterans Affairs  
2014

## Who is an SGE?

- Advisory Committee members appointed to serve not more than 130 days during any 365-day period (with or without compensation)
- Assume here that Committee members will serve less than 60 days in any 365-day period
- Not an SGE if you serve on Committee as representative of an outside organization or another Federal agency.

## How to Get Ethics Advice

- Contact an ethics official on OGC's Ethics Specialty Team:
  - Telephone: (202) 461-6000  
or, 202-461-7694 – PSG III main number
  - Facsimile: 202-273-6403
  - E –Mail: [GovernmentEthics@va.gov](mailto:GovernmentEthics@va.gov)

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## Why Get Advice?

- Seeking advice from an ethics official in advance of taking action and complying with that advice will, in virtually all cases, protect an SGE from criminal prosecution or other administrative action
- Good idea to get advice in writing

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## When do the Ethics Rules Apply?

- Ethics rules apply even if SGE serves without compensation
- Ethics rules apply even on days when SGE is not directly performing Government services
- SGEs are Government employees for ethics purposes, but are subject to less restrictive conflict of interest requirements and ethics rules

## Financial Disclosure

- Unless exempted by written DAEO determination – all SGE Advisory Committee members must submit Confidential Financial Disclosures
- Regular Government Employee members of Advisory Committees should submit reports as well (if already a filer – a copy of most recent OGE 450 or SF 278 is acceptable)
- **Report must** be certified before SGE can participate in any deliberative meeting

## Categories of Ethics Laws

- Criminal conflict of interest statutes;  
18 U.S.C. §§ 201-209
- Standards of Ethical Conduct for Executive  
Branch Employees; 5 C.F.R. part 2635
- Other, Constitution, Hatch Act . . .

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## Conflicts of Interest

- 18 U.S.C. § 208  
It is a crime for you to participate personally and substantially as a Government officer or employee in a particular matter which will directly and predictably affect your financial interest or a financial interest imputed to you.

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## Persons whose Financial Interests are Imputed to You

- Spouse
- Minor Child
- General Partner
- Organization in which SGE serves as officer, director, trustee, general partner, or employee
- Person or organization with which SGE is negotiating with, or has, arrangement concerning prospective employment

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## “Direct and Predictable Effect”

- Yes: Close causal link between decision or action to be taken and any effect of the matter on the financial interest
- No: Link between financial interest and effect of matter is attenuated or effect is contingent upon occurrence of events that are speculative or independent of the matter

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## Defining “Particular Matter”

- Deliberations, decisions, actions focused on interests of:
  - specific parties (e.g., a contract, grant, or case in litigation)

OR

- general applicability (focused on a discrete and identifiable class such as an industry)
- NOT broad policy directed at large and diverse group

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## Exception for Particular Matter of General Applicability

- SGEs **may** participate in particular matters of general applicability where the disqualifying financial interest arises from the SGE’s non-Federal employment or prospective employment
- ONLY where there is no “special or distinct effect” on SGE or the non-Federal employer other than as part of a class
- Exception does not cover interests arising from stock ownership
- Non-Federal employment must involve actual employer/employee relationship (not contractor)

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## Other Exceptions

- Individual Waiver (in writing)
  - Need for SGE services outweighs potential for conflict
  - Waiver issued by appointing official
  
- Multi-campus Exception
  - Can participate in matter affecting one campus of multi-campus State institution of higher education where disqualifying interest arises from employment with separate campus of the same institution; no multi-campus responsibilities

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## Appearances Matter

- Standard of conduct issue, not criminal, but analysis similar to criminal conflict of interest law
  
- SGE/employee cannot participate in specific party matter where a person with whom you have a "covered relationship" is, or represents, a party

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## Appearances Matter

- You have a “covered relationship” with all persons whose interests are yours under criminal conflict law, plus others
- Bottom line-would a reasonable person with knowledge of all the relevant facts question your impartiality in the matter?

