

2003 ANNUAL GOVERNMENT ETHICS CONFERENCE

King of Prussia, PA

Panel Session

ETHICS MANAGEMENT TOOLS FOR YOUR FEDERAL ADVISORY COMMITTEES

March 11, 2003



Panel Members

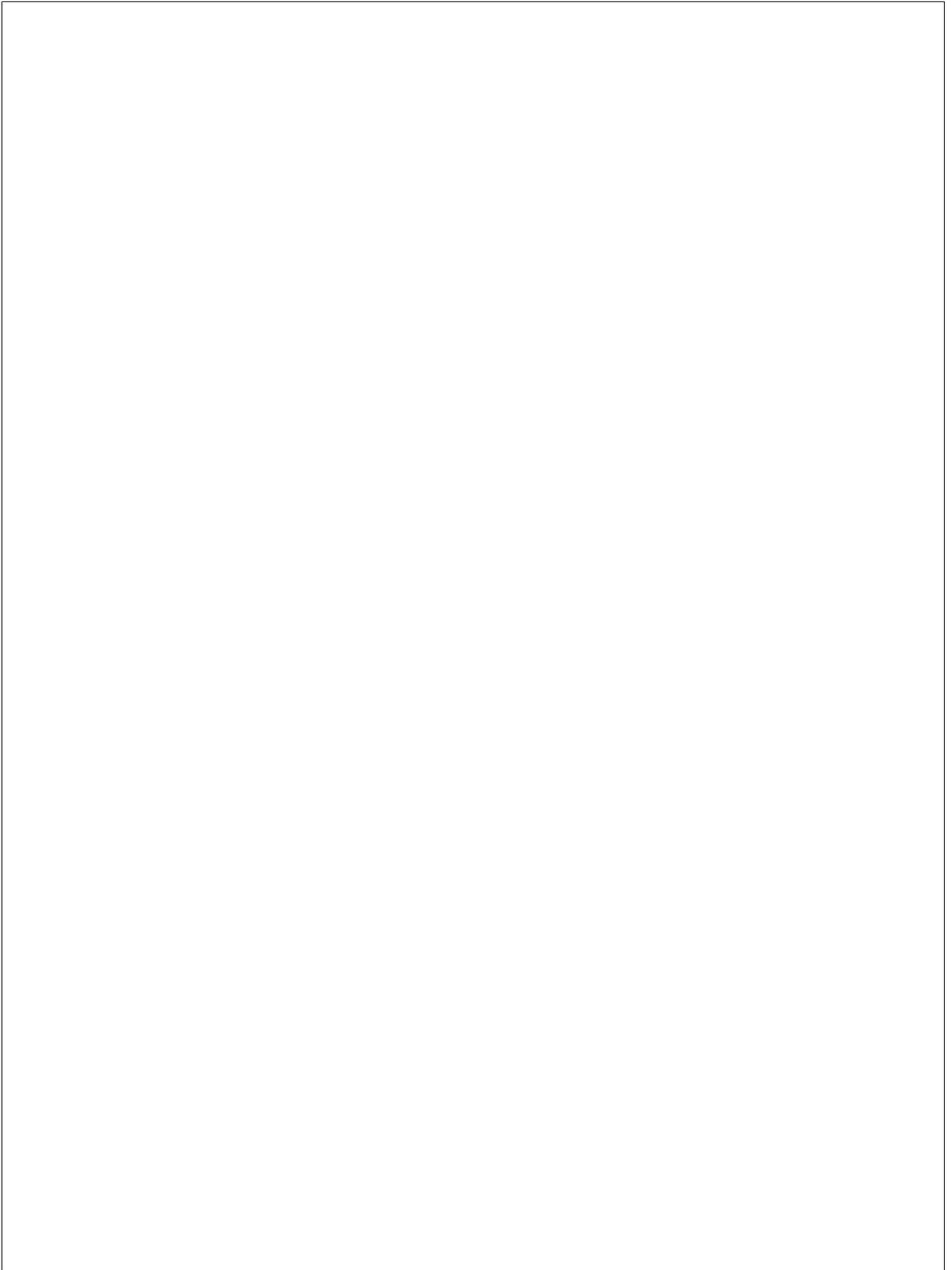
*Dale A. Christopher, OGE
Phil Riggin, VA,
Kenneth J. Wernick, EPA
Vince Salamone, Moderator, OGE*

