



Conflicts of Interest



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2025



Why It Matters!

The Washington Post

8 Fired as Commissary Audit Finds a 'Real Mess'

Fat Leonard Cost the U.S. Navy More Than Money

The corruption scandal has left a lingering legacy of distrust and unreadiness.

PRESS RELEASE

Retired U.S. Navy Admiral Found Guilty in Bribery Scheme



TO RECEIVE TESTIMONY
ON PUBLIC INTEGRITY
AND
ANTI-CORRUPTION
LAWS AT THE
DEPARTMENT OF
DEFENSE¹

April 26, 2023

New watchdog report decries 'revolving door' between the Pentagon and defense contractors

By: Daniel Cebul November 6



GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
Matter of: Teledyne Brown Engineering, Inc.
File: B-418835; B-418835.2
Protest that individual having extensive involvement in essentially every aspect of the agency's acquisition has an apparent conflict of interest is sustained. [NASA procurement for ground systems and operations services valued at over \$700M]

Nextgov

Pentagon Investigating Whether Amazon Employee Tilted JEDI Contract

Pentagon Investigating Whether Amazon Employee Tilted JEDI Contract ... impacted the integrity of its \$10 billion JEDI cloud contract.
Feb 25, 2019



¹ View at <https://www.youtube.com/watch?v=rivrGTCgEY8> or

<https://www.armed-services.senate.gov/hearings/to-receive-testimony-on-public-integrity-and-anti-corruption-laws-at-the-department-of-defense>



Conflict of Interest Laws:

- 18 USC § 208
- 5 CFR § 2635.502
- 18 USC § 201
- 18 USC § 202
- 18 USC § 203
- 18 USC § 205
- 18 USC § 207
- 18 USC § 209
- 18 USC § 216





Conflict of Interest

The General Concept:

Exists when an individual or non-Federal entity has the opportunity – real or perceived – to exploit their position for personal or corporate benefit.

Corruption occurs when the individual or corporation takes advantage of that opportunity and indeed abuses their position for private gain.





Ethics Mission

The primary mission of the Executive Branch Ethics Program is to prevent conflicts of interest. (5 CFR 2638.101(a))

How is that accomplished?

Ethics training

Financial disclosure

Employee Preventative Action

Agency Preventative Action





Financial Conflicts of Interest

18 USC § 208

The Law:

An official is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest if the particular matter will have a direct and predictable effect on that interest



Conflict of Interest Definitions:

