



*Ethics Briefing for
Special Government Employees
Serving on
NASA Advisory Committees*

NASA Office of the General Counsel

Service on NASA Advisory Committees

- Appointment as Special Government Employee (SGE)
- Defined at 18 U.S.C. § 202(a)
 - Anyone who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for a period not to exceed 130 days out of any 365 days
 - Includes participation on advisory committees

What Does it Mean to be an SGE?

- Status as SGE
 - Equivalent to being an “insider”
- Subject to civil service ethics rules
 - Including post-employment restrictions



Criminal Statutes for SGEs

- Financial Conflicts of Interest
 - 18 U.S.C. §§ 208 & 201
- Representational Conflicts of Interest
 - 18 U.S.C. §§ 203 & 205
- Limits on Representation when you leave government service
 - 18 U.S.C. § 207



Standards of Ethical Conduct

- SGEs are also subject to the Standards of Ethical Conduct spelled out in regulations (5 CFR Pt. 2635):
 - Public service is a public trust
 - May not have conflicting financial interests
 - May not improperly use nonpublic information
 - May not use public office for private gain
 - Avoid even the appearance of impropriety

Ethics Question #1

Marcus serves on a NASA advisory committee. He is also a full-time professor at Science and Technology University (STU). One day, his supervisor tells Marcus's team that a large commercial space company has offered to take his entire team on a special tour of the company's manufacturing facilities. In addition to the tour, the group will receive transportation to and from the company facilities and a catered lunch.

Can Marcus accept this invitation?

Standards of Conduct: Gifts



- Gift Rules

- Gift = Anything having monetary value
- Prohibits gifts
 - From Prohibited Sources (do or seek to do business with NASA)
 - Given because of Official Position

- Exceptions

- Outside business activities
- Personal relationships
- \$20/\$50 rule
- Widely-attended gathering (requires legal determination)

Ethics Question # 1

Marcus is being offered this gift because of his business relationship with his home institution, not because of his committee status. As such, he can accept the gifts of transportation and food without running afoul of the gift rules.



Ethics Question # 2

A few weeks before the next meeting, Marcus and the other committee members are offered free attendance at a big gala at the National Air and Space Museum celebrating a major milestone with a NASA mission. The event is sponsored by a large space contractor that does business with NASA. It will be attended by the committee members, industry representatives, members of Congress and some VIPs from various space-related associations.

Marcus isn't sure what to do. Can he accept?

Ethics Question # 2

Marcus should talk to the Executive Secretary or call the NASA attorney supporting his committee. This is a gift, it is being given because of his official committee position, and is from a prohibited source. It is considered a prohibited gift, but his NASA contacts can help determine whether it's okay to accept under a gift exception.

Ethics Question # 3

Gwen is a newly-appointed member of a NASA advisory subcommittee. She is also a leading biochemistry expert and is a professor at Science State University (SSU), which holds a number of contracts and grants with NASA.

Before her first meeting, she sees on the agenda that the committee will have a discussion on a particular project that Gwen knows is supported in part by a NASA contract with SSU. The planned discussion will address whether the project should be scaled back or perhaps even delayed, given other time and resource constraints. Gwen isn't directly involved in the project for SSU.

Does Gwen have any *conflicts of interest*?

