

**Financial Disclosure Forms,
Standards of Ethical Conduct
Acknowledgment,
and
Foreign Activities Questionnaire**

Financial Disclosure Forms

• SF 278

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

SF 278 (Rev. 04/2000)
5 CFR Part 2636
U.S. Office of Government Ethics

Form Approved
OMB No. 3209-0001

Reporting Status Check appropriate box: <input type="checkbox"/> Incumbent <input type="checkbox"/> Candidate for Covered Position <input type="checkbox"/> New Entry, Nominee, or Candidate <input type="checkbox"/> Termination Filer <input type="checkbox"/> Termination Date of Ann (dd/mm/yy)	Reporting Individual's Name Last Name: _____ First Name and Middle Initial: _____	Fee for Late Filing Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or if an extension is granted, more than 60 days after the last day of the filing exemption period, shall be subject to a \$200 fee.
Position for Which Filing Title of Position: _____ Department or Agency (if applicable): _____	Reporting Periods Incumbents: The reporting period is the preceding calendar year except Part II of Schedules C and Part II of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable. Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.	Reporting Periods Incumbents: The reporting period is the preceding calendar year except Part II of Schedules C and Part II of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable. Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.
Location of Present Office (for forwarding address) Address (Number, Street, City, State, and ZIP Code): _____ Telephone No. (include Area Code): _____	Presidential Nominees Subject to Senate Confirmation Name of Congressional Committee Considered for Nomination: _____ Do You intend to create a qualified, diversified trust? <input type="checkbox"/> Yes <input type="checkbox"/> No	Nominees, New Entrants and Candidates for President and Vice President: Schedule A: The reporting period for income (1026A-2) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 60 days of the date of filing. Schedule B: Not applicable. Schedule C, Part I: Incumbents: The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 60 days of the date of filing. Schedule C, Part II: Agreements or Arrangements: Show any agreements or arrangements as of the date of filing. Schedule D: The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.
Signature of Reporting Individual _____ Date (Month, Day, Year): _____	Signature of Designated Agency Ethics Official (Reviewing Official) _____ Date (Month, Day, Year): _____	Agency Use Only
Signature of Other Reviewer _____ Date (Month, Day, Year): _____	Signature _____ Date (Month, Day, Year): _____	OGÉ Use Only
Comments of Reviewing Official: (If additional space is required, use the reverse side of this sheet.)		
<input type="checkbox"/> If a box of filing extension granted, it indicates number of days.		
<input type="checkbox"/> If a box of comments is continued on the reverse side.		

Supersedes Form SF-278, Which Was Previously Used. 278-112. NEW FORM 04/2000

Financial Disclosure Forms

• OGE 450

OMB Form 278e (12/19) PUBLIC REPORT
 A Civil Service Position in the Executive Branch
 of the U.S. Government
 Form Approved
 OMB No. 3208-0055

Executive Branch CONFIDENTIAL FINANCIAL DISCLOSURE REPORT

Page Number: _____

Reporting Status: New Report Annual

Signature of Employee: _____

Date: _____

Signature and Title of Supervising Incumbent Personnel Personnel: _____

Date: _____

Comments of Reporting Official: _____

Signature of Agency: _____

Date: _____

Part I: Assets and Income

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Assets and Income Source: *Identify specific entities, business, and kind owned and report disposition of real estate only.*

1	2	3	4	5	6	7	8
Asset	Value	Category	Income	Source	Value	Category	Income
1. _____	_____	_____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____	_____	_____	_____
7. _____	_____	_____	_____	_____	_____	_____	_____
8. _____	_____	_____	_____	_____	_____	_____	_____

Approved for your reproduction

Standards of Ethical Conduct

Acknowledgment of the Standards of Ethical Conduct for Employees of the Executive Branch

Title 5, Volume 3 of the Code of Federal Regulations (5 CFR 2635)
http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html

Public service is a public trust, requiring employees of the Federal Government to place loyalty to the Constitution, the laws and ethical principles above private gain.

- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- An employee shall not, except as permitted by applicable standards of ethical conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- Employees shall put forth honest effort in the performance of their duties.
- Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those - such as Federal, State, or local taxes - that are imposed by law.

