Ethics for Special Government Employees

SOL Guidance, Office of Legal Counsel, United States Department of Labor

Special Government Employees

The role of consultants and advisors is vital to the effective functioning of the Federal Government. All employees are held to a high standard of conduct. As an employee, whether paid or unpaid, who is expected to serve 130 days or less per year, you are considered a "special Government employee" (SGE) and are subject to many, but not all, of the ethics rules applicable to Government employees who serve for longer periods of time. This document is to help familiarize you with those rules.

You are strongly encouraged to ask questions whenever you have any concerns about ethics-related matters. In this area, "preventive medicine" is the best course of action to avoid embarrassment to you, the Secretary, and the Department. Each Department and agency has a Designated Agency Ethics Official and an Alternate Designated Agency Ethics Official; see below for this and other contact information.

This document is designed to be a basic, "user-friendly" summary of the ethics requirements. It is not an independent regulation and does not supersede any of the legal authorities described herein. This summary is meant solely to familiarize you with the requirements and help you recognize and deal with potential pitfalls. You should always seek advice from the Office of the Solicitor or your agency ethics contact if you have questions.

Financial Conflicts of Interest

To ensure public confidence in the integrity of the Government and its employees, a conflict of interest statute prohibits you from working as an SGE on a matter affecting your personal financial interests (or the interests of those close to you). Participating in such a matter would create a conflict of interest between your personal interests and your duty to the Government.

You may not participate as a Government official on a matter that will have a direct and predictable effect on your financial interests or the financial interests of your spouse, minor children, or general partners; persons with whom you are seeking or have an arrangement concerning employment; organizations for which you serve as officer, director, trustee, general partner, or employee; or, with regard to a matter involving specific parties, a member of your household (unless an exception applies or you receive a conflict of interest waiver).

Exceptions

Disqualification is not necessary if the interest is:

- held in a broadly diversified mutual fund (i.e., a fund which does not concentrate its investments in a particular industry sector or geographic area);
- held in a sector mutual fund (i.e., a fund investing in a specific industry sector) so long as (1) the affected holding is not invested in the sector in which the fund concentrates, or (2) the aggregate market value of the disqualifying interest in all sector mutual funds (including those of persons whose interests are imputed to the employee) does not exceed $50,000;
- a publicly-traded stock or bond holding of $15,000 or less (unless the matter involves specific parties and holdings of all affected parties total more than $15,000);
- a publicly-traded security or long-term Federal or municipal security in an entity that is not a party to the matter, but may be affected by the matter; and the aggregate market value of the holdings does not exceed $25,000;
- a publicly-traded stock or bond holding of $25,000 or less if the matter is a general policy matter and the total value of investments in affected entities is $50,000 or less; or
- an interest for which you have received a conflict of interest waiver (the Department usually issues waivers for all interests reported on financial disclosure reports filed by members of Federal Advisory Committees).

If you are a Federal Advisory Committee member, disqualification is not necessary if the interest is:

- an interest arising from your non-Federal employment and the matter at issue is a general policy matter affecting that interest as part of a class.

Waivers

You may receive a conflict of interest waiver for interests that are not substantial or, if you serve on a Federal Advisory Committee, for interests that are reported on a financial disclosure report if there is a determination that the need for your service outweighs any potential conflict of interest presented by the financial interest in question. You should contact the Ethics Office to obtain a conflict of interest waiver, if you think one is appropriate.

Examples

An advisory committee member with $20,000 worth of stock in a telecommunications company may advise the Department on regulations which will affect all domestic telecommunications companies.

An advisory committee member with **$30,000 worth of stock** in a telecommunications company and no conflict of interest waiver **may not advise** the Department on regulations which will affect all domestic communications companies.

A 90-day temporary employee who has **$60,000 of holdings in a broadly diversified mutual fund may** review a proposed safety and health regulation affecting the mining industry, even if the fund contains mining equities.

A 90-day temporary employee who has **$60,000 of holdings in a mining sector fund may not** review a proposed safety and health regulation affecting the mining industry.

Appearances of Bias – Non-Financial Conflicts of Interest

Because the public must have confidence in the Government and the impartiality of its employees, it is important that you avoid situations that may give rise to an appearance of a conflict of interest based on your personal relationships. There may be matters on which you are asked to work that will not create an actual financial conflict of interest, but may, because the matter involves someone with whom you have close ties, create an appearance of favoritism or loss of objectivity. Thus, in addition to the statutory restrictions above, there is an additional restriction in the Standards of Conduct, which prohibits you from participating in matters in which certain persons with whom you have close ties ("covered relationships") are parties or are representing parties, if, under a reasonable person standard, participation would cause an appearance of loss of impartiality.

