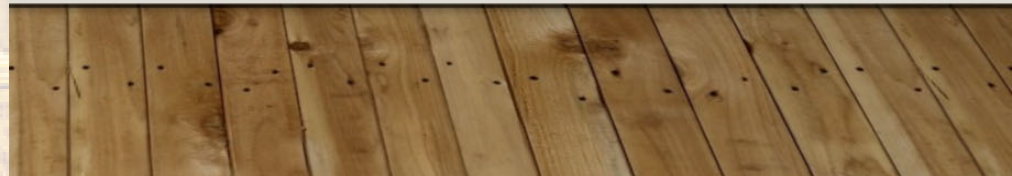




# ETHICS FOR USDA DESIGNATED FEDERAL OFFICERS

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<https://www.usda.gov/oe>



# BACKGROUND

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**“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:

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1. Federal Employees
2. Representatives
3. Special Government Employees (SGEs)

NOTE: *most will be representatives or SGEs*

# QUESTIONS TO ASK WHEN CLASSIFYING COMMITTEE MEMBERS

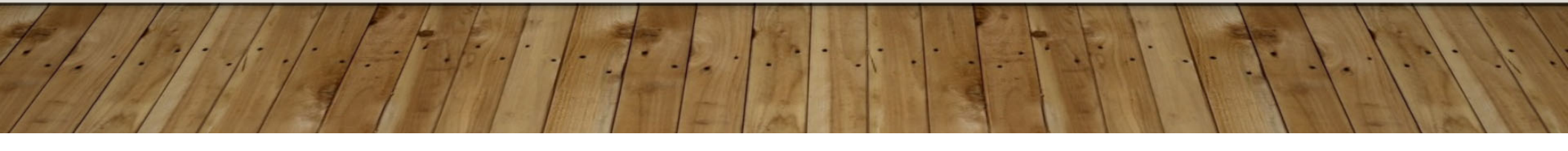


# QUESTIONS TO ASK WHEN CLASSIFYING COMMITTEE MEMBERS:

1) What is the committee being asked to do?

## Examples:

- Provide general recommendations to the Secretary on USDA policy (could be SGE or representative)
- Provide specific expert technical guidance to USDA on a particular problem (likely SGEs)



# QUESTIONS TO ASK WHEN CLASSIFYING COMMITTEE MEMBERS:

2) Are the members speaking on their own behalf (i.e. provide an expert opinion) or on behalf of an outside group?

- If on their own behalf, likely SGE
- If on behalf of an outside group, likely representative



# QUESTIONS TO ASK WHEN CLASSIFYING COMMITTEE MEMBERS:

3) Does the charter language provide any clues?

Examples:

- “An individual with expertise in the field of \_\_\_\_\_” (likely SGE)
- “An individual who represents a land grant university” (likely representative)



# WHY DOES THE COMMITTEE MEMBER CLASSIFICATION MATTER?

SGE members are required:

- 1) To submit an OGE 450 Confidential Financial Disclosure Report prior to beginning committee work and on an annual basis thereafter
- 2) To receive ethics training prior to beginning committee work and on an annual basis thereafter



# DFO ETHICS CHECKLIST

- ✓ Reach out to the Office of Ethics each time an SGE is appointed to your committee
- ✓ Reach out to the Office of Ethics each time an SGE leaves your committee
- ✓ Reach out to the Office of Ethics before the first meeting of your committee to schedule ethics training prior to beginning committee work and on an annual basis thereafter

# Ethics Basics for FACA Committee Members



# A “FEDERAL EMPLOYEE” IS:

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- 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
- Subject to the Standards of Ethical Conduct for Employees of the Executive Branch

## A “REPRESENTATIVE” IS:

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- Not a Federal employee
- Not compensated by the Federal Government
- Represents specific interests or outside groups
- Appointed for the purpose of presenting the points of view of outside interest groups or stakeholders (e.g. community-based organizations that represent underserved communities)

# ETHICS RULES AND REPRESENTATIVES

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- 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.



# REPRESENTATIVES SHOULD:

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- Fully and immediately disclose to the DFO any potential conflict of interest or any appearance thereof.
- Though not required, OE 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.



# WHAT IS A SPECIAL GOVERNMENT EMPLOYEE (SGE)?

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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:

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- 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

# ETHICS AND SGEs:

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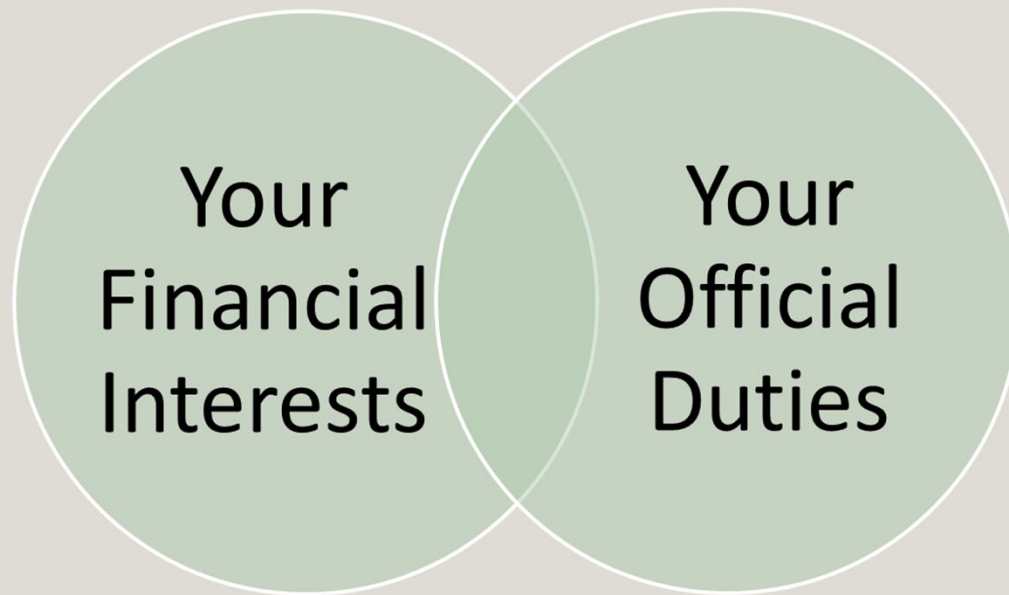
- Required to submit the OGE 450 Confidential Financial Disclosure Report upon appointment and annually thereafter.
- Required to receive ethics training each year.
- Subject to Federal employee ethics laws and regulations while acting as an SGE.