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## Prohibited Compensation

- For regular Federal employees - No non-Federal compensation for performance of official duties, except from treasury of State, local, municipal government. 18 U.S.C. § 209.
- For all employees -- No \$ to be influenced to perform your duties. 18 U.S.C. § 201

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## Switching Sides

- SGE is prohibited from receiving compensation based on their representation or anyone else's before any Federal agency or court in connection with any specific party matter in which they participated personally and substantially as a Government employee. 18 U.S.C. § 203.
- SGE is prohibited from acting as agent or attorney, with or without compensation before any Federal agency or court in connection with any specific party matter in which they participated personally and substantially as a Federal employee. 18 U.S.C. § 205.

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## Switching Sides

- Post-Government employment concept of no side switching. 18 U.S.C. § 207.
- Lifetime Ban – representing back to the Government in connection with particular matter involving specific parties in which SGE participated personally and substantially (“behind the scenes” advice OK)

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## Side Switching

- Related Standard of Conduct prohibition
- SGE may not serve as an expert witness for party opposing the Government where SGE participated in the underlying proceedings as a Government employee
- SGE may not serve as an expert for party opposing their own agency where they serve on a committee established by statute or serve for more than 60 days

## Standards of Conduct

- "Public Service is a public trust"
- 14 Principles boil down to two main prohibitions:
  - Do Not **Use Your Public Office for Private Gain**
  - Do Not **Give Unauthorized Preferential Treatment** to Any Private Organization or Individual

## Misuse of Position

- No use of non-public information to engage in any financial transaction or to further own private interest or that of another
- No use of Government property for other than authorized purposes

## Teaching, Speaking, and Writing

- No compensation for Teaching, Speaking, or Writing that relates to official duties
- Relates to Official Duties if:
  - Undertaken as part of official duties,
  - Invitation extended primarily because of official position,
  - Invitation from someone whose interests may be substantially affected by member's Government duties,
  - Information conveyed draws substantially on non-public information, or
  - Subject matter deals significantly with any specific party matter to which SGE is assigned or was assigned within past year of current SGE appointment

## Teaching, Speaking and Writing

- Exception – Teaching a course requiring multiple presentations offered as part of regular curriculum of an elementary/high school or institution of higher education or training program sponsored by the Federal Government.

## Gifts

- May not accept gift given because of official position OR from a “prohibited source”
- Prohibited Source:
  - Entity seeking official action by VA
  - Entity doing/seeking business with VA
  - Entity could be substantially affected by Committee decisions
  - Entity of which a majority of members are prohibited sources

## Gifts

- Exception – MAY accept meals, lodgings, transportation and other benefits arising from outside employment when benefits not offered due to status as Federal employee.
- Other minor exceptions exist, e.g., de minimis \$20 per occasion, \$50 during calendar year – consult an ethics official.

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## Charitable Fundraising

- SGE may engage in fundraising in a personal capacity as long as SGE does not personally solicit funds or support from a person whose interests may be substantially affected by the performance or nonperformance of the SGE's official duties

## Other Laws and Regulations

- **Emoluments Clause**
  - Prohibits employment with, receipt of gifts decoration or titles of nobility from a foreign government or public university or commercial enterprise owned or operated by a foreign government, except to extent authorized by Congress. U.S. Constitution, Art. 1 § 9, cl.8
- **Foreign Gifts and Decorations Act**
  - No gifts > \$375 from foreign government or international organization (includes travel unless takes place entirely outside U.S.)
- **Foreign Agents**
  - No acting as agent of a foreign principal registered under Foreign Agents Registration Act unless deemed in national interest by head of agency where SGE employed

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## Hatch Act

- Restricts certain political activities of Government employees
- Applies to SGEs only when engaged in Government business:
  - No political activity on duty, on Government property, or while using a Government vehicle
  - No soliciting/receiving political contributions
  - May be candidate for public office in partisan elections – but no campaign work while on duty

# Questions?

