Ethics Briefing for Special Government Employees Serving on NASA Advisory Committees

-Michael Pratt, JSC Office of Chief 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 advisory committees
SGE Ethics Rules

- Ethics Principles:
  - Public service is a public trust
  - May not have conflicting financial interests
  - May not improperly use nonpublic information
  - Avoid even the appearance of impropriety

- Status as SGE
  - Equivalent to being an insider
  - Subject to civil service ethics rules
  - Subject to post-employment restrictions
Major Criminal Laws

- 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 the government (18 U.S.C. 207)
Financial Conflicts
18 U.S.C. 208

- Prohibits involvement in a particular matter in which the SGE, employer, or spouse or dependent child has a financial interest:
  - An employee is disqualified
  - from participating personally and substantially
  - in any particular matter in which
  - the employee, or anyone whose interests are imputed to the employee, has a financial interest,
  - if the particular matter will have a direct and predictable effect on that interest.
Financial Interests

- Stocks
- Bonds
- Employment
- Consulting arrangements
- Grants, contracts
- Interests through ownership, partnership, LLC (limited liability company)
Imputed 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
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
Financial Disclosure

- 2 types:
  - Public (SF-278)
  - Confidential (OGE-450)

- Purpose: Identify potential conflicts of interest to preserve integrity of committee’s work
Conflict of Interest

What should you do?

- Recuse (Disqualify) yourself
- Inform your Executive Secretary
- Seek legal advice

- Some regulatory exemptions (< $15K)
- Waiver signed by Administrator
  - in special circumstances
Representational Conflicts
18 U.S.C 203 & 205

- Prohibits representational activities before the Government
- Applies to SGEs only if:
  - Matter involves parties (e.g., contracts)
  - 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
Post-Employment Restrictions
18 U.S.C. 207

- Permanently prohibits a former employee from making, with intent to influence, any communication to the United States, on behalf of any other person in connection with a particular matter in which the United States is a party or has a substantial interest,
- if the employee was personally and substantially involved in the matter.
Subject to 1 year representational “cooling off” period if
- If you are paid for services as an SGE, and
- Your basic rate of pay was over a certain amount ($155,440.50 in 2010), and
- You served 60 days or more as SGE in last year before leaving advisory comm.

Restriction on appearances before or communications to NASA (on behalf of another entity)
Standards of Conduct

- Gift Rules
  - Anything having monetary value
  - Prohibited Sources
  - Official Position

- Exceptions
  - Outside business activities
  - Personal relationships
  - $20/$50 rule
Impartiality

- Must maintain impartiality

- Cannot represent 2 entities at the same time and maintain impartiality
- Apply “Washington Post” test
- When in doubt, recuse yourself.
- Seek legal advice.
NASA Ethics Officials

- Michael C. Wholley, General Counsel
  - Designated Agency Ethics Official

- Adam Greenstone, Ethics Team Lead
  - Alternate Designated Agency Ethics Official

- Headquarters Ethics Team
  - Rebecca Gilchrist, Mike Monahan, Shari Feinberg, Kathleen Teale, Katie Spear, Andrew Falcon (Associate General Counsel for General Law)

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