

Ethics Issues for Federal Advisory Committee Members

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18 USC § 208 Conflict of Interest

An employee may not

- ✓ Personally and substantially
- ✓ In a particular matter
- ✓ In which s/he has a personal or imputed financial interest
- ✓ If the matter will have a direct and predictable effect on that interest

18 USC § 208 Particular Matter

- ✓ Matters involving deliberation, decision or action focused upon the interests of a entity or entities
- ✓ General - class of all pharmaceutical companies or cancer centers
- ✓ Specific – a company or academic institution

18 USC § 208 Conflict of Interest

- Statutory Waivers
- SGEs may be granted waivers under 18 USC §208(b)(3) to participate in general matters, but not in matters affecting their financial interests
- Matters identified as statutory financial interests are listed under the "*Financial Interests*" section of your recusal list.

18 USC § 208 Financial Interests

- ✓ Stocks, stock options, bonds
- ✓ Mutual funds and sector funds
- ✓ Salary
- ✓ Invention rights and royalties
- ✓ Employment interests--professional position or title

18 USC § 208 Sector Funds

- ✓ Stated policy of investing in a limited range of holdings
- ✓ Not considered a diversified fund
- ✓ Regulatory exemption/waiver only available up to an aggregate value of \$50,000
- ✓ Biotech/health care sector funds
 - ✓ Stated policy of investment in biotech/health care devices
 - ✓ Aggregate value exceeding \$50,000 disqualifies member from participating in general and specific matters relating to biotech/healthcare/devices, etc., under regulation.

18 USC § 208 Financial Interests

- ✓ Limited Partnerships
- ✓ Venture Capital Corporations – LLC

18 USC § 208

Limited Partnerships

- ✓ Portfolio with a limited number of partners an/or holdings
- ✓ Not considered a diversified fund, but can be declared an excepted investment fund – EIF
- ✓ An EIF is a *widely held* investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:
 - ✓ A. The filer *does not exercise control over* and does not have the ability to exercise control over the fund; **and**
 - ✓ B. *Either, the fund is publicly traded or available; or the assets of the fund are widely diversified.*
- ✓ A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector. The significance of an EIF is that it permits reduced financial disclosure information, as indicated in

Standards of Conduct

Impartiality – 5 CFR § 2635.502

Covered Relationships

- Relates to matters that are not a statutory conflicts of interest, but would raise a question regarding the SGE's impartiality in the matter
 - Special concerns regarding activities in the past 12 months

Standards of Conduct

Covered Relationships

- An entity (other than a prospective employer) with which you hold or seek a business or other relationship or have done so in the past 12 months
- *Consultation for a venture capital investment firm*
- *Consultation with a broker related to a sector fund*

Standards of Conduct

Covered Relationships - Example

- *Consultation for a venture capital investment firm*
 - *Service on the SAB of Interpharma LLC regarding its investments in start up companies*
- *Consultation with a broker related to a sector fund*
 - *Smith Barney requests advice regarding a new sector fund, Bioventure II*
- *The employing company (Interpharma or Smith Barney) does not conflict with BSA duties, but the clients for which the advice is being provided are the source of conflict*

Conflict Remedies

- Regulatory Waiver
- Waiver (criminal conflict)
- Authorization (conflicting covered relationship)
- Recusal/Disqualification
- Divestiture

Foreign Gifts & Acceptances

Establishes statutory limitations on acceptance of gifts from foreign governments

- Medals, badges, awards, orders of merit
- Tangible gift items valued at less than \$305 (US)
- Educational scholarship or medical treatment
- Travel or expenses for travel occurring entirely outside the U.S.

Standards of Conduct

Misuse of Position

Relates to restrictions on the use of public office for personal or private gain:

- Use of title for private gain of the SGE or others
- Use of title or Government position to coerce or induce benefit for self or others
- Use of non-public information to provide benefit

Outside Activities

Compensation is prohibited if the activity “relates” to your official duties.

- You do it as part of your official duties
- Invited mainly because of committee duties
- Invited by a person whose interests may be affected by committee activities
- Activity relies significantly on non-public information
- Concerns a specific matter in which you participated as a committee member within the last 12 months

18 USC § 205 Representation

May not

- Represent a third party
- Before the Federal Government
- In a matter involving specific parties
- In which the US is a party or has a substantial interest
- If you personally and substantially participated in the matter as an SGE

18 USC § 203 Representation with pay

May not

- Receive compensation
- For representational services
- Rendered by you or another
- Before the Federal government
- In a matter involving specific parties
- In which the US is a party or has a substantial interest
- During your tenure as an SGE

18 USC § § 203-205 Representation

Unless

- Done in the proper discharge of your official duties
- For yourself, your parents, spouse, minor children, or an estate for which you are trustee
- The matter is a personnel action

18 USC § 203 & 205

Representation with or without compensation in matters pending in your agency.....

Service \geq 60 Days in preceding 365

- May not, except in the discharge of official duties, represent any individual or organization before the HHS or the Federal Government in a matter involving specific parties in which the US is a party or has a substantial interest

18 USC § 207 Post Employment

- May not represent any individual or organization before the Federal government
- In a matter involving specific parties
- In which the US is a party or has a substantial interest
- If you personally and substantially participated in the specific matter as a SGE

Other Rules

- Gifts – given to influence you as a committee member, or solely because you are a committee member are prohibited
- Testimony - need agency permission before testifying as an expert for another in a matter in which you participated as an SGE
- Charity - can't use title or position, and can't solicit from an entity having interests that could be substantially affected by your committees activities.

Lobbying/Politics

- Appropriated funds can not be used in lobbying
- The Hatch Act - 5 USC § 7321-7328 limits the “political” activities of SGEs while engaged in the performance of official duties

Lobbying/Politics

- When authorized, SGEs may engage in educational activities relating to a policy or legislative proposal
- May communicate to members of Congress at the request of Congress

Lobbying

All official communications to Congress should be coordinated through the Office of the Assistant Secretary for Legislation

For further information, contact:

Office of Congressional and Government Relations

Susan Erickson

301-496-5217

Questions or Concerns

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