Participate Personally & Substantially-

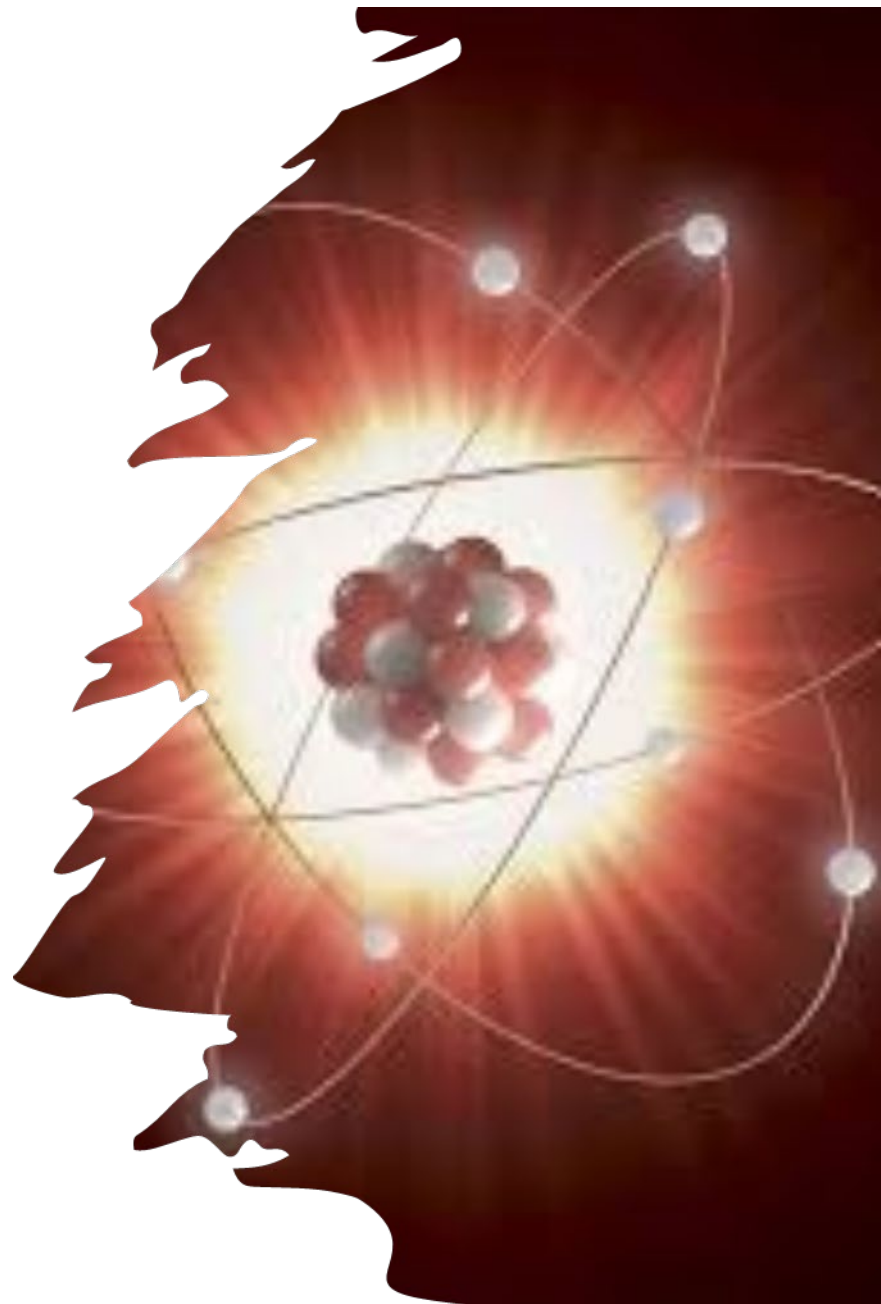
- **Participate**: decision, approval, recommendation, investigation or rendering of advice
- **Personally**: directly, and includes the participation of a subordinate when actually directed by the Government employee
- **Substantially**: of significance to the matter (not administrative)





Conflict of Interest Definitions:

- **Particular Matter-**
- **Matter focused upon the interests of:**
 - **Specific persons or parties (Particular Matter Involving Specific Parties);**
 - **or**
 - **Discrete and identifiable class of persons (Particular Matter of General Applicability)**
- **Does not extend to broad policy discussions or matters directed toward the interest of a large and diverse group**
- ***Key: Can you identify who is involved or affected?***