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Other Materials:

- **41 C.F.R. Parts 101-6 and 102-3**, Federal Advisory Committee Management; Final Rule (July 19, 2001), available on GSA Website, www.gsa.gov/Portal/browse/channel.jsp?channelId=-13689&channelPage=/channel/default.jsp&cid=1, (not provided to attendees)
- **EPA Confidential Financial Disclosure Form for Special Government Employees** (EPA Form 3110-48 (5-02)), (to be provided separately to attendees)
- **“Summary of Ethical Requirements Applicable to Special Government Employees”** - February 15, 2000, DO-00-003, available on OGE Website at www.usoge.gov (not provided to attendees)



PANEL DISCUSSION OUTLINE

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I. Survey: OGE Review of Federal Advisory Committee Management
(November 2002)**1. Impetus for review**

- A. Congressional hearings regarding FDA and CDC¹
- B. September 25, 2000 article in USA Today
- C. June 2001 General Accounting Office report²

2. Scope and methodology

- A. Seven departments and agencies
- B. Interviews with ethics officials\CMOs\DFOs
- C. Financial disclosure, ethics agreements, training, counseling

3. Results

- A. Designation of committee members—SGE VS. representative
 - 1. Large number of representatives
 - 2. Four of seven agencies had none, or very few, SGEs
 - 3. One department -- no SGEs on any of > 100 committees
- B. Financial Disclosure
 - 1. Three agencies require financial disclosure
 - a. Agency A

¹FACA: Conflicts of Interest and Vaccine Development - Preserving the Integrity of the Process, 2000: Hearing Before the House Comm. on Government Reform, 106th Cong., June 15, 2000

²EPA's Science Advisory Board Panels, GAO-01-536, June 2001

- i. OGE Form 450 upon appointment\annually thereafter
 - b. Agency B
 - i. One advisory committee and 400 review panelists (all SGEs)
 - ii. Committee members--OGE Form 450 upon appointment\alternative form quarterly thereafter
 - iii. Panelists--alternative form
 - c. Agency C
 - i. At time of review, SGEs filed OGE Form 450
 - ii. Now use alternative system
- 2. Development of standard SGE form
 - a. Little support
 - b. Standardization virtually impossible
 - c. Alternative system already an option
- C. Ethics agreements
 - 1. Recusals
 - 2. Waivers
 - a. Issued to approximately half of one agency's board members
 - b. No indication number of waivers was excessive or unjustified
- D. Ethics training
 - 1. All SGEs provided requisite training
 - a. Live training

b. Written materials

2. Written materials provided to representatives at one agency

E. Counseling

1. Occasionally provided

2. Usually in response to committee management official request

3. Occasionally initiated by ethics official

4. Most ethics officials provide names\telephone numbers in correspondence

5. All counseling complied with the ethics rules applicable to SGEs

4. **Conclusions**

II. VA: FACA Background and Appointment Overview

1. Background on VA Advisory Committees

- Total of 25 committees – 17 created by statute, one by Presidential executive order, 7 by Secretarial directive
- Wide variation in committees' areas of interest
- 5 of the 25 committees established in 2002

2. Policy Features of VA's Committee Member Appointment Process

- Secretary has appointment authority, may delegate authority in specific instances
- Delegation generally restricted to discretionary committees
- Member characteristics may be defined by instructions in statute, executive order
- Characteristics further defined by guidelines in FACM Final Rule (July 2001)

- FACM Final Rule guidelines call for “balanced membership”
- VA’s strong interest in membership diversity
- Critical importance of initial appointments – effective leadership, giving the committee a good start

