



**ETHICS BRIEFING FOR
SPECIAL GOVERNMENT EMPLOYEES
SERVING ON
NASA ADVISORY COMMITTEES**

Office of the General Counsel, 2024

NASA ETHICS OFFICIALS

- Iris Lan, General Counsel
 - Designated Agency Ethics Official
- Adam Greenstone, Ethics Team Lead
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NASA ADVISORY COMMITTEE SERVICE

Special status:

- Appointed 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 consecutive days
 - Includes participation on advisory committees



WHAT DOES IT MEAN TO BE AN SGE?

- Act in interests of the public, not personal interests
- Equivalent to being an “insider.” May have access to non-public information.
- Subject to civil service ethics rules, including both criminal statutes and additional regulations

CRIMINAL STATUTES FOR SGENS

- Bribery (18 U.S.C. § 201)
- Financial Conflicts of Interest (18 U.S.C. § 208)
- Representational Conflicts of Interest (18 U.S.C. §§ 203 & 205)
- Limits on Representation when you leave government service (18 U.S.C. § 207)



SGEs Also Subject to Federal Regulations

- The Standards of Ethical Conduct set out additional rules for employees (5 CFR Pt. 2635):
 - Public service is a public trust
 - May not have conflicting financial interests
 - May not improperly use nonpublic information
 - May not use public office for private gain
 - Avoid even the appearance of impropriety

GIFTS

ETHICS QUESTION #1

Carli works for a State university and recently began serving on a NASA advisory committee. One day her university colleague, Jessica, sends her an email:



Carli – Lunar SOIL Inc. invited our research team members to dinner to thank everyone for the great work we did to help their instrument. Do you think you can make it?

Carli hesitates. Lunar Soil Inc. has a big contract with NASA for lunar exploration. She worries that she shouldn't accept any gifts from NASA contractors now that she is on a committee. What may Carli do?

STANDARDS OF CONDUCT: GIFTS ⁹

- Gift regulations
 - Prohibits gifts
 - From Prohibited Sources – these do or seek to do business with NASA
 - Given because of Official Position
- Gift = Anything having monetary value
- Exceptions
 - Outside business activities
 - Personal relationships
 - \$20/\$50 rule
 - Widely-attended gathering (requires legal determination)



ETHICS QUESTION # 1

This is a prohibited gift to Carli because it is from a NASA contractor. However, an exception applies. Carli is not being offered the dinner because of her committee status. She is receiving the dinner due to her outside university affiliation. Therefore, she may accept this dinner.



MISUSE OF POSITION

ETHICS QUESTION # 2

Sam serves on a NASA advisory committee. One day, he meets up with his good friend, Teresa, for lunch. While catching up, Teresa tells him that she has written a science fiction novel set on Mars.



Teresa asks Sam if he will write a glowing quote about how good the book is for the back cover. Teresa says that it will really lend some legitimacy to the book if there is a quote from a NASA employee on it, so asks if she can use Sam's Committee title with the quote.

Sam wants to help his friend, but can he provide a quote to be used with his NASA title?

ETHICS QUESTION # 2

Federal Employees may NOT:

- Use their office for private gain
- Use or permit the use of their Government position, title, or any authority associated with their public office to endorse any non-Federal product, service, or enterprise
- Use Government title, position, or authority to give appearance of a governmental sanction (approval and/or recommendation) of someone's personal activities