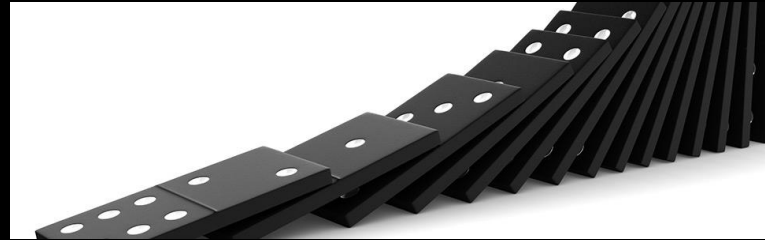
Conflicts of Interest

18 U.S.C. § 208

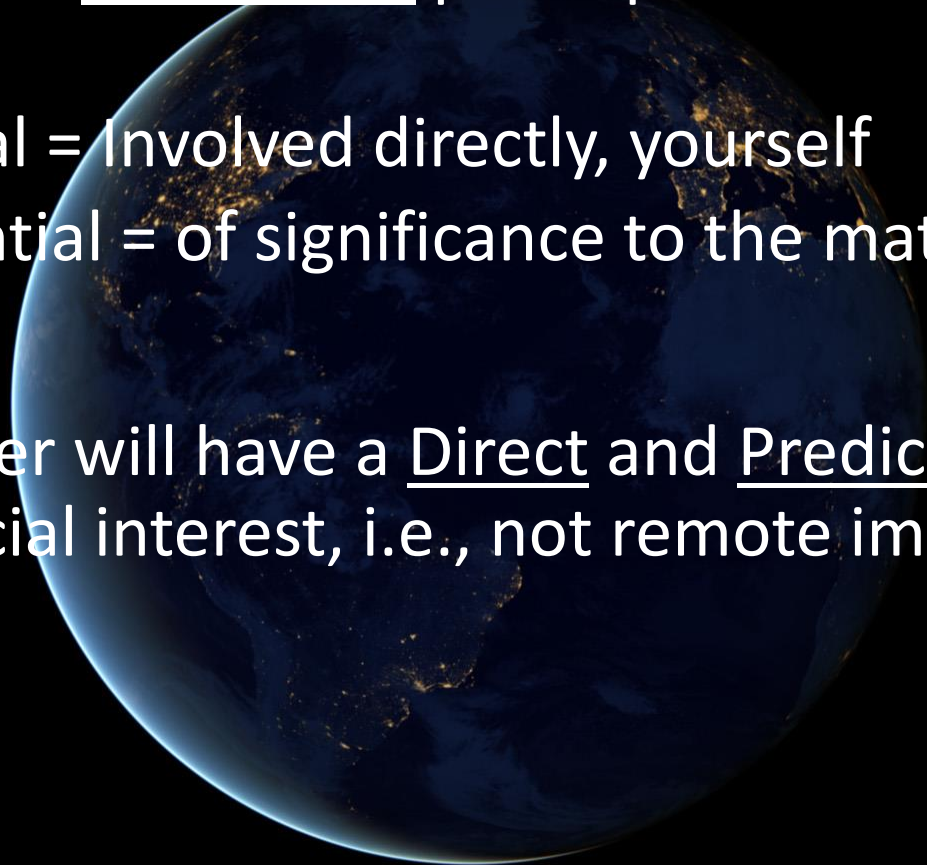
An employee is prohibited from:

- participating personally and substantially
- in any particular matter in which
- the employee has a financial interest,
- if the particular matter will have a direct and predictable effect on that interest.

Participation



- Personal and Substantial participation in a particular matter
 - Personal = Involved directly, yourself
 - Substantial = of significance to the matter
- If the matter will have a Direct and Predictable effect on a financial interest, i.e., not remote impact.



Particular Matter

- Deliberations, decisions, or actions that are focused upon the interests of:
 - Specific persons or entities (EX: contract, grant, agreement)
 - Identifiable class of persons or entities (EX: industry)
- NOT focused on:
 - Broad policy options or considerations