3. Various Influences on Composition of Advisory Committee Membership

- Congress, through statutory instructions
- President, through executive order instructions
- Interest groups, through political pressure
- Guidance in FACM Final Rule, with adjustments to accommodate committee’s area of interest
- Instructions on member characteristics, regardless of source, may vary from specific to virtually nonexistent
- Committee charter should reflect such instructions

4. Achieving “Balanced Membership”

- Identifying all interests and points of view
- Identifying potential conflicts of interest

5. Administrative Features of VA’s Committee Membership Appointment Process

- Appointment package submitted to Secretary after review by program head, General Counsel, Committee Management Officer and Chief of Staff
- Appointment package contains (1) statutory and/or charter instructions on committee composition, (2) list of current and proposed committee members, (3) summary of any special circumstances or developments, (4) recommended lengths of appointment/reappointment terms and (5) biographical sketches of candidates

6. Managing Compliance with Ethics/Financial Disclosure Mandates

- Ongoing liaison between Committee Management Officer and VA ethics staff (located in General Counsel's office)
- Regular consultations with Designated Federal Officers
- Regular review of VA ethics policy and procedures to ensure their continued effectiveness
- Regular ethics briefings for advisory committee members
- Current efforts to enhance timely compliance and bolster enforcement

III. Agency Perspective: Environmental Protection Agency

1. The 2001 Report of the General Accounting Office on EPA's Science Advisory Board Panels

A. **Focus:** to determine whether the policies and procedures of the Board are adequate to ensure that:

- (1) its peer review panelists are independent & the panels are properly balanced;
- (2) the public is sufficiently informed on points of view represented on the panels.

B. **Conclusions:**

- (1) Staff did not adequately consider "particular matter" in analysis;
- (2) Staff office did not systematically request certain information that is pertinent to assessing the independence and overall balance of viewpoints represented on the panel;
- (3) The public was not adequately informed about views represented on the panel.

2. EPA Response: A Formal Training Program for Special Government Employees ("SGEs")

A. Need to have SGEs aware of the basic standards of ethical conduct that apply to them.

- B. Need to start with general concepts, and then work down to specific issues.
- C. Need to address unique subjects applicable to SGEs (particular matter, release of information, emoluments, post-employment issues).
- D. Need to reinforce with examples and quizzes.
- E. Include the Office of Government Ethics video on special government employees.

3. EPA Response: Alternate Financial Disclosure Form for Identifying Conflicts of Interests

- A. Useful as a training vehicle for SGEs on conflict of interest statutes and regulations
- B. The alternate financial disclosure form seeks the following information
 - (1) Outside sources of income
 - (2) Sources of research support and project funding for SGEs and their spouses
 - (3) Consulting activities of SGEs and their spouses
 - (4) Compensated expert testimony
 - (5) Catch-all question about other pertinent information or appearances
- C. Keys to Success:
 - (1) Involvement of the senior scientists serving on the executive committee
 - (2) Getting OGE involved early in the process.

What is an Advisory Committee?

The term "**Advisory Committee**" means:

any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee") which is --

- (A) established by **statute** or reorganization plan, or
- (B) established or utilized by **the President** or
- (C) established or utilized by one or more **agencies**,

in the interest of obtaining

advice or recommendations

for the President or one or more agencies or officers of the Federal Government,

except that such term **excludes**

- (I) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and
- (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

FEDERAL ADVISORY COMMITTEE ACT **(Background and Major Provisions)**

The Federal Advisory Committee Act (Public Law 92-463) was enacted in 1972 and was effective January 5, 1973. The Act was designed to enhance public accountability of advisory committees and to reduce wasteful expenditures on advisory committees. The Act defines an advisory committee as any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations.

The Federal Advisory Committee Act, in meeting its principal purposes, was intended to authorize the establishment of a system governing the creation and operation of advisory committees in the Executive Branch of the Federal Government. Its major requirements are listed below.