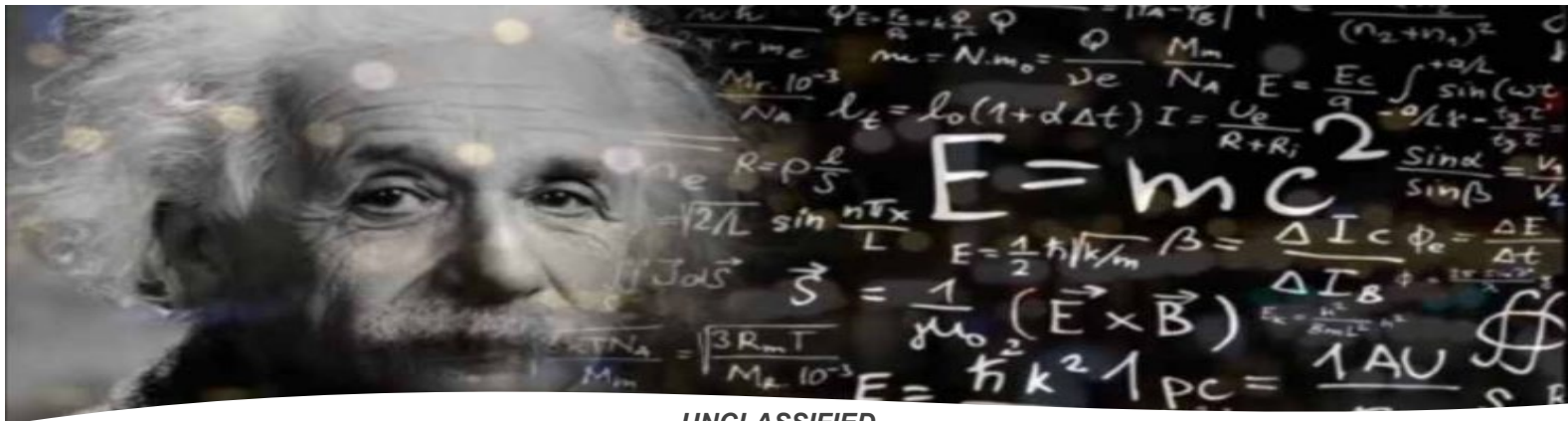




Conflict of Interest Definitions:

Direct and Predictable Effect -

- Direct:
 - Close causal link between
 - Any decision or action in the matter ; and
 - Any expected effect of the matter on the financial interest
- Predictable:
 - Real as opposed to speculative possibility
 - Matter will affect the financial interest
- Important Notes:
 - Magnitude of gain/loss is immaterial
 - Whether it is a gain or a loss is immaterial
 - Question is whether the MATTER will affect the interest NOT whether the employee's participation will affect the interest



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Conflict of Interest Definitions:

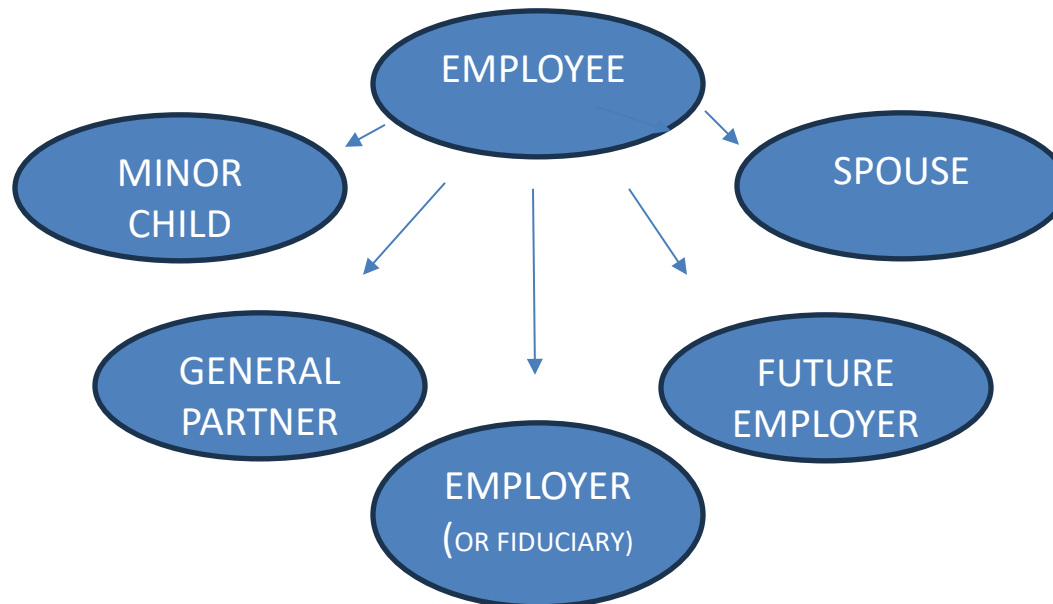
- **Financial Interest -**
- **Any current or contingent ownership, equity or security interest in real or personal property or a business. Includes:**
 - **Financial instruments or investments such as stocks, bonds, mutual funds and real estate**
 - **Salary, indebtedness or job offer**
- **Ask: Is there a real possibility that someone may gain or lose as a result of Government action in the matter?**