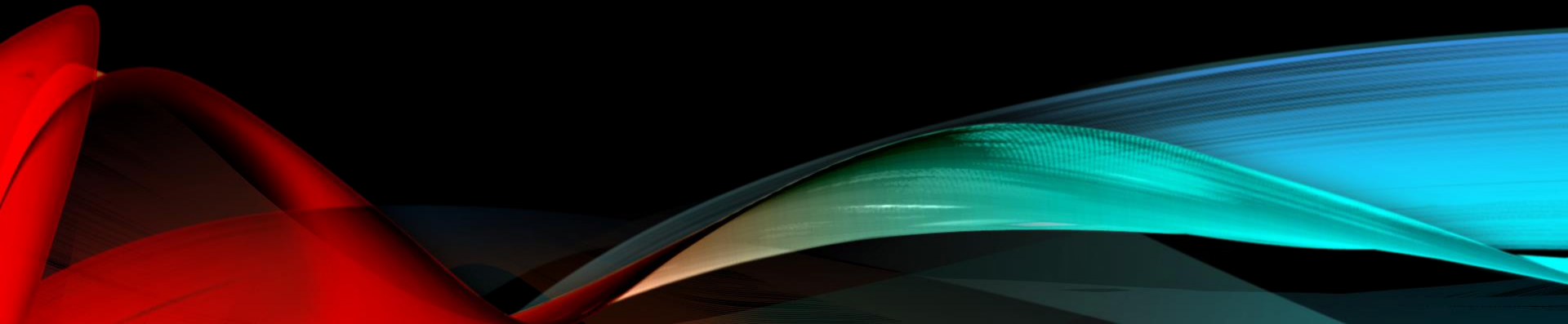
ETHICS QUESTION # 2

May Sam write the quote? Yes, but he may not allow the use of his NASA title with it. That would be using his public office for the private gain of his friend. Using his title or position on the testimonial would also be an endorsement of the book.



Image by Freepik

CONFLICTS OF INTEREST



ETHICS QUESTION # 3

Wendy is a new member of a NASA advisory committee. Wendy's husband works for Blue Moon Rockets co., which holds several contracts with NASA. Wendy felt confident that nothing with Blue Moon would come up in a committee meeting.

At the second meeting Wendy attends, she is surprised when a discussion on commercial space veers into a conversation about a current NASA contract for launch services, which Blue Moon supports. The committee talks about whether NASA could expand the scope of that contract or should do something else for some related work.

Does Wendy have a *conflict of interest*?



FACTORS FOR A CONFLICTS OF INTEREST

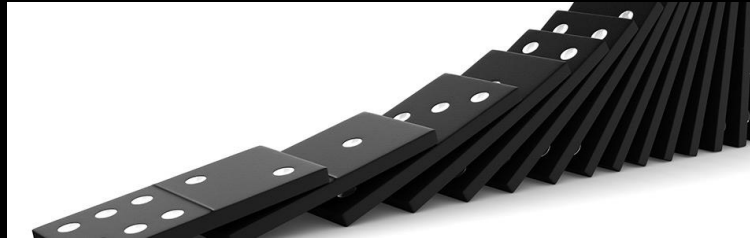
18 U.S.C. § 208

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.

PARTICIPATION

- Personal and Substantial participation in a particular matter
 - Personal = Involved directly, yourself
 - Substantial = of significance to the matter



PARTICULAR MATTER

- Deliberations, decisions, or actions that are focused upon the interests of:
 - Specific persons or entities
 - (Example: contract, grant, agreement)
 - Identifiable class of persons or entities
 - (Example: industry)
- NOT focused on:
 - Broad policy options or considerations
- Contracts and Grants are the most common at NASA



FINANCIAL INTERESTS

Examples:

- Assets and Holdings: Stocks, Bonds (retirement accounts)
- Relationships: Employment, consulting arrangements, board service
- Outside business interests: Ownership, partnership, LLC (limited liability corps.)