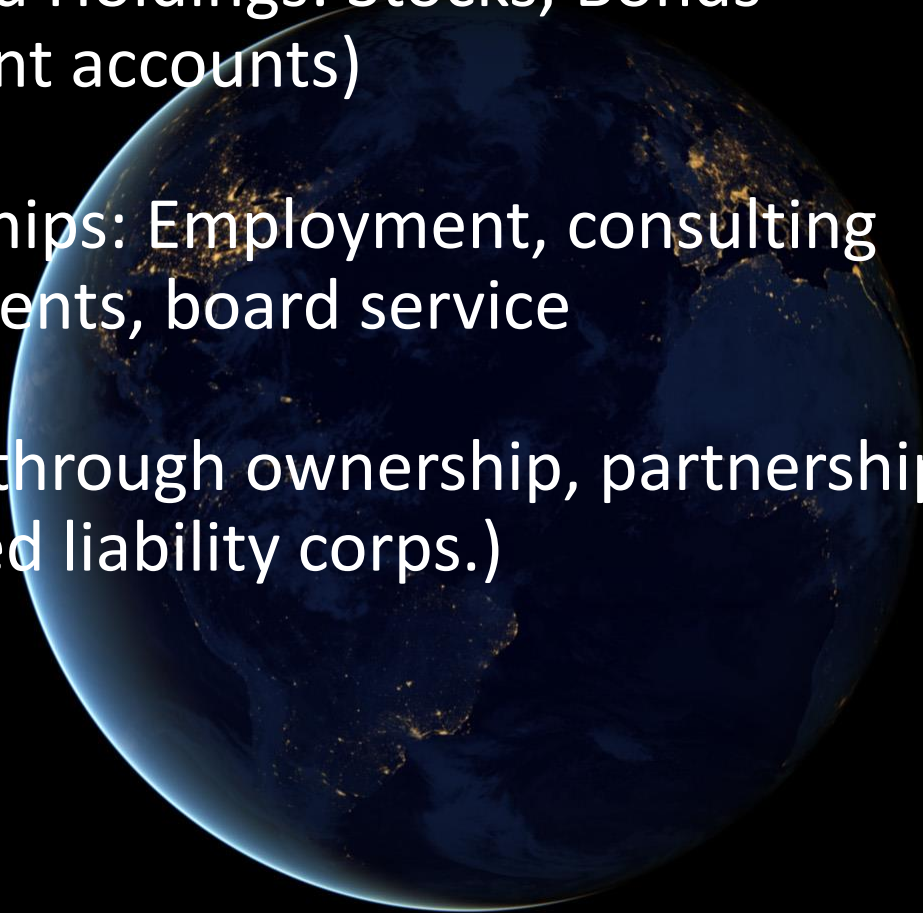
- Contracts and Grants most common at NASA



Financial Interests



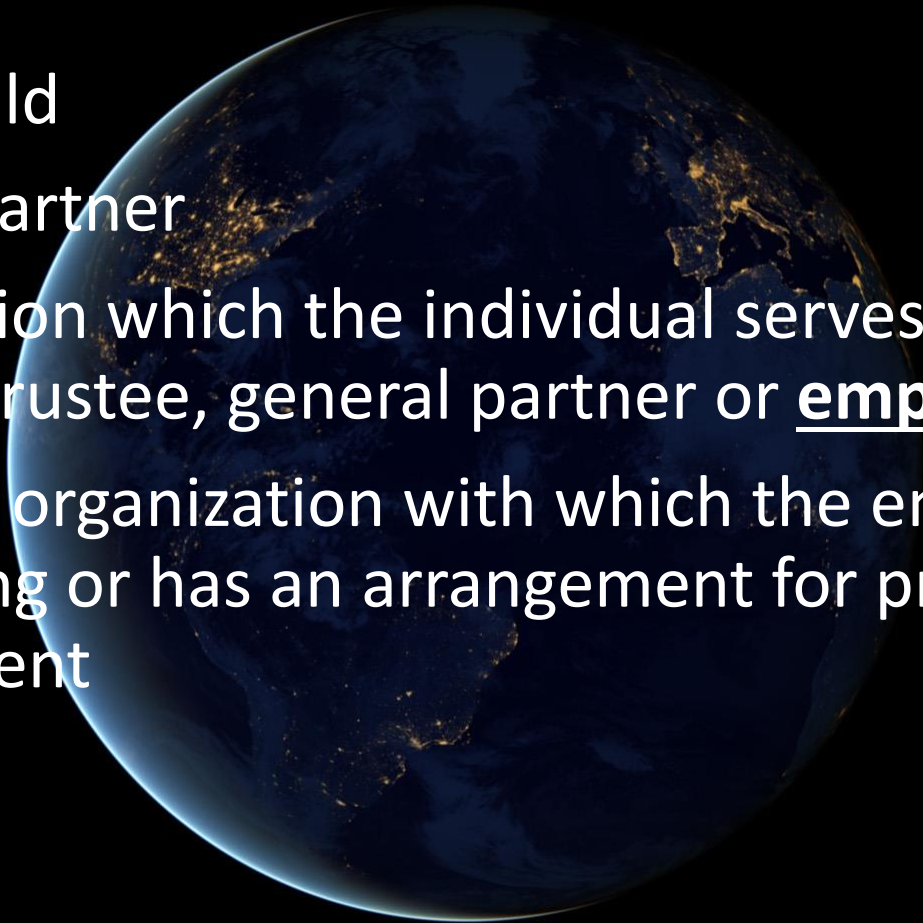
- Assets and Holdings: Stocks, Bonds (retirement accounts)
- Relationships: Employment, consulting arrangements, board service
- Interests through ownership, partnership, LLC (limited liability corps.)



