

**Ethics Briefing  
for  
Special Government Employees  
Serving on  
NASA Advisory Committees**

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# 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

- ▶ **Principles of Ethical Conduct (5 CFR 2635):**
  - 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

# Laws/Regulations

## ▶ Criminal Statutes

- 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 government service (18 U.S.C. 207)

## ▶ Regulations

- Standards of Conduct (5 CFR 2635)
- “Impartiality”

# Laws/Regulations (cont'd)

Federal Advisory Committee Act (5 USC Appx. 2)

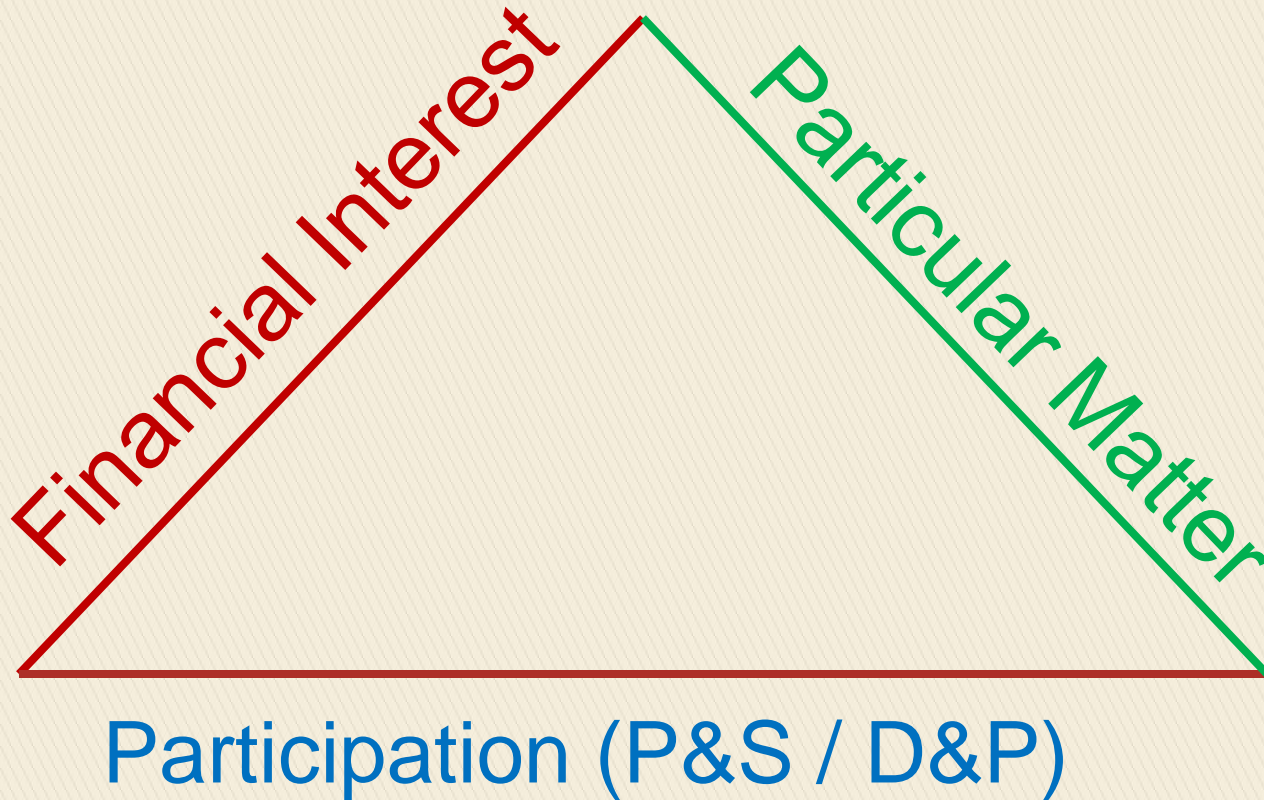
[A]dvisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by... an officer of the Federal Government.

# Conflicts of Interest 18 U.S.C. 208

## **An employee is prohibited from:**

- participating personally and substantially
- in any particular matter in which
- the employee has a financial interest,
- if the particular matter will have a direct and predictable effect on that interest.

# *“The Conflict Triangle”*



# Leg 1: Financial Interests

- ▶ Holdings: Stocks, Bonds (retirement accounts)
- ▶ Relationships: Employment, consulting arrangements
- ▶ Agreements: Grants, contracts
- ▶ Interests through ownership, partnership, LLC (limited liability corps.)