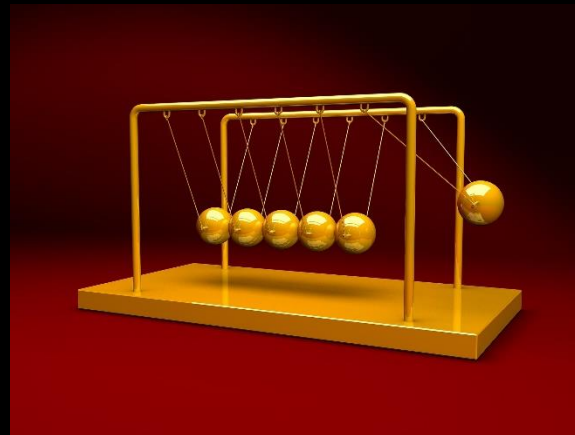
IMPUTED FINANCIAL INTERESTS

- 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



DIRECT AND PREDICTABLE EFFECT

- the matter will have a Direct and Predictable effect on a financial interest, i.e., not remote impact.
- It is not whether the employee's actions will affect their financial interests, but whether the matter will.



FACTORS FOR QUESTION 3

- ▶ **Financial interest** Wendy's husband is an employee of the company and his salary and interest in continuing employment are imputed to her.
- ▶ **Particular matter** A project and a specific contract are involved.
- ▶ **Personal and substantial involvement:** Wendy's advice would be given personally and would be substantial as it will address the scope of the contract.
- ▶ **Direct and predictable:** Her input may have a direct and predictable impact on the project, the company's interests and, potentially her financial interests.

DOES WENDY HAVE A CONFLICT?

- **It is likely that she does have a conflict.** She should recuse herself and seek further guidance from the Executive Secretary and OGC.
- **NOTE:** It does not matter that NASA may or may not ultimately follow the proposed course of action.

WHAT TO DO IF YOU SPOT A CONFLICT

- Communicate with the Executive Dir/Sec and Chair about potential conflicts and concerns. Consult OGC via the Exec Dir/Sec
- Recusal if necessary
 - Notify Executive Director/Secretary
 - Note in Minutes
 - Best practice is to leave room



STRATEGIES TO AVOID CONFLICTS

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- **Eliminate Financial interests –**
 - Note: Regulatory exemption < \$15k
- **Avoid Particular Matters –**
 - Keep discussions high-level and avoid specific contracts & grants.
 - Try to identify actions that could affect finite & discrete groups of individuals & organizations.
- **Stay Aware and Adjust Participation -**
 - Compare agenda with financial interests & covered relationships.
 - Be ready to recuse if the need arises



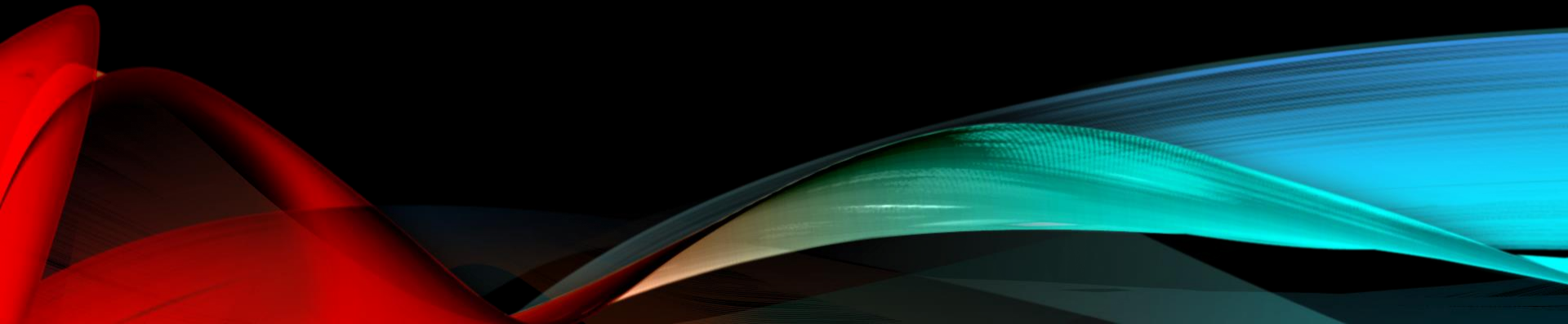
A NOTE ON FINANCIAL DISCLOSURE

- Purpose: Identify potential conflicts of interest to preserve integrity of committee's work
- They are Required for all SGEs
- 2 types:
 - Public (OGE-278)
 - Confidential (OGE-450)



Thank you for completing these forms in a timely fashion!!