Covered Relationships

You may not participate in a matter involving specific parties if: (1) a person with whom you have close ties (a "covered relationship") is a party or is representing a party in the matter; and (2) your participation would create an appearance of loss of impartiality (unless you receive specific authorization to participate in the matter). Persons with whom you have a "covered relationship" include:

- persons with whom you have business or financial relationships or are seeking such relationships (other than routine consumer transactions);
- household members;
- close relatives;
- employers and clients (and prospective employers and clients) of your parents, dependent children, or spouse;
- former non-Federal employers and clients (for one or two years depending on the amount of any severance payment); and
- organizations (other than political parties) in which you are an active participant.

Exception

You may be able to work on the matter if the interest of the Government in your participation outweighs a concern that someone may question the integrity of the Department's programs and operations. However, before you participate in such a matter you must receive authorization to do so. Contact the Ethics Office to obtain such an authorization if such a situation arises.

Examples

A consultant **may work** on a grant application from a company for which they worked **3 years ago.**

A consultant **may not work** on a grant application from a company for which they worked **3 months ago.**

Non-Government Activities

Additionally, it is important that SGEs avoid activities that conflict with their duties to the Government.

Non-Federal Employment

You may not engage in non-Federal employment that conflicts with your Government duties. You must ensure that aspects of your current employment do not interfere with your ability to carry out your responsibilities as a consultant or advisor to the Government.

Outside Speaking and Writing Activities

Generally, Federal employees may not receive compensation for outside speaking or writing activities that relate to the employee's official duties. SGEs are specifically prohibited from receiving compensation for activities related to their services to the Government, but only as to matters to which the SGE is currently (or had been) assigned during their current appointment. An activity is considered to relate to one's official duties if:

- the activity is performed as part of your services to the Government;
- the invitation was extended because of your Government position;
- the invitation was extended by someone with interests in matters that may be affected by your services;
- the information requested draws substantially on nonpublic information obtained because of your Government service; or
- the subject of the activity deals in significant part with:
- any matter to which the employee is assigned or has been assigned during the previous one-year period,
- any ongoing or announced policy, program, or operation of the agency, or
- (in the case of a non-career employee) the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the agency.

For SGEs who serve less than 60 days during the year, the last bulleted factor is applied more narrowly. Please contact the Ethics Office for more information.

Outside Teaching Activities

All SGEs may accept compensation for outside teaching activities, provided the course requires multiple presentations offered as part of a regularly established curriculum at various specified types of educational institutions, or is part of an educational or training program sponsored and funded by a Federal, State, or local government.

Political Activities

Under the Hatch Act, the rules on political activities are intended to allow you to actively participate in the political process, but also to ensure that Government activities and political activities are not intermingled. You may not engage in political activities during Government duty hours or on Government premises, or use Government resources (including your Government affiliation) for a partisan political purpose or to aid a political campaign or organization. You may engage in partisan political activities during non-duty hours, even on days in which you are providing services to the Government. However, you may not solicit or accept political contributions while on duty during the term you serve as an SGE. As an SGE, you are, unlike other employees, permitted to run for partisan political office, but you may not actively campaign when on duty.

Service as an Expert Witness

Unless you receive prior authorization, you may not serve as an expert witness in any case involving the United States Government if you participated as a Government employee in the matter that is the subject of the proceeding. Additionally, if you served for more than 60 days during the previous year, or on a commission established by statute, you may **not** serve as an expert witness in **any** proceeding before a Federal court or Federal agency if the Department of Labor is a party or has a direct and substantial interest in the matter, unless you receive prior authorization.

Lobbying the Federal Government

Because you are considered a Federal official, generally you may not contact other Federal officials to influence Government actions on behalf of others (e.g., business associates) in some situations. The restrictions differ depending on how many days you provided services to the Government during the previous year.

If you served for **more than 60 days** during the previous year, you may **not** represent anyone before a Federal agency or Federal court in any matter involving specific parties (e.g., contracts, grants, investigations) in which the United States is a party or has a substantial interest if:

- you participated personally and substantially in the matter as an SGE; or

- the matter is pending before the Department of Labor.

If you served for **60 days or less,** you may **not** represent anyone before a Federal agency or Federal court in any matter involving specific parties in which the United States is a party or has a substantial interest if:

- you participated personally and substantially in the matter as an SGE.

Unlike regular Government employees, SGEs **may** represent others or receive compensation for representational services in connection with particular matters of general applicability, such as broadly applicable policies, rulemaking, and legislation which do not affect specific parties. In addition, in certain limited circumstances, SGEs may be authorized to represent another partybefore the Government "in the performance of work under a grant by, or a contract with or for the benefit of, the United States," where the SGE's special knowledge or skills may be required. This requires a waiver from the Secretary of Labor; please contact the Ethics Office for further information.

Restrictions on Serving as a Foreign Agent

Federal officials may not serve as registered agents of foreign governments.

Bribes, Gifts, and Salary Supplementation

The United States Government recognizes that the acceptance of bribes is one of the most basic forms of corruption. Similarly, gratuities from persons with matters before the Government may create an appearance of undue influence on Government employees.