- Agencies must establish uniform administrative guidelines and management controls that are consistent with the Act and the GSA Rule.
- Agencies must maintain systematic information on the nature, functions and operations of their advisory committees.
- Agency heads must designate Committee Management Officers who are responsible for exercising controls and supervision over the committee management program.
- Committees must be chartered before they can meet or conduct any business.
- Committee charters must be renewed every two years or they will be terminated under the sunset provisions of Sec. 14 of the Act, unless otherwise provided by law.
- Advisory committee memberships are to be fairly balanced in terms of the point of view represented and the functions to be performed.
- Advisory committee meetings are required to be open to the public, with limited exceptions. Meeting notices and agendas must be published in the Federal Register to accommodate public participation.
- Designated Federal Officers must approve all meetings and agendas, and attend meetings.
- Detailed committee meeting minutes will be kept and must contain date and location of the meeting, a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and a record of recommendations made by the committee.

- All advisory committee documents must be available for public inspection and copying until the committee ceases to exist.
- Committee records must fully disclose costs for the purpose of GAO audits and the annual report.
- Advisory committees will be terminated as soon as the stated objectives have been completed or the committee's work has become obsolete, or the cost of the operations is excessive in relation to the benefits.

Definition of Special Government Employee

TITLE 18--CRIMES AND CRIMINAL PROCEDURE PART I--CRIMES CHAPTER 11--
BRIBERY, GRAFT, AND CONFLICTS OF INTEREST Sec. 202.

Definitions (a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term ``**special Government employee**'' shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for **not to exceed one hundred and thirty days** during any period of three hundred and sixty-five consecutive days, **temporary duties** either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate judge, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d) \1\ of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms ``officer or employee'' and ``special Government employee'' as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces. (underscoring added)

**PAGES 13 - 17: NOT INCLUDED IN THIS
ELECTRONIC VERSION; CHECK OGE WEBSITE FOR
COPY OF AUDIT GUIDELINES.**

ETHICS RULES FOR ADVISORY COMMITTEE MEMBERS WHO ARE SPECIAL GOVERNMENT EMPLOYEES

Which Members are Special Government Employees (SGE)?

SGEs are those members who have been appointed to an advisory committee for duties expected to cover a period of not to exceed 130 days during any period of 365 consecutive days. Even a person so appointed, however, does not become an SGE if he or she serves on the committee as a representative of an outside organization or is already an employee of some other federal entity. Members whose role is to represent outside entities are accountable to those entities but are not subject to the rules discussed in this paper. Most advisory committee members are SGEs. For example, members of the Capital Asset Realignment for Enhanced Services (CARES) Committee are SGEs. As indicated below, advice on a member's status is readily available.

How to Get Ethics Advice

The purpose of this paper is to alert SGEs to potential ethics issues that may arise during their service on an advisory committee so that they have the option of seeking advice. For advice, contact VA's Assistant General Counsel (023) and Designated Agency Ethics Official (DAEO), Walter Hall, or an ethics official in his office. Contact information is located at the conclusion of this paper. Most VA ethics questions can be answered in a telephone call. More than half of ethics questions get **resolved on the same day** they are raised. Seeking ethics advice from an ethics official before acting, and complying with that advice, will, virtually in all cases, protect an SGE from criminal prosecution.

Financial Disclosure

SGEs are required under the Ethics in Government Act to file financial disclosure reports when first appointed and annually thereafter. The agency ethics official has the authority to exclude committee members from the filing requirement based on the particular duties and responsibilities of each committee and has done so with respect to many committees. Committee managers, who help administer the disclosure program, know whether committee members are required to file. If you are uncertain whether you must file a financial disclosure report, please contact Roberto D. DiBella of the ethics officer's staff at (202) 273-6334.

Conflicts of Interest in Committee Deliberations

The main criminal conflict of interest statute prohibits an SGE from participating personally and substantially in any particular matter, such as a grant review, that directly and predictably affects the financial interests of the SGE, his or her spouse, minor child, general partner, an organization in which the SGE serves as an officer, director, trustee, general partner, or employee, or an organization with which the SGE is negotiating, or with which the SGE has an arrangement, for prospective employment. See 18 U.S.C. § 208.

