

## **ETHICS AND CONFLICT OF INTEREST GUIDANCE for Department of Energy Advisory Committee Members**

The composition of the Department's advisory committees may include both full-time Federal Government employees and individuals who are employed by or represent non-Federal Government entities. Members of a committee who represent interests other than the Federal Government are not Government employees or so-called "special Government employees." For non-Federal advisory committee members, the Department has a policy regarding your conduct to assure integrity in the committee process and the credibility of its work.

For members who are Federal employees, the same conflict of interest statutes and regulations that apply in your regular Government employment apply to you as a member of an Advisory Committee.

### **Financial Conflicts**

For members who are **Federal employees**, the participation prohibition of 18 U.S.C. § 208 applies to you with respect to your involvement in this advisory committee, just as it applies to you in any work that you perform for the Government. That criminal statute provides that a Government employee may not participate personally and substantially as a Government employee in any particular matter in which, to his/her knowledge, he/she, a spouse, minor child, general partner, organization in which s/he is serving as an officer, director, trustee, general partner, or employee, or any person or organization with whom s/he is negotiating or has any arrangement concerning prospective employment, has a financial interest. This means that, as a Federal employee, you may not participate in any matter that would have a direct and predictable effect upon those personal financial interests, including those imputed to you, unless a waiver of the participation prohibition exists.

While members who are **not Government employees** are not subject to the criminal and civil sanctions of the statute, there are restrictions based on Department policy which apply to service on an Advisory Committee. Thus, you should not participate in committee business involving a particular matter that would have a direct and predictable impact on any company or organization with which you are associated or in which you have a financial interest without discussing the situation with the Committee's Designated Federal Official (DFO). Whether you can participate in a particular matter that will have a direct and predictable impact on an entity with which you are associated or have a financial interest will depend on the nature of the association or the amount of the financial interest.

Where appropriate, the DFO will discuss the particular situation with the Department's Designated Agency Ethics Official (DAEO). Therefore, you are encouraged to promptly disclose any potential conflicts to allow time for resolution of the matter prior to a scheduled meeting. You may be required to recuse yourself from the entire discussion of the matter, or to abstain from voting on the matter.

### **Restrictions on Activities**

All committee members who serve in an **expert or non-representational capacity** should also be aware that section 219(a), title 18, United States Code, makes it a criminal offense for a "public official" to be, or to act as, (1) an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, or (2) a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity as defined in section 3(6) of that Act. For this purpose the term "public official" has been interpreted to include members of Federal Advisory committees if they are not serving in a representational capacity.

Advisory Committee members shall also adhere to the following general conflict of interest requirements:

- (1) A member shall refrain from any use of his or her membership which is, or gives the appearance of being, motivated by the desire for private gain;
- (2) A member shall not use inside information obtained as a result of committee service, directly or indirectly, for private gain;
- (3) A member shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide a financial benefit to the member or any person with whom he or she has family, business, or financial ties;
- (4) A member should seek immediate guidance if he or she is offered anything of value as a gift, gratuity, loan, or favor in connection with committee service. See Appendix A, att. (Summary of the gift rules under the Standards of Conduct applicable to Federal employees in the Executive Branch, for guidance only).

As a practical matter, the first restriction includes a prohibition on using your committee membership to further the interests of your employers or clients. For example, it would be improper to lobby a senior Department official at a committee meeting regarding a matter of interest to one of your clients or your employer. Such communications are a misuse of your position as a committee member. Likewise, using information gained through your membership on the Advisory Committee to alert your employer to up-coming contract opportunities would violate the second restriction.

### **Post-Employment Restrictions**

For members who are **Federal employees**, the post-employment restrictions applicable to you in your regular Federal positions also apply to your work of this advisory committee. However, for members who are **not Federal employees**, once your service on the committee has ended you will not be subject to any restrictions as a result of your committee service unless you had access to classified or proprietary documents or information.

### **Contacts for Advice**

If you have any questions, first contact your DFO. The DFO, in consultation with the Department's DAEO, in the Office of the Assistant General Counsel for General Law (GC-77), will try to answer your questions or resolve your concerns. If you are unable to resolve your concerns, you may contact the Department's DAEO directly on (202) 586-1522, by facsimile on (202) 586-8685, or by electronic mail to: [standardsofconduct@hq.doe.gov](mailto:standardsofconduct@hq.doe.gov).

## **GIFTS FROM OUTSIDE SOURCES** (Summary of 5 C.F.R. Part 2635, subpart B)

**BASIC PROHIBITION ON GIFTS FROM OUTSIDE SOURCES.** A Federal employee shall not solicit or accept a gift from a “prohibited source” or one given because of the employee’s official position. A prohibited source is any person (including an organization in which more than half of its members are persons noted below), that

- Seeks official action by the Department
- Does or seeks to do business with the Department
- Is regulated by the Department, or
- Is substantially affected by the performance of the employee's duties.

**DEFINITION OF A GIFT.** The term "gift" includes almost anything of monetary value. However, among the items excluded from the definition are:

- Coffee, donuts and similar modest items of food and refreshments when offered other than as part of a meal;
- Greeting cards and most plaques, certificates and trophies; and
- Anything for which the employee pays market value.

**EXCEPTIONS.** Subject to the limitations noted below, there are exceptions which will permit an employee to accept certain gifts. The most commonly used exceptions are:

- Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any one source (this exception does not permit gifts of cash or investment interests);
- Gifts based on a family relationship or personal friendship;
- Certain awards and honorary degrees;
- Certain gifts from political organizations;
- Free attendance provided by the sponsor of an event for the day on which an employee is speaking or presenting information at the event;
- Free attendance provided by the **sponsor** of a widely-attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made;
- Free attendance provided by a **non-sponsor** of a widely-attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made and more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$250 or less; and

- Invitations to certain social events extended by persons who are not prohibited sources, provided no one is charged a fee to attend the event.

**LIMITATIONS ON USE OF EXCEPTIONS.** An employee may not use any of the exceptions noted above to solicit or coerce the offering of a gift or to accept gifts:

- For being influenced in the performance of official duties;
- In violation of any statute;
- So frequently as to appear to be using public office for private gain; or
- In violation of applicable procurement policies regarding participation in vendor promotional training.

**DISPOSITION OF GIFTS.** When an employee cannot accept a gift, the employee should return the gift or pay the donor its market value. Subject to approval, however, perishable items, such as flowers or food, may be donated to a charity, destroyed or shared within the office.

**FOR FURTHER INFORMATION:** Contact the Designated Agency Ethics Official (DAEO) of the Department of Energy in the Office of the Assistant General Counsel for General Law (GC-77), on (202) 586-1522, by facsimile on (202) 586-8685, or by electronic mail to: [standardsofconduct@hq.doe.gov](mailto:standardsofconduct@hq.doe.gov).