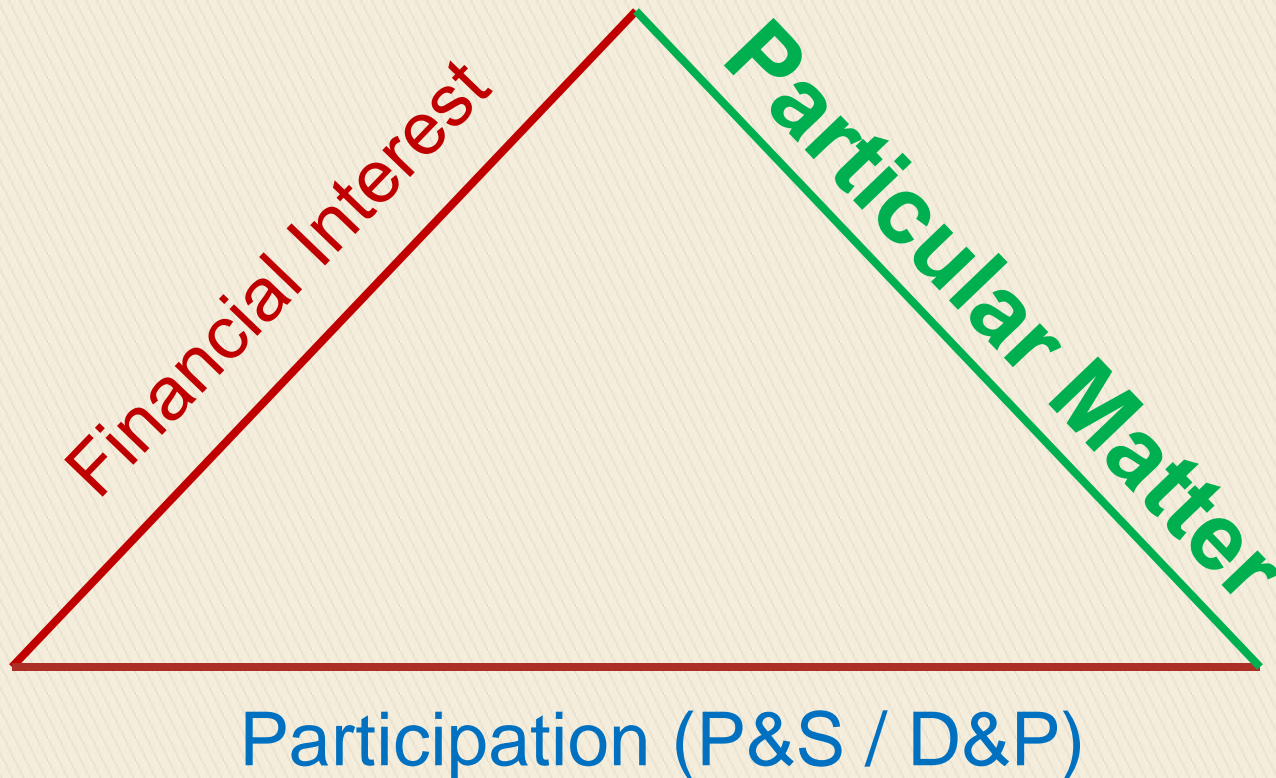
# Imputed Financial Interests

- ▶ 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

# Financial Disclosure

- ▶ 2 types:
  - Public (SF-278)
  - Confidential (OGE-450)
- ▶ Purpose: Identify potential conflicts of interest to preserve integrity of committee's work
- ▶ *Only one leg of the triangle*