Conflict of Interest: Imputed Interests

- **Spouse**
- **Minor child**
- **General partner**
- **Organization in which the Gov employee serves as officer, director, trustee or employee**
- **Prospective employer**





Applies to:

- **Federal Civilian Employees**
- **Military Personnel**
 - **Active and Reserve**
 - **Officers**
 - **Enlisted (JER vice statutes)**
- **Special Government Employees**
- **Presidential Appointees (Non-career SES & Schedule C)**

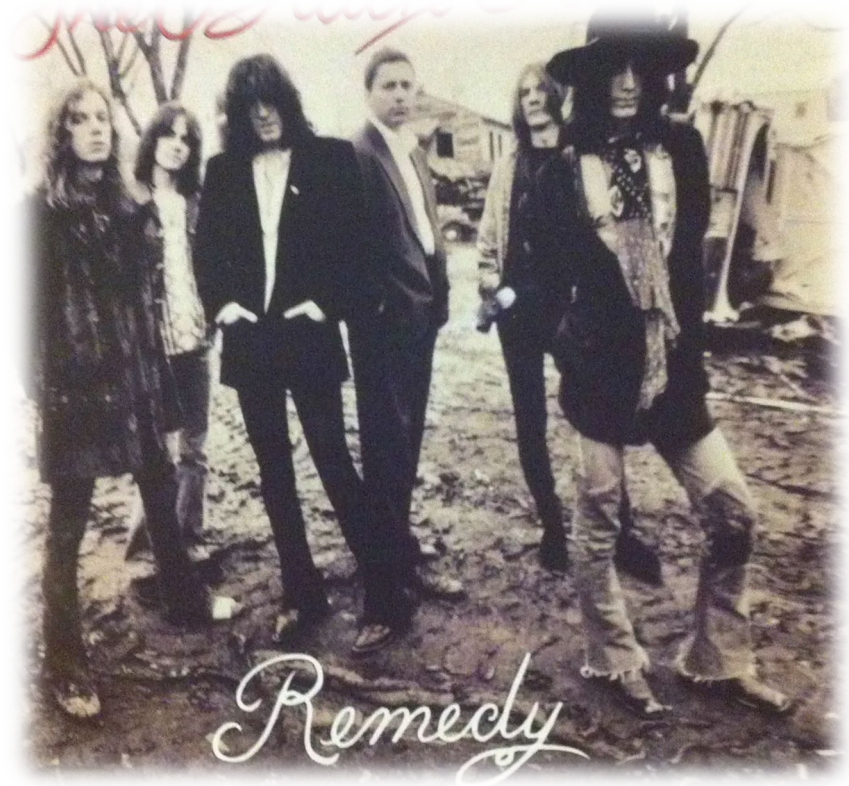
Conflicts of Interest Applicability



Resolving Conflicts

Potential Remedies:

- Disqualification/Recusal
- Divest financial interest
- Individual waiver (Rare)
- Reassignment/change of duty
- Regulatory exemption
- Waiver for SGEs





Pooled Investments -

Regulatory Exemptions

- **Widely Diversified Mutual Funds/ETFs (Exempt)**
- **Sector Mutual Funds/ETFs (Aggregate Value at/≤\$50,000)**
- **Employee Benefit Plans**

5 CFR 2640.201



Regulatory Exemptions

Securities (Not Pooled) -

- **Party Matters –**
 - De minimis at/ < \$15,000 if affect interest is that of a party
 - De minimis at/ < \$25,000 if affected interest is not that of a party
- **General Applicability Matters –**
 - De minimis at/ < \$25,000 in any one member of affected class
 - De minimis is at/ \$50K,000 aggregate among all members of affected class
- **Short Term Federal Securities – Exempt**
- **Securities Owned by Tax Exempt Organizations –**
 - Narrow exemption from imputed conflict where employee is an unpaid officer, director or employee of TEO and certain criteria are met
- **General Partners**
 - Narrow exemption from imputed conflict for certain interests unrelated to the partnership