A particular matter is a matter that is narrowly focused upon the financial interests of specific persons, or a discrete and identifiable class of persons. A particular matter does not cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. For example, pharmaceutical manufacturers are an identifiable class of persons while all U.S. businesses are a large and diverse group. Particular matters may include, but are not limited to, reviews of grant proposals or contract applications, other funding decisions, studies or approvals of scientific studies or projects, and other actions which involve deliberation, decision or action such as making recommendations regarding the realignment and allocation of capital assets.

Under this statute, for example, an SGE would be prohibited from reviewing a grant application submitted by a university that employs him or her. Consistent with the well established practice in the community, the statute would require that the SGE “recuse” - disqualify - himself or herself from participation in the review.

The conflict of interest law would also prohibit an SGE, for example, from participating in setting standards for grantees or contractors in general, to the extent that a university employing the SGE (or any organization with which the SGE is affiliated as an officer or board member) would be directly and predictably affected by those standards.

There may be other circumstances in which an SGE’s participation in committee business would raise a question regarding the member’s impartiality in the matter. For example, an SGE asked to review a grant application submitted by the SGE’s mentor, or someone with whom the SGE has a close personal or professional relationship, may raise a concern about the SGE’s impartiality in the review. In such circumstances, the SGE should discuss the relationship with the DAEO before participating.

Other Applicable Criminal Statutes

Acting on Someone's Else's Behalf Before the Government

18 U.S.C. § 203 - Section 203 prohibits an SGE from receiving compensation for representational services rendered by the employee or another person before VA or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the SGE has participated personally and substantially as a Government employee. By their nature, policy matters generally do not involve specific parties.

Representational services include communications (written or oral) and appearances made in connection with a covered matter on behalf of someone else, generally with the intent to influence or persuade the Government.

Where an individual or entity with which the SGE is associated provides representational services to third parties in any particular matter involving a specific party in which the SGE has participated personally and substantially as a Government employee, any compensation derived by the SGE from his or her association must not be tied to those representational services. For example, an SGE is employed with a law firm that is lobbying the VA on behalf of a Veterans organization against a particular proposal to remove inpatient treatment at a medical center affecting 15 veterans. If the SGE participated in any deliberations or made any recommendations regarding this proposal as a Government employee, the SGE should structure his or her compensation with the law firm so that he or she does not share in any profits derived from these representational services.

Exempted from the above prohibition are representations required in the performance of work under (as opposed to the negotiation or solicitation of) a grant, contract or other agreement with or for the benefit of the Government.

18 U.S.C. § 205 - Section 205 prohibits an SGE from representing a party, with or without compensation, before VA or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the United States is a party or has a direct and substantial interest that the SGE participated in personally and substantially as a Government employee.

Department of Veterans Affairs (VA) Advisory Committee Composition/Member Characteristics

Statutory instructions which govern the composition of VA advisory committees vary from specific to none at all. The following summaries provide a sampling of how varied statutory instructions can be.

National Commission on VA Nursing (Established 2002)

The Commission shall be composed of 12 members appointed by the Secretary of Veterans Affairs as follows:

- At least two shall be recognized representatives of employees (including nurses) of the Department of Veterans Affairs.
- At least one shall be a representative of professional associations of nurses of the Department or similar organizations affiliated with the Department's health care practitioners.
- At least one shall be a nurse from a nursing school affiliated with the Department of Veterans Affairs.
- At least two shall be representatives of veterans.
- At least one shall be an economist.
- The remainder shall be appointed in such manner as the Secretary considers appropriate.

Advisory Committee on Homeless Veterans (Established 2002)

The Committee shall consist of not more than 15 members appointed by the Secretary from among the following:

- Veterans service organizations.
- Advocates of homeless veterans and other homeless individuals.
- Community-based providers of services to homeless individuals.
- Previously homeless veterans.
- State veterans affairs officials.
- Experts in the treatment of individuals with mental illness.
- Experts in the treatment of substance use disorders.
- Experts in the development of permanent housing alternatives for lower income populations.
- Experts in vocational rehabilitation.
- Such other organizations or groups as the Secretary considers appropriate.

