

AN ETHICS GUIDE FOR
ADVISORY COMMITTEE MEMBERS
AT THE OFFICE OF MANAGEMENT AND BUDGET,
EXECUTIVE OFFICE OF THE PRESIDENT.

At the Office of Management and Budget (OMB), we are fortunate to have experts from outside of the Government to provide advice as members of advisory committees. This guide will assist you to identify potential ethical issues as you begin your service on an OMB advisory committee. It is important that you understand potential conflicts of interest and other ethics issues that may arise from your appointment to an OMB advisory committee. This guidance briefly summarizes the statutes and regulations that are most likely to affect you.

1. Where Can I Get Advice?

The OMB General Counsel's Office is available to provide advice on any ethics question you may have, many of which may be answered in a telephone call or by e-mail. We are here to help and, if you have any questions at all during your service on an advisory committee, you are encouraged to contact Mr. Stuart Bender, OMB Ethics Officer, in the General Counsel's Office at (202) 395-7533, fax (202) 395-3108, or e-mail at Stuart_Bender@omb.eop.gov.

2. What is a Special Government Employee?

In OMB, members of advisory committees may be appointed as Special Government Employees (SGEs). It is important to note that as an SGE, you will essentially become a Federal employee at those times you are attending committee meetings and are involved in conducting official work for the committee. This means that upon such appointment, you will assume the responsibilities, obligations, and restrictions that are part of Federal public service. Because SGEs are not full-time Federal employees, several of these restrictions apply to you only in limited circumstances.

Service as an SGE may be compensated or uncompensated, but it is always temporary. In fact, you should not serve for more than 130 days during any period of 365 consecutive days. This 130-day period is an aggregate of all your Federal SGE service, not just your appointment at OMB. For example, it includes any days you have served as an SGE in other Federal agencies. If you have served in other Federal agencies within the last year, please advise the OMB Ethics Officer, so that you do not exceed the 130-day period of appointment.

3. Financial Disclosure

You were required to file a financial disclosure report as part of the vetting process prior to your appointment. The purpose of financial disclosure is to protect you from violating any of the criminal conflict of interest statutes, discussed below, and to ensure the public and OMB that your advice is free from any real or perceived conflicts of interest. **It is your responsibility to update the OMB Ethics Officer about any new financial interests that have not been previously disclosed on your financial disclosure report.**

4. Conflict of Interest Statutes

You are required to comply with various criminal statutes while you are an SGE. These statutes are codified at 18 U.S.C. 201, 203, 205, 207, and 208, and are divided into the following subject areas: (a) financial conflicts of interest; (b) representational activities; and (c) limitations on representation after you leave the Government.

a.) Financial Conflicts of Interest and Recusals (Disqualifications)

A conflict of interest occurs when a Federal employee, who has a financial interest in a particular matter, takes some official government action that has a direct and predictable affect on that financial interest.

The main financial conflict of interest statute, 18 U.S.C. 208(a), prohibits you from participating personally and substantially in any particular matter that affects your financial interests, as well as the financial interests of your spouse, minor child, general partner, an organization in which you serve as an officer, director, trustee, general partner, or employee, or an organization with which you are negotiating or with which you have an arrangement for prospective employment. The primary reason you are required to disclose your financial interests is to alert the OMB Ethics Officer to any potential conflict of interest prior to your participation in a particular matter involving an entity in which you have a financial interest. **As noted above, you are under an obligation to promptly inform the Ethics Officer if you obtain subsequent new financial interests after you filed your financial disclosure report.**

Generally, OMB advisory committees address broad policy matters, not particular matters. This greatly reduces the potential for ethical conflicts of interest. However, occasionally, due to their financial interests, some committee members appointed from the private sector may have an actual or potential conflict of interest arising with respect to certain areas such as government procurement. For those members, a conflict of interest waiver may be issued by OMB, in accordance with Section 208(b)(3) and the implementing Office of Government Ethics regulations. The waiver permits a committee member to participate in any particular matter of general applicability where the disqualifying financial interest will not have a special or distinct effect on the member's financial interests. Even with such a waiver, however, those members must still promptly

recuse (disqualify) themselves from participating personally and substantially on any particular matter in their committee work that would affect their financial interests. If an SGE had a financial interest in any of these companies, even with a waiver, the SGE would need to recuse themselves from participating in a committee discussion or vote on such matter to avoid a conflict of interest. Since waivers are complex legal documents, you should seek specific advice from the OMB Ethics Officer.