5 CFR §2640.202

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Other Miscellaneous Exemptions -

- **Hiring Decisions**
- **Leave of Absence**
- **Multi-Campus Institution**
- **Official Duties**
- **Commercial Discounts**
- **Mutual Insurance Company**
- **Special Government Employees**
- **Official Participation in Nonprofit Organizations**

Regulatory Exemptions

5 CFR § 2640.203

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Conflicts of Interest Waivers

18 U.S.C. § (208(b)(1)):

If the disqualifying financial interest is not so substantial as to affect the integrity of the employee's services to the Government

- **Must be issued in advance of action**
- **Issued by Secretary (or Designee) & coordinated with U.S. Office of Government Ethics**
- **Publicly available**
- **RARE (almost never)**

18 U.S.C. § (208(b)(3)):

For Special Government Employees (SGEs) – also rare.



PROHIBITED ***Financial*** ***Interests***

Employees may be prohibited from holding certain interests:

- If prohibited by statute (e.g., 10 U.S.C. § 988)
- If prohibited by agency regulation
- If prohibited by agency determination of a conflict of interest
- Officials subject to Senate confirmation may be restricted by committee policy
- Political appointees may agree not to hold certain interests



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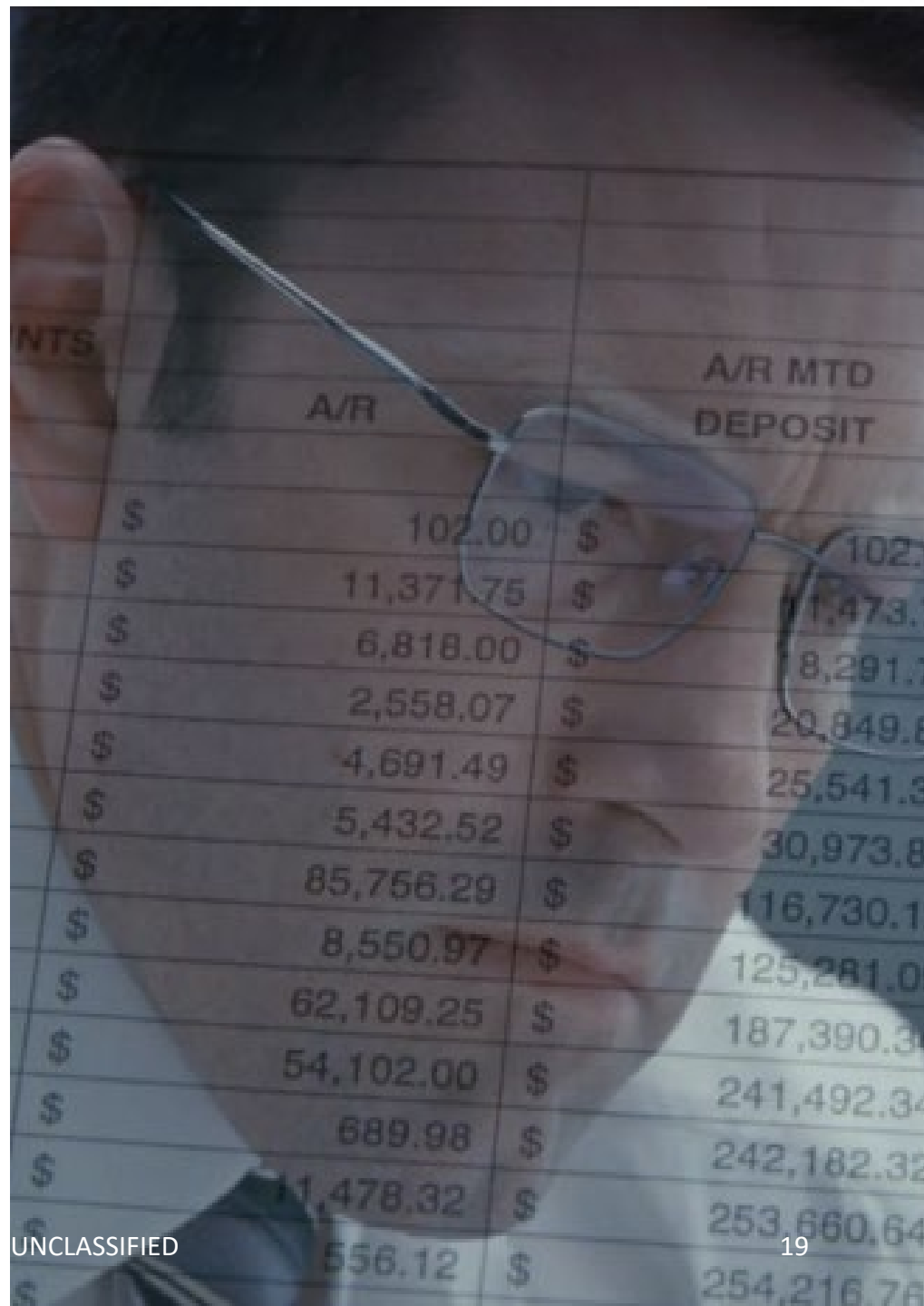
Preventing Conflicts: Financial Disclosure