Advisory Committee on Women Veterans
(Established 1983)

The Committee shall consist of members appointed by the Secretary from the general public, including –

- Representatives of women veterans.
- Individuals who are recognized authorities in fields pertinent to the needs of women veterans, including the gender-specific health care needs of women.
- Representatives of both female and male veterans with service-connected disabilities, including at least one female veteran with a service-connected disability and at least one male veteran with a service-connected disability.

Advisory Committee on Former Prisoners of War
(Established 1981)

The members of the Committee shall be appointed by the Secretary from the general public and shall include –

- Appropriate representatives of veterans who are former prisoners of war.
- Individuals who are recognized authorities in fields pertinent to disabilities prevalent among former prisoners of war, including authorities in epidemiology, mental health, nutrition, geriatrics, and internal medicine.
- Appropriate representatives of disabled veterans.

Chiropractic Advisory Committee
(Established 2002)

The membership of the advisory committee shall include members of the chiropractic care profession and such other members as the Secretary considers appropriate.

Advisory Committee on Cemeteries and Memorials
(Established 1973)

The Secretary shall consult with the Committee on administration of the cemeteries for which the Secretary is responsible, and with respect to the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits.

There is no statutory guidance on the composition of this committee's membership.

BIOGRAPHIES

Dale A. Christopher

Senior Ethics Program Specialist
Program Review Division
U.S. Office of Government Ethics

Dale has worked at OGE since October 1991. As a senior member of the Program Review Division, he leads teams of management analysts in the review of executive branch department and agency ethics programs to ensure compliance with regulatory standards-of-conduct and statutory conflict-of-interest rules. Additionally, he has conducted numerous single-issue reviews of ethics-related topics, including agency procedures for granting conflict-of-interest waivers, issuing certificates of divestiture, administering alternative and supplemental financial disclosure systems, and managing Federal advisory committees. He also evaluates and recommends approval or disapproval of agency requests to implement alternative or supplemental financial disclosure systems.

Dale attended West Virginia University. He graduated in 1991 with a degree of Bachelor in Science in Business Administration.

Philip Rigglin

Advisory Committee Management Officer
Department of Veterans Affairs

Phil has been performing the duties of Committee Management Officer at the Department of Veterans Affairs (VA) since January 2002. In that capacity, he oversees the operations of VA's 25 advisory committees, with areas of emphasis ranging from federal educational assistance to environmental hazards research.

Phil's federal service career began at VA in 1993, and his first assignment involved coordination of the Department's liaison with all of the national veterans' service organizations. From 1996 to 2002, he managed VA's office of congressional and legislative affairs – serving at various times during that period as Deputy Assistant Secretary and Acting Assistant Secretary for Congressional Affairs.

In the early 1970s, Phil served on active duty as an Army infantry officer with a tour of duty in Vietnam. Following military service and prior to his federal service at VA, he was employed for 19 years in the private sector by The American Legion, the nation's largest veterans' service organization. For most of those years at The American Legion, he directed that organization's legislative program and its daily liaison activities with the United States Congress.

Phil is a native of Maryland where he has lived most of his life. However, in 2001,

he moved into the city of Washington and, as a result, has reduced his one way commuting time from about one hour to less than 15 minutes.

Kenneth J. Wernick
Senior Counsel (Ethics)
Alternate Agency Ethics Official
Environmental Protection Agency

Ken is the Alternate Agency Ethics Official and serves as the point of contact for EPA employees, including political appointees and senior career officials, on ethics and standards of conduct matters. He also administers the ethics program at EPA. He has served in this position since June 2001.

Before joining EPA, Ken served for twenty years in the Department of the Navy Office of General Counsel. From 1994-2001, he was the Assistant General Counsel (Ethics). In that position, he was responsible for administering the Department of the Navy ethics program and was the principal assistant to the General Counsel of the Navy on ethics matters. He also served as the Associate Counsel for Civilian Personnel and Labor Law at the Naval Sea Systems Command (NAVSEA) from 1986-1994, where he was responsible for NAVSEA's ethics program as well as for civilian personnel and labor law matters.