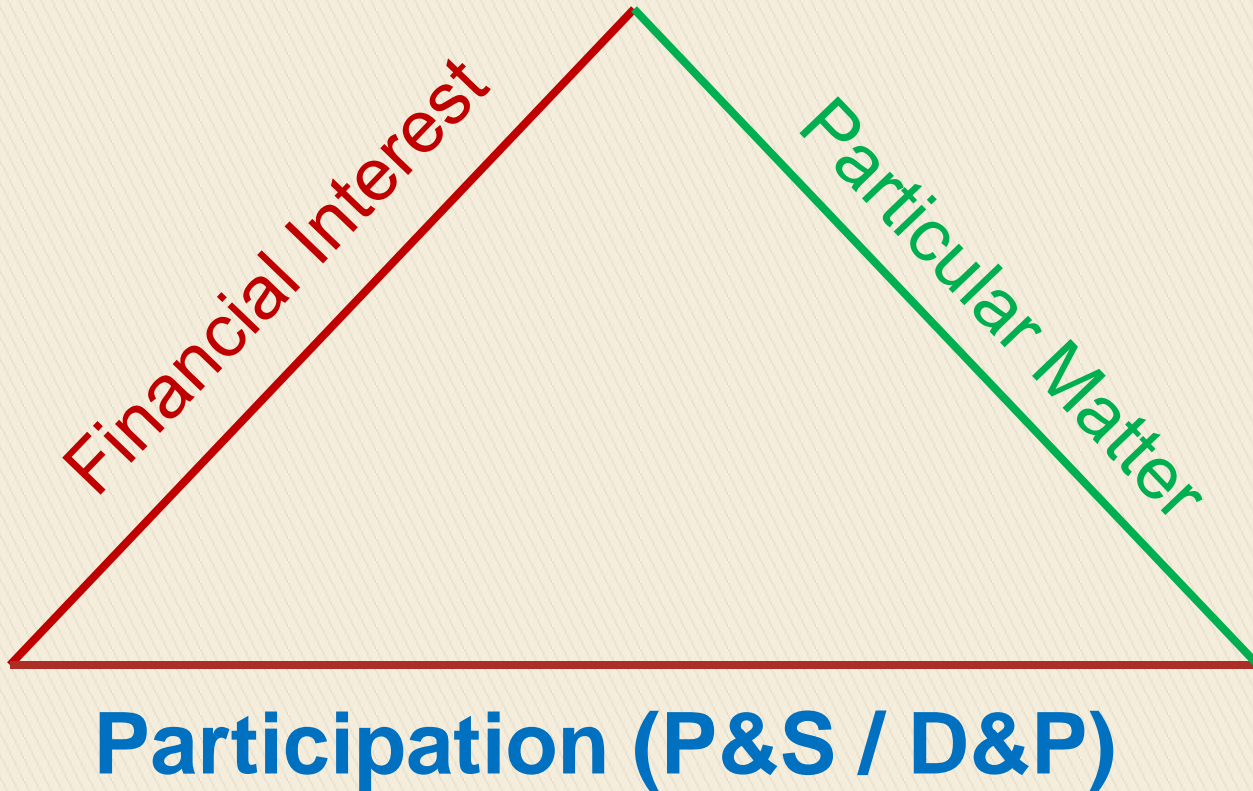
# *“The Conflict Triangle”*



# Leg 2: 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
- ▶ **Contracts and Grants most common at NASA**

# *“The Conflict Triangle”*



# Leg 3: Participation

- ▶ Personal and Substantial participation in a particular matter
- ▶ If the matter will have a Direct and Predictable effect on a financial interest
- ▶ *Compare to role of NASA Advisory Committees*

# Impartiality & “Covered Relationships”

- ▶ “Impartiality” regulation has effect of expanding imputed interests to following:
  - Former employer (past 12 mos.)
  - Close personal relationship or member of household
  - Person/company that employs spouse/family member
- ▶ *Any relationship that would cause a reasonable person to question your impartiality*

# Ethics Challenge



Luke is asked to advise on the feasibility of continuing a NASA project to develop holographic images of planetary bodies. The contractor supporting this project is 360 Visuals, Inc.

Luke is a member of 360 Visuals, Inc.'s Board of Directors. He thinks that he does not have a “real” conflict of interest, because he does not have an ownership stake in the company.

Does Luke have a *conflict of interest*?



# Factors

- ▶ **Financial interest:** Luke sits on the Board.
- ▶ **Particular matter:** A specific contract is involved.
- ▶ **Personal and substantial involvement:**

His advice would be given personally and would be substantial as it will address the continuation of the project. His input may have a direct and predictable impact on the project, the company's interests and, thus, his financial interests.

**Yes, Luke has a conflict of interest and should recuse himself.** It does not matter that NASA may or may not ultimately follow the proposed course of action.

# Avoiding Conflicts

## *“Breaking the Triangle”*

### **Leg 1: Financial Interests**

- Sell holdings? (often a difficult option)
  - Regulatory exemption < \$15K
- Terminate relationships - employment / client
  - Still have “impartiality” concerns

# Avoiding Conflicts

## *“Breaking the Triangle”*

### Leg 2: Particular Matter

- Advisory Committees can keep discussions high-level
- Avoid specific contracts & grants
- Be aware of actions that could affect finite & discreet groups of individuals & organizations