Bribes

You may not receive anything of value for taking action or failing to take action in your Government position.

Gifts

You may not accept gifts from a person who has business before the Department of Labor or which is regulated by the Department, unless an exception applies. Similarly, you may not accept gifts which are given to you because of your Government position, unless an exception applies.

The appearance of favoritism or impropriety can cause embarrassment to both you and the Department. An SGE's actions should promote the public's trust; thus, even where acceptance of a gift may be permitted by one of the below exceptions, you should refuse it if it would lead to questions of your integrity or impartiality. Several factors should be considered when making this determination—including the gift value, the timing, the interests of the giver, and whether disproportionate access is involved. Please contact the Ethics Office if you have any questions.

Exceptions regarding Personal Gifts

Under 5 C.F.R. §§ 2635.203-204, there are a number of items that can be accepted, including, but not limited to:

- gifts of $20 or less (other than cash) up to $50 per year from the same source;
- gifts based on a personal relationship (such as from a relative or friend);
- free attendance and meals at an event where the employee is officially presenting;
- invitations to widely attended events (if the Ethics Office approves and your supervisor provides you a written determination finding that the agency interest in your attendance outweighs any concern that the you may be, or may appear to be improperly influenced);
- items of little intrinsic value (such as cards, plaques, or trophies);
- discounts available to a broad range of persons;
- awards and honorary degrees (in specified circumstances);
- meals, lodging, transportation, and other benefits offered because of an outside business relationship or outside employment (or your spouse's business or employment);
- business meals overseas (if a foreign national is present) up to the *per diem* for the city; and
- gifts from a foreign government of $390 or less (gifts of greater value may be accepted, but become property of the United States Government).

Remember that the appearance of favoritism or impropriety can cause embarrassment to both you and the Department. Thus, even where acceptance of a gift may be permitted by one of the above exceptions, it is never inappropriate and often prudent to decline a gift.

Salary Supplementation

A criminal statute prohibits Federal employees from receiving any salary, or any contribution to or supplementation of their salary from an outside source as compensation for Government services. SGEs, however, are completely exempt from this prohibition and, thus, may continue to collect their regular salary from an outside employer for days on which they are providing services to the Government (whether their Government service is paid or unpaid).

Misuse of Government Resources

It is important to limit the use of taxpayer-funded resources to activities that benefit the public rather than the individual employee. You may only use Government equipment, supplies, services, and personnel for authorized Government activities.

In particular, your official title may not be used in connection with non-Government activities. You are prohibited from using public office for your own private gain or the private gain of another. Therefore, you should generally not endorse any product, service, organization, or enterprise in an official capacity, or use or allow the use of your name and title in a manner that could be construed as sanctioned by the Governmental. If participating in outside events,

unrelated to your Government responsibilities, you may note that you serve as an SGE if appropriate, but should refrain from invoking your Government title or position to merely enhance your stature or to obtain special treatment or benefits.

Specifically:

- you must avoid circumstances that may imply that the Government endorses a particular private activity with which you are associated;
- you may not use nonpublic data, economic analyses, private personnel information, national security information, or other nonpublic information for your private activities; and
- you may not use your Government authority, including business contacts obtained through Federal employment, for personal non-official activities.

Examples

An advisory committee member **is permitted** to use a Department-produced **publically available** study to solicit potential customers for their private business.

And advisory committee member **may not** use a Department-produced **non-public** study to solicit potential customers for their private business.

Post-Employment Restrictions

After leaving Federal service you will continue to be subject to some restrictions on your activities, particularly with regard to lobbying the Government and using nonpublic information.

After you leave Federal service you may **not** represent others before a Federal agency or Federal court with regard to a particular matter involving specific parties (e.g., investigations, grants, or contracts) in which you participated personally and substantially as an SGE. Similarly, for two years after leaving Federal service you may **not** represent others before a Federal agency or Federal court concerning a matter which was under your official responsibility as an SGE during your last year of service.

Certain high level SGEs (those positions for which the rate of pay is fixed according to the Executive Schedule, those compensated at a rate of pay equivalent to the rate of basic pay for level 5 of the Senior Executive Service, or those appointed by the President or Vice President) are subject to the one-year "cooling off" period from representing anyone before their former agency or department, in connection with any matter, if they served 60 days or more during a one-year period before terminating their services as a "senior employee." Furthermore, you may not use or disclose nonpublic information you obtained through your Federal service.

Ethics Contacts

Designated Agency Ethics Official:

Vacant

Alternate Designated Agency Ethics Official:

Vanessa Myers, Associate Solicitor for Legal Counsel

If you have specific questions about how the Federal ethics rules apply, please contact:

- Vanessa Myers, at Myers.Vanessa.J@dol.gov or (202) 693-5702
- Sean Conlen, Ethics Attorney, at Conlen.Sean.P@dol.gov or (202) 693-5694
- Andrew Welz, Ethics Attorney, at Welz.Andrew.J@dol.gov or (202) 693-4421

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