Imputed Financial Interests



- Spouse
- Minor Child
- General Partner
- Organization which the individual serves as officer, director, trustee, general partner or employee
- Person or organization with which the employee is negotiating or has an arrangement for prospective employment



Factors for Question 3



- ▶ **Financial interest:** Gwen is an employee of SSU.
- ▶ **Particular matter:** A project and a specific contract is involved.
- ▶ **Personal and substantial involvement:**

Her advice would be given personally and would be substantial as it will address the scope or continuation of the project. Her input may have a direct and predictable impact on the project, the University's interests and, thus, her financial interests.

Yes, Gwen has a conflict of interest and should recuse herself. NOTE: It does not matter that NASA may or may not ultimately follow the proposed course of action.

Financial Disclosure



- Required for all SGEs
- 2 types:
 - Public (OGE-278)
 - Confidential (OGE-450)
- Purpose: Identify potential conflicts of interest to preserve integrity of committee's work

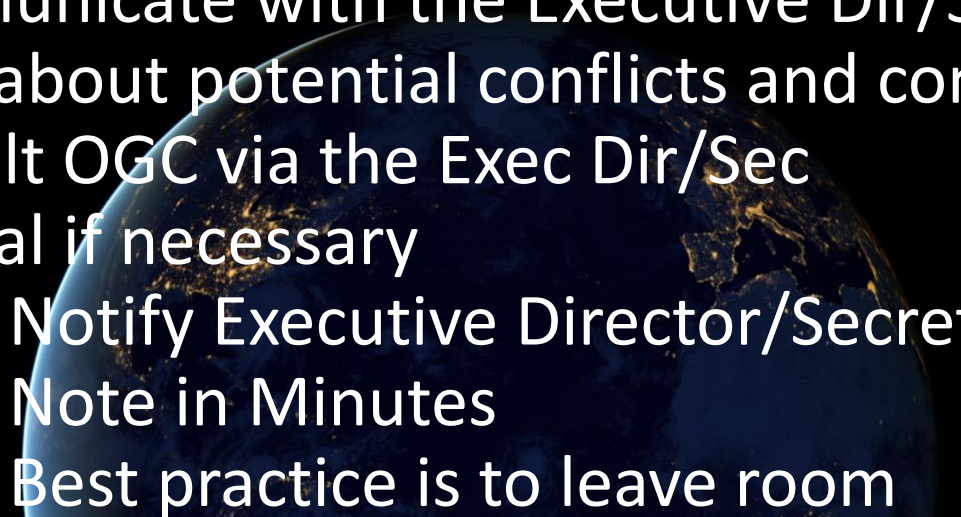


Avoiding Conflicts

- **Eliminate Financial interests –**
 - Note: Regulatory exemption < \$15k
- **Avoid Particular Matters –**
 - Keep discussions high-level and avoid specific contracts & grants.
 - Try to identify actions that could affect finite & discrete groups of individuals & organizations.
- **Stay Aware and Adjust Participation -**
 - Compare agenda with financial interests & covered relationships.
 - Take care when committee discussions or deliberations begin to approach particular matters.



What to Do if You Spot a Conflict

- Communicate with the Executive Dir/Sec and Chair about potential conflicts and concerns and Consult OGC via the Exec Dir/Sec
 - Recusal if necessary
 - Notify Executive Director/Secretary
 - Note in Minutes
 - Best practice is to leave room
- 

Ethics Question # 4

Gwen was also serving on the Board of Directors of the non-profit Association of Biochemistry Experts (ABE). This entity often collaborates with NASA on various activities, including conferences and other projects. She left the Board two months ago because she was too busy to attend the meetings.

Gwen feels better because she is sure that if anything involving ABE comes up in her committee work, she will still be able to participate. She tells the Executive Secretary that she now has no restrictions on participating in discussions involving ABE matters. Is she correct?

