



ETHICS FOR THE 2020 DIETARY GUIDELINES ADVISORY COMMITTEE

Presented By:

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WHAT IS A FEDERAL ADVISORY COMMITTEE?

A committee, board, panel, or other similar group—

- Established by statute or established or utilized by either the President or an agency official.
- For the purpose of obtaining advice or recommendations on “issues or policies within the scope of an agency official’s responsibilities”.

The Dietary Guidelines Advisory Committee: 7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III, directed the Secretaries of USDA and HHS to publish the Dietary Guidelines for Americans jointly at least every five years.

BACKGROUND



“It is occasionally necessary to distinguish consultants and advisers from persons speaking for a firm or an industry, or for labor or agriculture, or in some other representative capacity”

- *“Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government.”* (February 9, 1962)

THREE POSSIBLE CLASSIFICATIONS UNDER THE ETHICS RULES:



1. Federal Employees
2. Representatives
3. Special Government Employees (SGEs)

A “FEDERAL EMPLOYEE” IS:



- A full-time employee or a part-time employee that works more than 130 days in a year
- Compensated by the Federal Government
- Subject to all criminal conflict of interest statutes (18 U.S.C. §§ 203-209)
- Subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635)

A “REPRESENTATIVE” IS:



- **Not** a Federal employee
- **Not** compensated by the Federal Government
- Only represents specific interests or outside groups

ETHICS RULES AND REPRESENTATIVES



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- Not subject to the conflict of interest statutes (18 U.S.C. §§ 203-209); or
 - The standard of conduct regulations found at 5 C.F.R. part 2635.

 - However, representatives should be aware of any potential appearance concerns associated with their service.

REPRESENTATIVES SHOULD:

- Fully and immediately disclose to the DFO any potential conflict of interest or any appearance thereof.
- Though not required, OE may still recommend a recusal (disqualification) if a particular matter involves:
 - Financial interests of a spouse, minor child, or business partner.
 - Submissions of a close friend, student, colleague, or from an organization of which the representative is an active member.

EXAMPLE (REPRESENTATIVES):



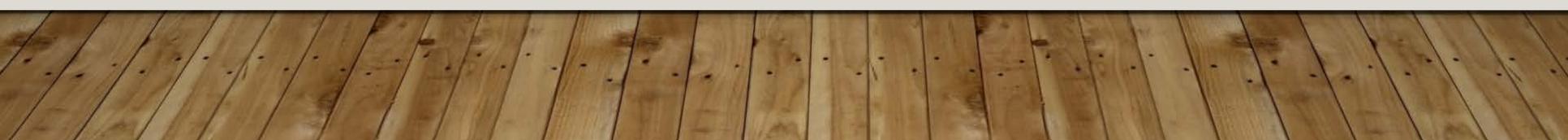
EXAMPLE: Suzanne serves on the Advisory Committee on Minority Farmers. In that capacity, she is asked to review grant applications for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grant Program.

If her husband applies for such a grant, **Suzanne should recuse herself from reviewing any application** for that program.

WHAT IS A SPECIAL GOVERNMENT EMPLOYEE (SGE)?

The term “special Government employee” is defined to include an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis.

- 18 U.S.C. § 202(a)



MORE SPECIFICALLY, A SGE IS ONE WHO:



- Provides independent advice based on recognized expertise or expert knowledge relevant to the committee.
- Works on a temporary basis
 - Not to exceed 130 days of Federal service during a 365-day period.
 - Partial work days count as a full day.
- Is under supervision of a Federal Employee while acting as an SGE

OMB GUIDANCE RE: LOBBYISTS ON FEDERAL ADVISORY COMMITTEES:

- As per guidance from the White House Office of Management and Budget, Federal agencies are prohibited from appointing or re-appointing federally registered lobbyists to advisory committees, boards, and commissions in their individual capacity (e.g. SGEs)
- The prohibition does not apply if they are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.), or state or local governments.

See: OMB Notice of Revised Guidance (8/13/2014)

ETHICS AND SGEs:

- Required to submit the OGE 450 Confidential Financial Disclosure Report upon appointment and annually thereafter.
- Required to receive annual ethics training.
- Subject to Federal employee ethics laws and regulations while acting as an SGE.



ETHICS BASICS FOR SGENS

BASIC RULE #1:

If a matter before the committee involves your financial interests or the interests of someone close to you DON'T work on it.



ETHICS BASICS FOR SGENS

Which relationships trigger recusal?

- Your Spouse and Minor Child(ren)
- Your employer or prospective employer;
- Your General Partner; and
- Any organization where you are an officer, trustee, or General Partner.



ETHICS BASICS FOR SGES

- Which matters* count?
- Grant and Loan Applications
- Contracts
- Litigation
- Judicial proceedings
- Requests for rulings & determinations

*These are known as “particular matters involving specific parties”

ETHICS BASICS FOR SGENS



EXAMPLE: Jim is a member of the National Urban and Community Forestry Advisory Council (NUCFAC). His wife is the President of City Leaves, Inc.

City Leaves, Inc. submits an application for a “Creative and Innovative Project ” program grant. NUCFAC administers such grants.

*Can Jim evaluate and score the City Leaves application??

ETHICS BASICS FOR SGEs

BASIC RULE #2:

If you work on a matter as a SGE, you are then barred from representing another party back to the Federal government on that matter for as long as it exists.

ETHICS BASICS FOR SGES



EXAMPLE #2: Jim, the NUCFAC member from the prior example, and his fellow council members, awarded a \$1 million grant to Arbor, Inc. in 2016.

In 2018, Arbor's CEO contacts Jim and asks him if he'd be willing to contact a FS District Ranger to increase the size of the grant.

Can Jim contact the FS District Ranger?

BASIC RULE: GIFTS

- FACA Board members may accept gifts NOT offered as a result of their Board membership.
- Any gift given to a FACA Board Member because of their service on an Advisory Committee or Board would raise concerns.
- Gifts given to an SGE because of their position or achievements in the private (non-Government) sector generally are not problematic.



BASIC RULE: TEACHING, SPEAKING AND WRITING

- SGEs may NOT receive compensation for teaching/speaking/writing that relates to their official duties.
- SGEs may generally receive compensation for teaching, speaking and writing activities performed in a personal capacity.



RELATES TO OFFICIAL DUTIES?

- Done as part of official duties as a Board member
- Draws on non-public information acquired through Board membership
- Invitation was based upon SGE's Board membership
- Invitation from source that would be substantially affected by the performance of the SGE's official duties

THE UPSHOT:

Federal Advisory Committees are put in place because the government needs your expertise, experience and insight.

Don't let an ethical problem, or the appearance of one, derail the good work you're doing here.



QUESTIONS?

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