Primary Purpose:

- Serve as a tool for employees, supervisors and ethics officials to identify & prevent potential conflicts of interest.
- Maintain public confidence
- Provide evidence if violations occur

Key Concepts:

- Timely filing and review is critical
- DoD requires prompt supervisory review





Impartiality

Employees are required to recuse from participating in particular matters where a member of their household or a person with whom they have a covered relationship is a party to the matter or represents a party to the matter.

5 CFR § 2635.502



Covered Relationship:

In addition to members of household:

- **Persons with whom the employee has or is seeking a business or a financial relationship (other than a routine consumer transaction);**
 - **Close relatives;**
 - **Employers and clients of employee's parents, children (including adult), and spouse (and their prospective employers and clients);**
 - **Former non-Federal employers and clients (for a one-year period, or a two-year period if received an extraordinary severance payment from the former employer before entering into Federal service); ***
- and**
- **Organizations in which the employee is an active participant (other than political organizations)**

** Note Section 1117 of FY22 NDAA is 2-year former employer recusal for ALL DoD personnel.*

Impartiality



Agency Designee may authorize participation if:

- The employee's action would NOT violate 18 USC § 208
- Determination made in the light of all relevant circumstances that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

Impartiality - Authorization

5 CFR § 2635.502(d)



“Catch-all Provision”

Employees who are concerned that others may question their impartiality for reasons other than covered relationships may request a written determination from their ethics official under 501, and the ethics official will use the process in 502 to provide a determination.

- **Examples:**
 - Gov employee dating contractor employee
 - Gov employee taking official meeting with former colleague and friend who now represents a contractor

5 CFR § 2635.501



Other Conflict of Interest Statutes

18 U.S.C. Sections:

- 201
- 202
- 203/205
- 207
- 209
- 216





Bribery Statute

18 USC § 201

- Quid Pro Quo
- Crime to corruptly give, offer or promise anything of value directly or indirectly to a Gov official with the intent to influence any official act or the commission of fraud
- Crime for the Gov official to accept
- Distinguish from Illegal Gratuities – No Quid Pro Quo

Example: Fat Leonard Cases!





Special Government Employee 18 USC § 202

- **Special Government Employee (SGE) – Any employee expect to work not more than 130 days in any consecutive 365 day period.**
 - Prospective Determination
- **Solely an Ethics Construct – NOT a hiring authority.**
 - SGE = Part time
 - Any employee category can be an SGE
- **Military:**
 - Includes reserve officers
 - Excludes enlisted (but see JER)



Representation (Paid)- 18 USC § 203

- **Gov employees are prohibited from accepting compensation for representing a third party back to the Gov**
 - Limitations for special Government employees depending on number of days worked
 - Exemptions for representing the employee's parents, spouse, child or any person or estate for which the employee is guardian, executor, administrator, trustee or other personal fiduciary