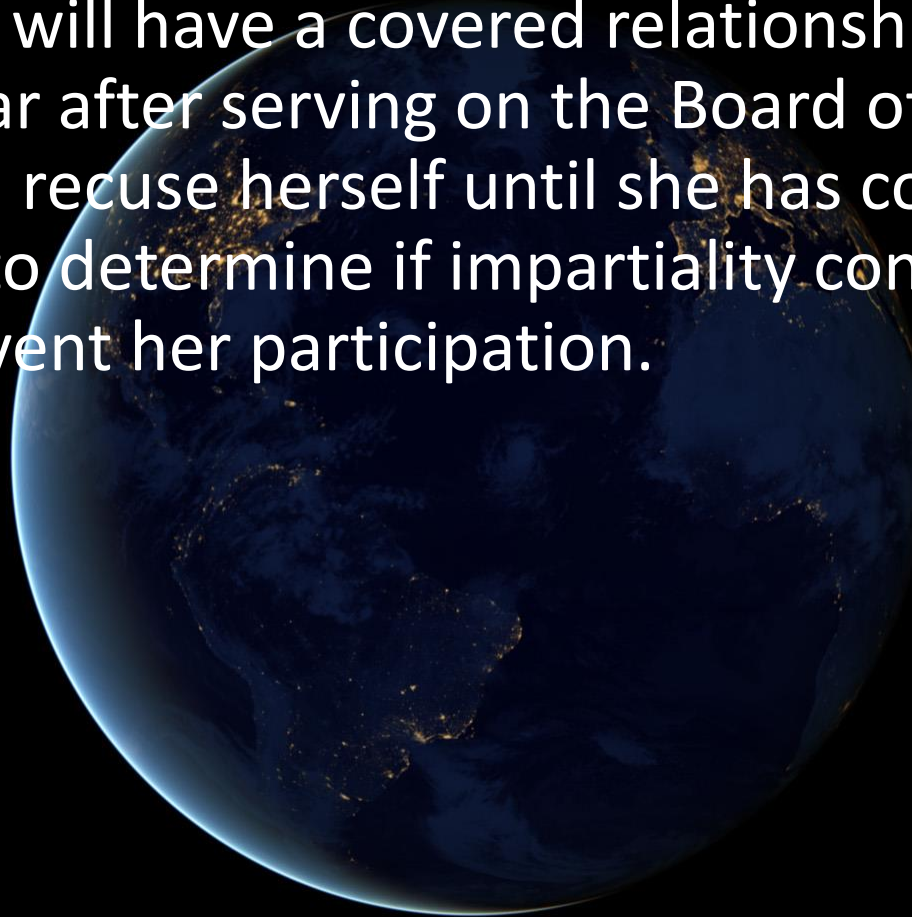
Impartiality & “Covered Relationships”

- “Impartiality” regulation has effect of expanding imputed interests to the following:
 - Entity for which served as employee, consultant, board member or officer (past 12 mos.)
 - Close personal relationship or member of household
 - Person/company that employs spouse/family member
- *Any relationship that would cause a reasonable person to question your impartiality*



Question # 4

No! Gwen will have a covered relationship with ABE for one year after serving on the Board of Directors. She should recuse herself until she has consulted with OGC to determine if impartiality concerns would prevent her participation.



Representational Activities - 18 U.S.C. §§ 203/205

- Prohibits representational activities before the Government
- Applies to SGEs only if:
 - Matter involves specific parties (e.g., contracts, grants) and either
 - SGE was personally and substantially involved in the particular matter as part of Government service, or
 - SGE served *more than 60 days* in the previous 365, and matter is pending before the same agency

Ethics Question # 5

Terrence sits on a NASA advisory committee. At one meeting, a senior NASA employee gives the committee a briefing in which he provides a summary of the outcome of the latest annual solicitation for research grants in their community. The committee is then asked for suggestions for prioritizing those subcategories with regard to the solicitation for next year. Terrence participates in the discussion. He later leaves the committee at the end of the year.

May Terrence submit a proposal on behalf of his University in the next NASA grant solicitation?