If at any time during your service on the advisory committee, you become aware of a financial conflict of interest, you must immediately disqualify yourself from acting in a governmental capacity in the particular matter and immediately notify the OMB Ethics Officer.

(i). Requirement to Avoid the Appearance of a Conflict of Interest

Although you are prohibited by 18 U.S.C. 208(a) from participating in committee matters in which you would have a direct effect on your financial interests, there may be other circumstances in which your participation in a particular matter involving specific parties, while not a violation of Section 208(a), would raise an appearance of a conflict of interest. In such a situation, a question could be raised regarding your impartiality in a particular matter. The ethics regulations require you to avoid any situation which could create the appearance of a conflict of interest. The standard is whether a reasonable person with knowledge of the relevant facts to question your impartiality. If you are unsure whether a situation could create the appearance of the loss of impartiality, you should promptly contact the OMB Ethics Officer to determine the appropriate steps to be taken.

(ii). Acceptance of Gifts from Outside Sources

Any gift given to you because of your service on the advisory committee will raise concerns and may be prohibited. 5 C.F.R. 2635.202. You may, however, properly accept gifts given to you because of your personal, outside business, or employment relationships. There are other exceptions, but since they are often fact specific, you should consult the Ethics Officer before accepting any gifts that may have been provided because of your service on the committee.

(iii). Foreign Gifts and Decorations Act

During the period of your appointment as an SGE, you may not accept a gift above a minimum value (\$305 in 2005) from a foreign government or an international organization. This prohibition applies to gifts offered to you by foreign governments even if such gifts have no nexus to your Government appointment. The restriction also extends to such gifts given to your spouse and dependents.

b.) Representational Activities

Two statutes, 18 U.S.C. §§ 203 and 205, prohibit Federal employees, including SGEs, from acting as an agent or attorney for private entities before any agency or court, respectively, of the Executive or Judicial Branches. Section 203 (c) prohibits compensated representation while section 205 prohibits even uncompensated representations by SGEs.

For SGEs, Sections 203 (c) and 205 (c) prohibit representational services only in any particular matter involving a specific party:

- (1) in which you have participated personally and substantially as a SGE; or
- (2) which is pending before OMB and you served as an SGE for more than 60 days during the immediately preceding 365 days.

Representational services include written or oral communications as well as physical appearances made on behalf of someone else with the intent to influence or persuade the Government. Examples of such matters include applications for Federal funding and pending investigations.

(i). Providing Expert Testimony

If, during your service on the Committee as an SGE, you are asked to testify, as an expert witness, in a judicial or administrative proceeding where the United States is a party or has a direct and substantial interest, you may only do so on behalf of the United States, unless you have received prior written authorization from the OMB General Counsel.

Similarly, you may not serve, except on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a Federal court or agency in which OMB is a party or has a direct and substantial interest, unless you have received prior written authorization from the OMB General Counsel.

(ii). Lobbying Activities

While the time you spend performing your official duties as an SGE is intermittent and usually brief, please remember that whenever you are acting as a committee member, you are prohibited from engaging in any activity that directly or indirectly encourages or directs any person or organization to lobby one or more members of Congress. (18 U.S.C. 1913) This statute does not bar you, in your official capacity, from appearing before any individual or group for the purpose of informing or educating the public about a particular policy, or from communicating directly with Members of Congress on official matters. Any communications to members of Congress

initiated by you, in your official capacity as a member of an advisory committee, must first be coordinated through OMB's Office of the General Counsel and OMB's Office of Legislative Affairs as well as the Office of Federal Procurement Policy (OFPP).

(iii). Foreign Government Employment Ban

The Constitution prohibits Federal employees, including SGEs, from accepting any compensation from, or employment with, a foreign government or the political subdivision of a foreign government, including a public university, a commercial enterprise owned or operated by a foreign government, or an international organization controlled by a foreign government. The ban does not apply to a foreign privately-owned corporation. U.S. Constitution, Art. 1 § 9, cl. 8. If you have a contract with, or are consulting for, a foreign government, you must immediately contact the OMB Ethics Officer.