IMPARTIALITY:
DOES IT LOOK BAD?



Ethics Question # 4

Travis, a NASA advisory committee member, works for a university. He is also very active with the Association of Artificial Intelligence Stakeholders (AAIS). He is the chair of both the recruiting committee and the planning committee for the AAIS annual conference.

Travis sees on the next committee agenda a planned discussion of how NASA can better participate in the AI community. They will talk about the AAIS conference, among other ideas.

Can Travis participate in the discussion?



IMPARTIALITY

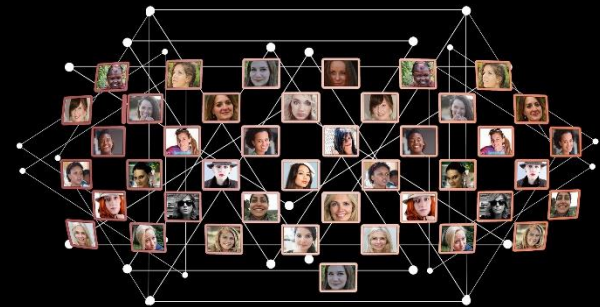
An employee may not participate in a particular matter involving specific parties (e.g., a contract, grant, or agreement) if it is

- likely to have a direct and predictable effect on the financial interest of someone with whom the employee has a covered relationship OR
- the employee knows that a person with whom he has a covered relationship is or represents a party to such matter.

Test: would a reasonable person with knowledge of the covered relationship and facts question the employee's impartiality in working on the matter?

COVERED RELATIONSHIPS ³¹

- Member of household
- Relative with close personal relationship
- Current or prospective business or financial relationship
- Current or prospective employer of spouse, parent, or dependent child
- Entities for which employee served as an officer, director, trustee, partner or employee within the last year
- Organization in which employee actively participates
- *Any relationship that would cause a reasonable person to question your impartiality*



CAN TRAVIS PARTICIPATE?

No! Travis has a covered relationship with AAIS, because he is actively involved in the organization. He should recuse himself until he has consulted with his Executive Secretary or OGC to determine if impartiality concerns would prevent his participation.



REPRESENTATIONAL CONFLICT RESTRICTIONS

REPRESENTATIONAL ACTIVITIES

18 U.S.C. §§ 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

ETHICS QUESTION # 5

Ari participates in a subcommittee to the advisory committee on which he is serving. The subcommittee is tasked to look at whether changes to a few NASA science projects could help the agency meet its goals. He soon leaves the committee.

Two months later, Ari gets an offer to do some consulting for Top Notch Inc. He recalls that Top Notch Inc. is the main contractor for one of the projects that was discussed by the subcommittee.

They would like for him to communicate to NASA under the contract for the project. May he take the job and speak to NASA on behalf of the company?



POST-EMPLOYMENT RESTRICTIONS⁶

18 U.S.C. § 207(A)(1)

Prohibits Former employees, including SGEs, from

- 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 they were a government employee, *and*
- The matter involved specific parties at the time of their participation.

POST EMPLOYMENT RESTRICTIONS

18 U.S.C. § 207(C)

- Subject to a 1 year representational “cooling off” period if
 - Rate of pay as SGE was over a certain amount (\$191,944 in 2024), and
 - Served 60 days or more as SGE in previous year
- Restriction on appearances before or communications to NASA *on behalf of another entity*



ETHICS QUESTION # 5

No. Ari may not communicate back to NASA regarding the same particular matters involving parties in which he participated personally and substantially while an SGE.

What can Ari do?

- Work behind-the-scenes for Top Notch Inc.
- Communicate on new party matters
- Communicate on party matters in which he was not involved while an SGE



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THANK YOU FOR YOUR
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