



U.S. Department of Commerce

Federal Advisory Committee Act (FACA)

Ethics Law and Programs Office

Office of the General Counsel

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Representatives & Special Government Employees

- Although 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 two categories:
- **Special Government Employees.** Individuals who serve on advisory committees as SGEs 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.** A representative is not a Government employee. Individuals who serve on advisory committees as representatives 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.



ETHICS RULES FOR PERSONS WHO WORK WITH THE FEDERAL GOVERNMENT

Representatives

- **MISUSE OF GOVERNMENT RESOURCES**
 - Use of Equipment, Supplies, and Services –
 - Government resources may only be used for official authorized Government activities. This includes use of:
 - Government equipment;
 - Government supplies;
 - Government services; and
 - the time of Government personnel.



MISUSE OF GOVERNMENT INFORMATION

Representatives

Use of Non-Public information

- Information Representatives obtain through their work with the Federal Government may not be used for their private activities or disseminated to anyone outside the Government unless the person is specifically authorized to receive the information.
- Government information is another form of Government property. Just as Government supplies and equipment may not be used for personal activities, information may only be used for Government programs. Release or dissemination of such information must be authorized by a Federal official.
- 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).



MISUSE OF GOVERNMENT AFFILIATION

Representatives

References to Association with the Government

- 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.
- Because Representatives are not Federal employees, they may not represent that they serve or act on behalf of the Federal Government unless they are specifically authorized to do so with regard to the specific matter.
- They may not use their association with the Government to imply that the Government endorses their personal activities.



Special Government Employees (SGEs)

- The SGE category was created by Congress to apply an important, but limited set of conflict-of-interest requirements to a group of individuals who provide important, but limited, service to the Government.
- The SGE category should be distinguished from other categories of individuals who serve executive branch agencies but who are not employees, such as independent contractors (who are generally not covered by the ethics laws and regulations at all).
- Although many SGEs serve as advisory committee members, not all members of advisory committees are SGEs.



A couple of common questions

- **Do the ethics rules apply to you if you receive no pay from the Government?** Answer: **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?** Answer: **Yes, they do.** They apply equally on days you serve the Government and on days you don't.



FINANCIAL CONFLICTS OF INTEREST

Special Government Employees

- SGEs will be required to file a financial disclosure report.
- A conflict-of-interest statute requires their disqualification from participating in a matter— including by giving advice or making a recommendation—in which they or their spouse, minor child, partner, household member, or employer has a financial interest.



CONFLICTS OF INTEREST BASED ON PERSONAL RELATIONSHIPS

Special Government Employees

- SGEs cannot participate in a matter in which a person with whom the SGE has a “covered relationship” is before the Government as a party (or represents a party) and their participation would cause a reasonable person to question their impartiality.



NON-FEDERAL EMPLOYMENT AND OTHER OUTSIDE ACTIVITIES

Special Government Employees

- 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 (except that SGEs are permitted to participate in general policy matters affecting a non-Federal employer if they serve on a Federal Advisory Committee).



RESTRICTION ON NON-FEDERAL ACTIVITIES

Special Government Employees

Special Government Employees may not:

- be a registered lobbyist;
- 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; and
- engage in political activities during days of Federal service



GIFTS

Special Government Employees

- Generally, SGEs cannot accept a personal gift 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, or a gift that was offered to them because of their Government position.



MISUSE OF GOVERNMENT RESOURCES

Special Government Employees

- The most common violation of ethics standards concerns the misuse of Government resources.
- Appropriated funds, agency gift funds, and other Commerce resources are provided to support Government activities and may be used only for authorized purposes.



THANK YOU

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