During his time at the Navy General Counsel's Office, he was awarded the Superior Civilian Service Award and two Meritorious Civilian Service Awards. Ken began his Federal career as an attorney in the Army Judge Advocate General's Corps. After serving on active duty for three years, he remained in the Army Reserve, retiring in 1994.

Ken is a graduate of Bucknell University and the Washington & Lee University School of Law. He is a member of the bars of the District of Columbia and Virginia.

Vincent J. Salamone
Associate General Counsel
Office of General Counsel & Legal Policy
U.S. Office of Government Ethics

Before coming to OGE in July 1992, Vince served in the U.S. Army as a captain in the Judge Advocate General Corps and was stationed at the U.S. Army Communications-Electronics Command (CECOM), Fort Monmouth, New Jersey. From April 1988 to June 1992, Vince served as an Administrative Law Attorney at CECOM. Among his many roles, Vince was the Command Procurement Fraud Advisor and was appointed a CECOM Ethics Counselor. He has served as an Associate General Counsel at OGE since November 2000.

Vince is a graduate of Assumption College where he received his Bachelor of Arts degree (Magna Cum Laude) in History. He received his Juris Doctor degree from Western New England College School of Law in 1987. He is a member of the Massachusetts Bar.

SUPPLEMENT TO PANEL MATERIALS

20a

Post-Employment Restrictions

18 U.S.C. § 207 - Section 207, the “post-employment” statute, imposes a lifetime ban on a former SGE from representing another person or entity to VA or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the former SGE participated personally and substantially while serving in the Government.

Bribery

18 U.S.C. § 201 - Section 201, commonly known as the “bribery” statute, prohibits Federal employees, including SGEs, from seeking, accepting, or agreeing to receive anything of value in return for being influenced in the performance of an official act.

Standards of Ethical Conduct

The following paragraphs generally characterize some of the administrative Standards of Ethical Conduct regulations (5 C.F.R. Part 2635) that pertain to VA SGEs.

Teaching, Speaking and Writing in a Personal Capacity

One administrative rule limits the circumstances where SGEs may receive compensation for some teaching, and for certain speaking and writing. The rule provides that for most non-curriculum teaching and most speaking and writing, SGEs may not be paid if the activity “relates to the employee’s official duties.” The “relatedness” test is met for such activities if the invitation was extended to the SGE either primarily because of the member’s committee position rather than his or her expertise or by someone whose interests may be affected substantially by the member’s government duties; or if the information conveyed draws substantially on ideas not publicly available. See 5 C.F.R. § 2635.807.

Additionally, any SGE that is to work no more than 60 days a year is prohibited from accepting compensation if the subject matter deals significantly with *any specific party matter* to which the SGE is assigned or was assigned within the past year of his or her current SGE appointment. If the SGE is to work more than 60 days a year, he or she is prohibited from accepting compensation if the subject deals significantly with *any particular matter* to which the SGE is assigned or was assigned within the past year of his or her current SGE appointment. 5 C.F.R. § 2635.807(a)(2)(i)(E)(4).

NOTE: subsection (a)(3) contains limited exceptions for teaching certain courses.

Examples: Teaching, Speaking and Writing in a Personal Capacity

Example 1: *An employee of a university has been given a one year appointment as a special Government employee to serve on an advisory committee convened for the purpose of making specific recommendations regarding the realignment and allocation of capital assets necessary to meet the demands of health care services. Because his service under that appointment is not expected to exceed 60 days, the employee may accept compensation for an article about the hardships a community may endure with the loss of VA Medical Center even though he is reviewing proposals to move several VA Medical Centers. The proposals which are the focus of the advisory committee deliberations are not a particular matter involving specific parties.*