Representation (Unpaid)- 18 USC § 205

- **Gov employees are prohibited from representing third parties back to the Gov**
 - Limitations for special Government employees depending on number of days worked
 - Exemptions for representing the employee's parents, spouse, child or any person or estate for which the employee is guardian, executor, administrator, trustee or other personal fiduciary





Post Gov Employment - 18 USC § 207

- **Prohibitions on representing a non-Federal entity back to the Government. Most common are:**
 - Ban on representing non-Federal entity back to Executive or Judicial Branches on party matters:
 - Permanent ban if employee participated personally and substantially in the matter during Gov service;
 - Two year ban if matter was pending under employee's official responsibility during last year of Gov service
 - One Year Cooling Off – prohibits former senior officials from representing non-Federal entity back to former Department or Agency



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Supplementation of Salary - 18 USC § 209

- **Prohibits a third party from paying salary or any contribution to Gov employee for performing his Government duties**
 - No Quid Pro Quo required
 - Can include gifts
 - Most commonly arises in the context of payments by former employers or based on outside activities



Penalties Statute - 18 USC § 216

Violations of the criminal conflict of interest statutes at 18 U.S.C. §§ 203-209 may result in:

- Imprisonment for not more than one (1) year
- If willful - imprisonment for not more than five (5) years
- Fine up to \$50,000 (or amount of illegal compensation if greater)
- Penalties are per count



Resources

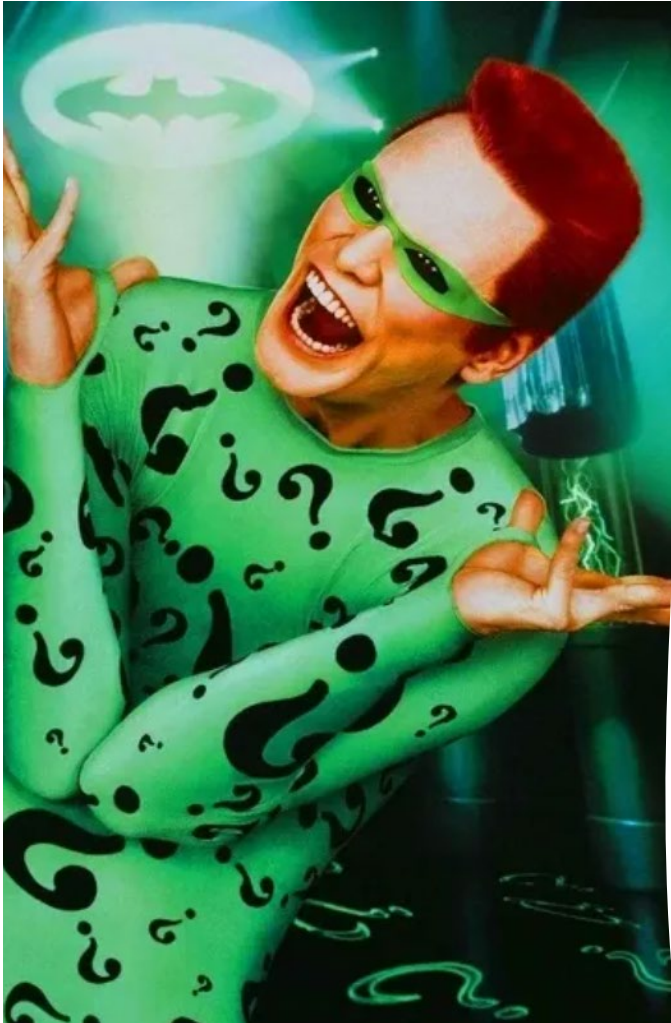
SOCO website: <https://dodsoco.ogc.osd.mil/>

- EC Deskbook – NOT to be cited. “Hornbook” style compilation
- Advisories
- Handouts, Guides & Samples





Contact



- Ethics is a team sport!
- Questions on this presentation?
 - Contact SOCO:
 - 703-695-3422
 - OSD.SOCO@mail.mil
- Questions on a specific COI matter?
 - Work through your legal/ethics chain of command.