

# FACA Committees and Ethics: National Agricultural Research, Extension, Education, and Economics Advisory Board (NAREEEAB)

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**Presented By:**

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# What is a Federal Advisory Committee?

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”.



# Background

- **2004 GAO report-** the Government Accountability Office issued a report providing guidance for agency ethics offices in regards to advisory committees, instructing them to:
  1. Develop policies, procedures and guidance for advisory committee member status determinations
  2. Appropriately apply Ethics Rules
  3. Advise committee management officials to consult with their respective Designated Agency Ethics Official (DAEO) during the nomination process
    - AT USDA, the DAEO is Stuart Bender, the Director of the Office of Ethics, at [daeo.ethics@usda.gov](mailto:daeo.ethics@usda.gov)

# 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
- Appointed for the purpose of presenting the points of view of outside interest groups or stakeholders
  - e.g., (labor unions, consumers, an industry sector)
- **Not** appointed to provide expert, independent, or unbiased advice in committee matters

# Why are Representatives important?

- Provide an outside perspective
- Let us know how our programs affect participants
- Eliminate communication barriers
- Help us improve



# Ethics Rules and Representatives



- 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.

# If you are a Representative, you should:

- Fully and immediately disclose to the DFO any potential conflicts of interest.
- Though not required, we 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**: A business owner *should* disqualify herself from serving on a committee that is reviewing grant applications, if her own company or firm has submitted a grant.

# 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
- Is not a Federally-registered lobbyist (as per August 2014 guidance from OMB)



# Ethics and SGEs:

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



# Ethics Basics for SGEs

## **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 SGEs

## 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

# Ethics Basics for SGEs

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 2012.

In 2013, 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:

**FACA 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????

## Contact Information:

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