# Avoiding Conflicts (cont'd)

## *“Breaking the Triangle”*

### Leg 3: Participation

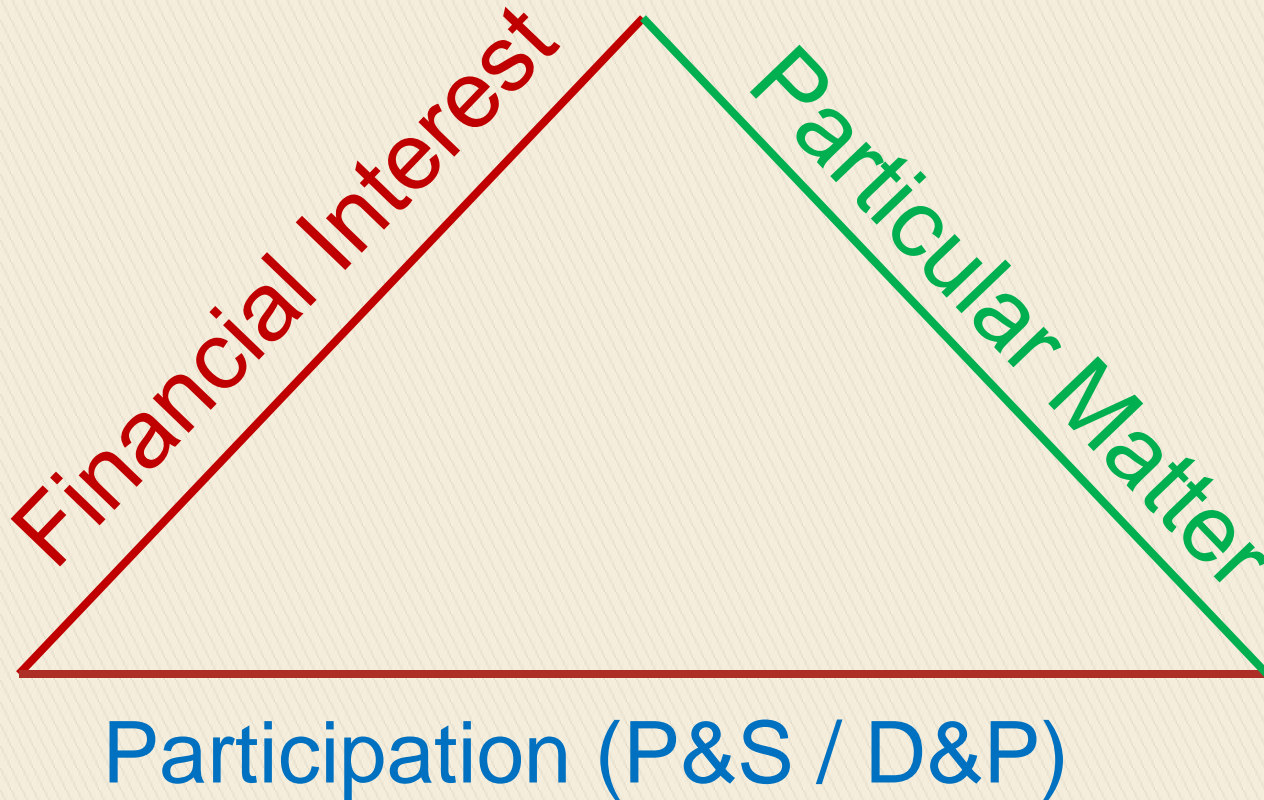
- Keep discussions high-level
- Recusal if necessary
  - Notify Executive Director / Secretary
  - Note in Minutes
  - Best practice is to leave room

# Avoiding Conflicts (cont'd)

## *“Breaking the Triangle”*

- ▶ **Forecast** potential conflicts by comparing agenda with financial interests & covered relationships
- ▶ **Communicate** with the Executive Dir/Sec and Chair about potential conflicts and concerns
- ▶ **Take Care** when committee discussion/deliberation begins to approach particular matters
- ▶ **Consult** OGC via the Exec Dir/Sec

# *“The Conflict Triangle”*



# Representational Activities (18 USC 203/205)

- ▶ Prohibits representational activities before the Government
- ▶ Applies to SGEs only if:
  - Matter involves specific parties (e.g., contracts, grants) and either
    - 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 USC 207

Prohibits representing back to the Agency on a particular matter when:

- ▶ The U.S. is a party or has a direct and substantial interest,
- ▶ The employee participated personally and substantially in the matter while he was a government employee, *and*
- ▶ The matter involved specific parties at the time of his participation.



# Post Employment Restrictions (Cont'd)

- ▶ Subject to a 1 year representational “cooling off” period if
  - Rate of pay as SGE was over a certain amount (\$155,440 in 2013), and
  - You served 60 days or more as SGE in previous year
- ▶ 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

# 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, Jim Reistrup, Katie Spear
  - Team: (202) 358-2465 or [ethicsteam@hq.nasa.gov](mailto:ethicsteam@hq.nasa.gov)
  - [kspear@nasa.gov](mailto:kspear@nasa.gov); 202-358-0394