(iv). Foreign Agents

You may not act as an agent or lobbyist of a foreign principal required to register under the Foreign Agents Registration Act or the Lobbying Disclosure Act of 1995 unless OMB certifies that your employment is in the national interest. 18 U.S.C. § 219. If you are currently registered under either of these statutes, please immediately contact the OMB Ethics Officer.

(v.) Non-Disclosure of Internal Government Information

You may not disclose classified, proprietary or predecisional information that you receive in the course of your official duties. Before disclosing information please first confirm with the appropriate OMB personnel that the information may be released.

(vi). Teaching, Speaking, and Writing in a Personal Capacity

Generally, during the term of your appointment, you may continue to receive fees, honoraria, and other compensation for teaching, speaking, and writing undertaken in your

personal or non-Government capacity. For example, you may receive compensation for teaching, speaking, or writing in your personal, non-governmental capacity on a subject within your discipline or inherent area of expertise based on your educational background or experience. In addition, you may teach a course that is part of the regularly established curriculum of an institution of higher education or a program of education or training sponsored and funded by the Federal, state, or local governments.

However, the law imposes limitations on teaching, speaking or writing that is related to your official duties on the advisory committee. You are prohibited from receiving compensation for teaching, speaking, or writing (“activity”) that “relates to the employee’s official duties.” 5 C.F.R. 2635.807. For you, the “relatedness” test is met if:

- the activity is undertaken as an official Governmental duty; or
- the invitation was extended to you primarily because of your position as an SGE in the Government rather than your expertise on the particular subject matter; or
- the invitation was extended to you, directly or indirectly, by a person who has interests that may be affected substantially by the performance or nonperformance of your official government duties; or
- the information conveyed through the activity draws substantially on ideas or official government data that are confidential or not publicly available.

If you use or permit the use of your position on an OMB Advisory Committee as one of several biographical details given to identify yourself in connection with your personal teaching, speaking, or writing (whether or not compensated), you should include a disclaimer that the views presented are solely your own views and do not necessarily represent the views of the Federal government.

Many OMB SGEs hold senior and influential positions in their private lives. However, please remember that you may not use, or permit the use of, your official OMB advisory committee title, position, or authority associated with your Government position to imply an OMB or Government endorsement of a non-Federal entity, event, product, service, or enterprise. (5 C.F.R. 2635.702.) Provided that you act exclusively outside the scope of your official position and abide by the restrictions discussed above, you may participate and support the activities of non-Federal entities in your personal capacity.

(vii). Misuse of Position

The prohibition on misuse of position, which applies to all Federal employees (including SGEs) bars the use of public office for private gain. (5 C.F.R. 2635.702.) This broad prohibition generally is triggered by the following:

1. Using your Government title, position, or authority for your own private gain, or for the private gain of friends, relatives, clients, or anyone with whom you

are affiliated in a non-Governmental capacity (including nonprofit organizations in which you serve as an officer, member, employee, or persons with whom you have or seek an employment or business relationship);

2. Using non-public Government information in a financial transaction to further your private interests or those of another, or disclosing confidential or non-public information without authorization.

(viii.) Hatch Act

The Hatch Act, which limits the political activities of Federal employees on partisan political campaigns, applies to you only while you are conducting Government business. 5 U.S.C. §§ 7321-7326. If you plan on engaging in such activities, please first contact the OMB Ethics Officer.

c. Limits on Representations After Your Committee Appointment Ends

18 U.S.C. 207, prohibits former employees, including SGEs, from representing another person or entity to OMB or to another Federal agency or court in any particular matter involving a specific party in which the former SGE participated personally and substantially while serving as an SGE with the Government. You will receive further ethics guidance on post-employment matters near the end of your membership on the committee. Of course, committee members may raise any questions about this issue at any time with the OMB Ethics Officer.

As noted above, this guide is intended to be an introduction to the statutes and regulations that apply to SGEs. You are encouraged to contact the OMB Ethics Officer at any time to discuss any of the issues raised in this guide and/or any other ethics questions.

For quick reference, your Ethics Officer's contact information is:

Stuart A. Bender
Assistant General Counsel and Ethics Officer
Office of Management and Budget
Telephone: (202) 395-7533
Fax: (202) 395-3108
E-mail: Stuart_Bender@omb.eop.gov