The background is a teal-to-blue gradient with technical graphics. On the right side, there are several circular gauges or dials with numerical scales (0, 90, 180, 270) and arrows. There are also faint circular patterns and lines scattered across the background.

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

NASA Office of the General Counsel

# NASA ETHICS OFFICIALS



- Sumara Thompson-King, General Counsel
  - Designated Agency Ethics Official
- Adam Greenstone, Ethics Team Lead
  - Alternate Designated Agency Ethics Official
- Headquarters Ethics Team
  - Adam Greenstone, Griffin Farris, Clevette Lee, Katie Spear
  - Team: (202) 358-0550 or [ethicsteam@hq.nasa.gov](mailto:ethicsteam@hq.nasa.gov)

## 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 consecutive days
  - Includes participation on advisory committees

# WHAT DOES IT MEAN TO BE AN SGE?

- Status as SGE
  - Equivalent to being an “insider”
  - Subject to civil service ethics rules, including both criminal statutes and additional regulations

## CRIMINAL STATUTES FOR SGEs

- 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



# Standards of Ethical Conduct

- SGEs are also subject to the Standards of Ethical Conduct spelled out in regulations (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

## ETHICS QUESTION #1

Sam serves on a NASA advisory committee. He is also a full-time professor at State Lakeside University (SLU). One day, Sam receives a package in the mail containing an expensive leather laptop bag. The bag includes a note from a company that supports a major science mission for NASA, congratulating him on his new role on the committee. It states that the company hopes he will find the bag useful for his committee work.

May Sam accept this bag?

# STANDARDS OF CONDUCT: GIFTS



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



## **ETHICS QUESTION # 1**

Sam is being offered this gift because of his committee status. The company also does business with NASA. It also appears that the gift is over \$20. Therefore, he may not accept the gift. He should return the bag or pay fair market value for it.



## ETHICS QUESTION # 2

Wyatt is a NASA advisory committee member. His committee relies on a software system called Zippy Reports. Wyatt received a request from Zippy Reports asking if he could give a short, written testimonial about the software so Zippy Reports can put it on their website and in some of their written materials.

Wyatt is eager to help Zippy Reports because they have helped his committee and he knows other Federal agencies and businesses could benefit from this software.

Can Wyatt give a short, written statement to Zippy Reports for them to use?

## 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 Wyatt Write the Testimonial? No. Wyatt would be using his public office for the private gain of the Zippy Reports company. Using his title or position on the testimonial would also be an endorsement of Zippy Reports and their products.



## ETHICS QUESTION # 3

Sarah is a newly-appointed member of a NASA advisory committee. She is an astrochemistry professor at a university and also serves on the Board of Directors for a company, Astrochemistry Aces Inc. The company holds several contracts and grants with NASA.

Before her first meeting, she sees on the agenda that the committee will have a discussion on a particular project that Astrochemistry Aces supports under a NASA contract. The discussion will address whether the project scope should be changed or if it should be delayed, given time and resource constraints. Sarah isn't directly involved in the project for NASA.

Does Sarah have any *conflicts of interest*?

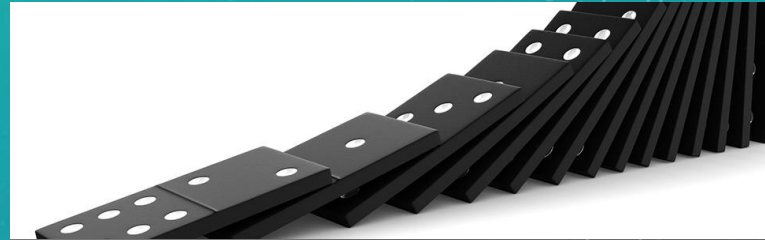
# CONFLICTS OF INTEREST

## 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
- If the matter will have a Direct and Predictable effect on a financial interest, i.e., not remote impact.

## 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



- Assets and Holdings: Stocks, Bonds (retirement accounts)
- Relationships: Employment, consulting arrangements, board service
- 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





## FACTORS FOR QUESTION 3

- **Financial interest:** Sarah is on the Board of the company. Thus, the company's interests are imputed to her
- **Particular matter:** A project and a specific contract are involved.
- **Personal and substantial involvement:**  
Her advice would be given personally and would be substantial as it will address the scope or continuation of the project. Her input may have a direct and predictable impact on the project, the company's interests and, thus, her financial interests.

**Yes, Sarah has a conflict of interest and should recuse herself.**

**NOTE:** It does not matter that NASA may or may not ultimately follow the proposed course of action.

# FINANCIAL DISCLOSURE

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



# AVOIDING CONFLICTS



- **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.
  - Take care when committee discussions or deliberations begin to approach particular matters.

## 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



## Ethics Question # 4

Sarah later leaves the Board of Directors for Astrochemistry Aces Inc. because her schedule is so busy. The next NASA committee meeting is two months later.

Sarah thinks that if anything involving the company comes up in her committee work, she will still be able to participate. She tells the Executive Secretary that she now has no restrictions on participating in discussions involving the company-related matters.

Is Sarah correct?

# 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



- 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*

## QUESTION # 4 – IS SARAH CORRECT?

No! Sarah will have a covered relationship with Astrochemistry Aces for one year after serving on the Board of Directors. She should recuse herself until she has consulted with her Executive Secretary or OGC to determine if impartiality concerns would prevent her participation.



# 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**

Jeff is a University professor and sits on a NASA advisory committee. At one meeting, a senior NASA employee gives the committee a briefing in which he provides a summary of the outcome of the latest annual solicitation for research grants in their community. The committee is then asked for suggestions for prioritizing those subcategories with regard to the solicitation for next year. Jeff participates in the discussion. He later leaves the committee at the end of the year.

May Jeff submit a proposal on behalf of his University in the next NASA grant solicitation?

# POST-EMPLOYMENT RESTRICTIONS

## 18 U.S.C. § 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 (\$176,201 in 2022), 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

YES! Jeff may represent his University with respect to the solicitation because, although it was a particular matter, there were not yet parties identified to it at the time he participated.

Even if he did have a restriction:

- Working behind-the-scenes is generally permitted.
- Note that being listed as a Principal Investigator is not a “communication,” however, serving as a PI may require such representations.

# NASA ETHICS OFFICIALS

- Sumara Thompson-King, General Counsel
  - Designated Agency Ethics Official
- Adam Greenstone, Ethics Team Lead
  - Alternate Designated Agency Ethics Official
- Headquarters Ethics Team
  - Adam Greenstone, Griffin Farris, Clevette Lee, Katie Spear
  - Team: (202) 358-0550 or [ethicsteam@hq.nasa.gov](mailto:ethicsteam@hq.nasa.gov)