Example 2: *A physician of a large health care firm, who is an expert in cardiology, is employed for more than 60 days in a year as a special Government employee on the Capital Asset Realignment for Enhanced Services (CARES) Advisory Committee. The physician may continue to receive compensation for speaking, teaching and writing about cardiology generally. However, during the term of her appointment as a special Government employee, she may not receive compensation for an article about allocation of cardiology assets that is currently under discussion on the CARES Committee. The latter would concern a matter to which the special Government employee is assigned.*

Example 3: *An employee of a Veterans Service Organization (VSO), who has been appointed to serve fewer than 60 days on the CARES Advisory Committee as a special Government Employee (SGE), is offered compensation to give a speech to the local chamber of commerce regarding the status of the Committee deliberations to include the processes being used to formulate recommendations. The VSO employee may not accept compensation for this speech.*

Gifts

Any gift given to an SGE because of his or her service on a VA advisory committee or given by an entity with a grant application pending would obviously raise concerns. Please consult with the DAEO should this situation arise. Gifts given to the SGE because of his or her position or achievements generally are not problematic in the private sector.

A primary exception invoked for SGEs:

An employee may accept meals, lodgings, transportation and other benefits resulting from his or her outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his or her official status.

Example: The members of the Capital Asset Realignment for Enhanced Services (CARES) Advisory Committee that meets 4 times per year are SGEs. A member who has a consulting business may accept an invitation to a \$50 dinner from her client, a Veterans Service Organization, unless, for example, the invitation was extended in order to discuss the activities of the committee.

Charitable Fundraising

An SGE may engage in fundraising in a personal capacity, if he or she does not personally solicit from anyone known to have interests that may be substantially affected by the performance [or nonperformance] of the SGE's official duties. 5 C.F.R. § 2635.808. If you have questions concerning particular fundraising events or activities, please consult with the DAEO.

Expert Testimony

An SGE may not serve as an expert witness, except for the United States, in any proceeding in which the United States is a party or has a direct and substantial interest, if:

(1) He or she has participated as an employee or special Government employee in the particular subject matter of the proceeding; or

(2) His or her employing agency is a party or has a direct and substantial interest and he or she:

- i) Is appointed by the President;
- (ii) Serves on a commission established by statute; or
- (iii) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days. 5 C.F.R. § 2635.805.

Emoluments Clause

This clause of the Constitution prohibits SGEs from accepting any employment with a foreign government or the political subdivision of a foreign government, including a public university or commercial enterprise owned or operated by a foreign government. The ban does not apply to a foreign privately owned corporation or an international organization. U.S. Constitution, Art. 1 § 9, cl. 8.

Foreign Gifts and Decorations Act

This law prohibits SGEs from accepting a gift exceeding \$285 in value from a foreign government or an international organization. A prohibited gift even includes travel expenses exceeding \$285 in value unless the travel takes place entirely outside the United States. The restriction extends to the spouse and dependents of the SGE. SGEs can accept travel and related expenses from a foreign government as part of U.S. Government duties. 5 U.S.C. § 7342.

Foreign Agents

This law prohibits SGEs from acting as an agent of a foreign principal registered under the Foreign Agents Registration Act unless the head of the agency certifies that employment of the SGE is in the national interest. 18 U.S.C. § 219.

Hatch Act

The Hatch Act rules on political activities apply to SGE's only while conducting Government business. 5 U.S.C. §§ 7321-7326.

How to Get Ethics Advice

Call, Write or Send a Facsimile Message:

Walter Hall
Assistant General Counsel and
Designated Agency Ethics Official

Jim Adams
Deputy Assistant General Counsel and
Alternate VA Ethics Official

Roberto D. DiBella
General Attorney and
Deputy Ethics Official

Office of the General Counsel (023)
VA Central Office
810 Vermont Avenue, NW
Washington, D.C. 20420

at(telephone): **202-273-6334**
(facsimile): **202-273-6403**

(for Microsoft Outlook):
Adams, James E. (OGC)
DiBella, Roberto

THE OFFICE OF GOVERNMENT ETHICS WEB PAGE ADDRESS IS:

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