

SOCO Short Course Conflicts of Interest

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Conflicts 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 & Procurement Integrity Act
- ▶ 18 USC 209
- ▶ 18 USC 216



What You Should Learn

- ▶ To spot a 208 issue
- ▶ To spot a 203/205 issue
- ▶ To spot a 209 issue
- ▶ To spot a 502 issue



Conflict of Interest

- ▶ Exists when an individual or corporation 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.



Conflicts of Interest

- ▶ The primary mission of the Executive Branch Ethics Program is to prevent conflicts of interest on the part of Executive Branch employees. 5 CFR 2638.101(a)
- ▶ How is that accomplished?
 - ▶ Ethics training
 - ▶ Financial disclosure



18 USC 208

- ▶ An employee 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 he particular matter will have a direct and predictable effect on that interest

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)

Particular Matter

- ▶ Matter focused upon the interests of specific persons, or a discrete and identifiable class of persons
- ▶ Does not extend to broad policy options or consideration directed toward the interest of a large and diverse group
- ▶ Key: Can you identify who is involved?



Direct and Predictable

- ▶ Direct
 - ▶ Close causal link between any decision or action in the matter, &
 - ▶ Any expected effect of the matter on the financial interest
- ▶ Predictable
 - ▶ Real as opposed to speculative possibility
 - ▶ Matter will effect the financial interest
- ▶ Magnitude of gain/loss is immaterial (no de minimis)

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 on the particular matter?

IMPUTED INTERESTS

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

Applies to

- ▶ Military Personnel
 - ▶ Active and Reserve
 - ▶ Officers
 - ▶ Enlisted (not 208)
- ▶ Federal Civilian Employees
- ▶ Special Government Employees
- ▶ Presidential Appointees (Schedule C & Non-career SES)

Resolve Conflict

- ▶ Disqualification/Recusal
- ▶ Regulatory exemption
- ▶ Individual waiver
- ▶ Waiver for Special Government Employees
- ▶ Reassignment/change of duty
- ▶ Divest financial interest



Regulatory Exemption Pooled Investments

- ▶ Widely Diversified Mutual Funds (no limit)
- ▶ Sector Mutual Funds (capped at \$50,000)
- ▶ Employee Benefit Plans

Regulatory Exemptions Securities

- ▶ De Minimis (capped at \$15,000)
- ▶ Short Term Federal Securities
- ▶ Securities Owned by Tax Exempt Organizations
- ▶ General Partners

Regulatory Exemption Miscellaneous

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

Waiver 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 & coordinated with U.S. Office of Government Ethics
- ▶ Publicly available
- ▶ RARE (almost never)

Waiver 203(b)(3)

- ▶ For special Government employee serving on a Federal Advisory Committee
- ▶ Based on agency determination that the need for the sGe's services is outweighed by the potential conflict of interest
- ▶ Identity of sGe & his qualifications a factor
- ▶ Issued prior to action
- ▶ Consult with U.S. Office of Government Ethics when practicable
- ▶ Publicly available
- ▶ RARE (almost never)

PROHIBITED Financial Interests

- ▶ Assets prohibited by statute
- ▶ Assets prohibited by agency regulation
- ▶ Assets prohibited by agency determination of a conflict of interest
- ▶ PAS officials may have additional restrictions based on their ethics agreements

208 & Financial Disclosure Nexus

- ▶ If you understand 208, then you will understand the importance of the financial disclosure reporting system (278 & 450). It is how we as ethics officials find & resolve conflicts.



5 CFR 2635.502

Impartiality (Appearance of Bias)

- ▶ Employees are prohibited from participating on particular matters if a person with whom they have a covered relationship is a party to the matter or represents a party to the matter



Covered Relationship

- ▶ Persons with whom the employee has or is seeking a business or a financial relationship (other than a routine consumer transaction);
- ▶ Members of employee's household;
- ▶ Close relatives;
- ▶ Employers and clients of employee's parents, dependent children, 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)

Waiver

- ▶ If the employee's action would NOT violate 18 USC 208, but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee's participation in the matter based on a 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. 5 CFR 2635.502(d).

5 CFR 2635.501

The Catch-all

- ▶ 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.
- ▶ What is this used for?
 - ▶ Gov employees dating contractor employees
 - ▶ Gov employees taking meetings with their battle buddy/contractor employee

Remaining Criminal Conflict of Interest Statutes

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



18 USC 201 Bribery Statute

- ▶ Quid Pro Quo
- ▶ Crime to corruptly give, offer or promise anything of value directly or indirectly to a Gov official with the intend to influence any official act or the commission of fraud
- ▶ Crime for the Gov official to accept



18 USC 202

- ▶ Defines special Government employee
- ▶ Defines Government official & employee



18 USC 203

Representation/Compensation

- ▶ Gov employees are prohibited from accepting compensation for representing a third party back to the Gov
 - ▶ Limitations for special Government employees
 - ▶ 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

18 USC 205

Representation

- ▶ Gov employees are prohibited from representing third parties back to the Gov
 - ▶ Limitations for special Government employees
 - ▶ 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 Restrictions

- ▶ Procurement Integrity Act
- ▶ 18 USC 207
- ▶ Both statutes will be covered in detail by Jeff Green on Thursday



18 USC 209

Supplementation of Salary

- ▶ Prohibits a third party from paying salary or any contribution to Gov employee for performing his Government
- ▶ Includes gifts



"I appreciate your offer, but I'm afraid I'm already bought and paid for."

18 USC 216

Penalty Statute

- ▶ Imprisoned for not more than one (1) year
- ▶ Willful engagement, imprisoned for not more than five (5) years
- ▶ Fined \$50,000
- ▶ Per count

What we learned--

- ▶ 208--Conflicts
- ▶ 2635.502—Appearance of Bias
- ▶ 201--Bribes
- ▶ 202--Definitions
- ▶ 203/205--Representation
- ▶ 209—Supplementation of Salary



Test Your Knowledge

- ▶ Can I work on matters for the Gov that affect my husband's employer?
- ▶ Can I work on matters affecting my prospective employer?
- ▶ Can I serve on a SSEB where my former employer is a competitor?
- ▶ Can I represent my neighbor in a proceeding before the IRS?
- ▶ Can I accept a post Pandemic/Return to Work gift of a weekend stay a spa from a company whose Gov contract I am serving on as COR?



QUESTIONS???

Ask now or contact me at:

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