# ETHICS AND SGENS:

## BASIC RULE #1, Conflicts of Interest:

If a matter before the committee involves your financial interests or the interests of someone close to you DON'T work on it.



# BASIC RULE #1

## CONFLICT OF INTEREST BOTTOM LINE

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**SGEs should NOT participate in a USDA matter that involves or impacts their personal financial interests OR the financial interests of:**

1. Their spouse; or
2. Their minor children; or
3. A general partner; or
4. An entity whom the SGE serves as: officer, director, trustee, general partner, or employee; or
5. An entity with whom the SGE is negotiating for or seeking outside or future employment





## **BASIC RULE #1, COI**

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### Which matters count?

- Policies or rules directed at a particular industry
- Contracts, Grants, and Loan Applications
- Litigation
- Judicial proceedings
- Requests for rulings & determinations



## BASIC RULE #2 – REPRESENTATION (18 USC 203 & 205)

Section 203: SGE may not receive compensation for representational services before any Federal agency/court for any specific party matter the SGE personally and substantially worked on

Section 205: SGE may not act as agent or attorney for any other party before any Federal agency/court for any specific party matter the SGE personally and substantially worked on

## BASIC RULE #2 – REPRESENTATION (18 USC 203 & 205) CONT.

Additionally, if an SGE served more than 60 days during the preceding 365 day period, the ban extends to any such matters pending before USDA.

Any day on which you perform substantive EC duties will count as a day of service.



# EXCEPTIONS TO THE REPRESENTATION RULES

- **Representing yourself or a sole proprietorship (does not include a family or personal corporation).**
- Representing your parents, spouse, child, person/estate you serve as fiduciary (matter must not be subject to your official responsibility).
- Representing one subject to disciplinary, loyalty or other personal administrative proceedings.

## BASIC RULE #3 – POST GOVERNMENT EMPLOYMENT RESTRICTIONS (18 USC 207)

If you work on a matter as an SGE, you are then barred from representing another party back to the Federal government on that matter for as long as it exists.

# BASIC RULE #4: 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 #5: TEACHING, SPEAKING AND WRITING

- SGEs may NOT receive compensation for teaching/speaking/writing that relates to their official FAC duties.
- SGEs may generally receive compensation for teaching, speaking and writing activities performed in a personal capacity.



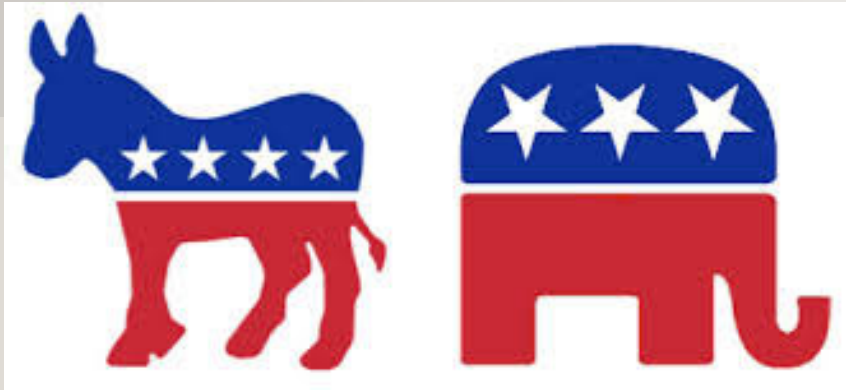


## BASIC RULE #6: DO NOT MISUSE YOUR POSITION

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- Do not use for private gain of yourself or others.
- Do not endorse anything in your official capacity.
- Do not engage in financial transaction using nonpublic information.
- Use Government property or time for authorized purposes only.

## BASIC RULE #7: THE HATCH ACT AND POLITICAL ACTIVITY



5 U.S.C. §§ 7321-7326

**Prohibits the use of taxpayer funds or authority to further partisan political interests.**

**SGEs may not engage in political activity while performing Government business.**

## THE UPSHOT:



**Federal Advisory Committees are put in place because the government benefits from the members' expertise, experience and insight.**

**We appreciate our partnership with the DFOs throughout USDA, please let us know how we can help!**



# QUESTIONS?

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## Contact Information:

USDA Office of Ethics

202-720-2251

[daeo.ethics@usda.gov](mailto:daeo.ethics@usda.gov)

<https://www.usda.gov/oe>