Post-Employment Restrictions

18 U.S.C. § 207

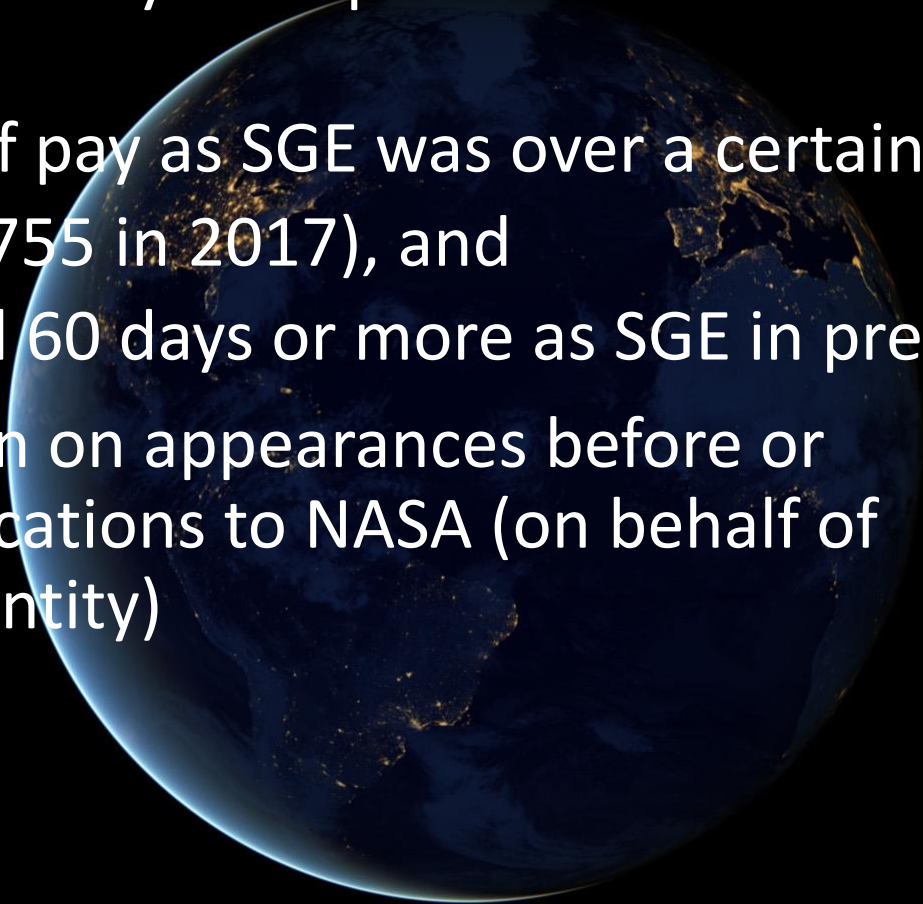


Prohibits representing back to the Agency on a particular matter when:

- The U.S. is a party or has a direct and substantial interest,
- The employee participated personally and substantially in the matter while he was a government employee, *and*
- The matter involved specific parties at the time of his participation.

Post Employment Restrictions (Cont'd)

- Subject to a 1 year representational “cooling off” period if
 - Rate of pay as SGE was over a certain amount (\$160,755 in 2017), and
 - Served 60 days or more as SGE in previous year
- Restriction on appearances before or communications to NASA (on behalf of another entity)



Ethics Question # 5

YES! Terrence may represent his University with respect to the solicitation because, although it was a particular matter, there were not yet parties identified to it at the time he participated.

Even if he did have a restriction:

- Being listed as a Principal investigator is not a “communication,” however, serving as a PI may require such representations.
- Working behind-the-scenes is generally permitted.

A red and white name tag with the text "HELLO I AM..." in bold black letters at the top. Below that, the words "SOMEONE WHO CAN HELP!" are written in a black, handwritten-style font. The tag has a white background and red borders at the top and bottom.

NASA Ethics Officials

- Sumara Thompson-King, General Counsel
 - Designated Agency Ethics Official
- Adam Greenstone, Ethics Team Lead
 - Alternate Designated Agency Ethics Official
- Headquarters Ethics Team
 - Adam Greenstone, Rebecca Gilchrist, Katie Spear, Amanda Fuisz, Griffin Farris
 - Team: (202) 358-2465 or ethicsteam@hq.nasa.gov
 - Legal Assistant: Donna Nelson