Foreign Activities Questionnaire

• DD Form 2859

FOREIGN ACTIVITIES QUESTIONNAIRE (Continued)	
1. NAME (Last, First, Middle Initial)	2. COMMITTEE
3. DAYTIME TELEPHONE NUMBER (Include Area Code)	4. MAILING ADDRESS (Include Zip Code)
5. E-MAIL ADDRESS (Optional)	
6. Describe any activities you are currently undertaking, or expect to undertake, during your tenure on a Federal advisory committee, including a foreign government, including a foreign public university or government owned corporation. Such activities include consulting work, receipt of grants or contracts, directly or through your domestic professional faculty appointments, relationships in the holding of an office, title, or position. <input type="checkbox"/> IF NONE, X HERE	
7. If any activity described above is with a foreign public university and consent of a faculty appointment, describe whether the university is an instrument of the foreign government with respect to conditions regarding the terms and conditions of faculty appointments. If you may need to consult with the foreign university to obtain such information.	
8. Describe any thing of or intangible gift, including travel reimbursement or other form of value that you anticipate that you, your spouse, or your dependent child will receive from a foreign government during your tenure on a Federal advisory committee. <input type="checkbox"/> IF NONE, X HERE	
9. SIGNATURE OF REPORTING INDIVIDUAL	10. DATE OF PRINTING

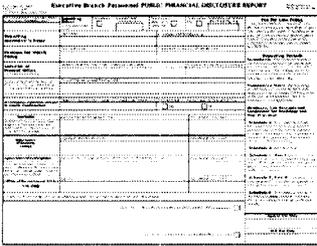
DD FORM 2859 (BACK), FEB 2003

NAME

Financial Disclosure Forms,
Standards of Ethical Conduct
Acknowledgment,
and
Foreign Activities Questionnaire

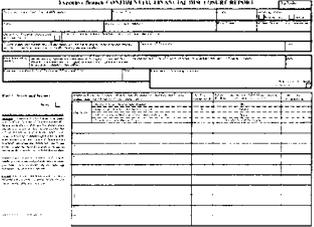
Financial Disclosure Forms

- SF 278

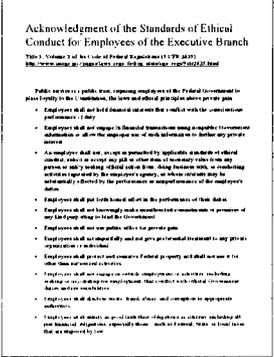


Financial Disclosure Forms

- OGE 450

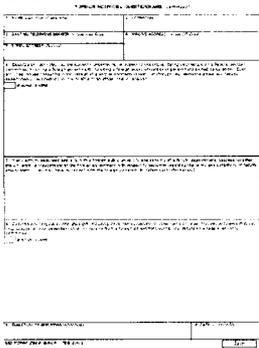


Standards
of Ethical
Conduct



Foreign
Activities
Questionnaire

- DD Form 2859



JOHN WARNER, VIRGINIA, CHAIRMAN

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United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

March 7, 2005

MEMORANDUM FOR SENATORS WARNER AND LEVIN

FROM: Scott Stucky and Peter Levine

SUBJECT: Conflict of interest issues concerning the Defense Base Closure and Realignment Commission

The Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), as amended by Title XXX of the National Defense Authorization Act for Fiscal Year 2002 (P.L.107-107, December 28, 2001), authorizes a single round of base closure in 2005. The administrative instrument for the closure decisions, as in the 1991, 1993, and 1995 rounds of base closure, is the Defense Base Closure and Realignment Commission (the Commission.) The procedures set out in the statute raise unique conflict of interest issues. This memorandum discusses those issues.

Background on the base closure commission

The 2005 Defense Base Closure and Realignment Commission is an "independent commission", consisting of nine members, including a Chairman, nominated by the President and confirmed by the Senate. Under the statute, nominations to the Commission must be submitted to the Senate by March 15, 2005. The Commission is to meet in calendar year 2005. The terms of the members, and the Commission itself, terminate on April 15, 2006.

The Chairman and the other members are not full-time employees; they are paid on a daily basis for days they perform services, and they receive travel and per diem expenses. It is expected that their actual service will be fewer than 130 days in a year, which makes them "special government employees" for the purposes of the criminal statutes and regulations governing conflict of interest. Special government employees are subject to certain of the criminal statutes only to the extent that they participated personally and substantially as employees in particular matters. Those serving fewer than 60 days in a year are also exempt from the one-year bar on certain post-employment communications with the department in which they served. Special government employees are also partially or wholly exempt from regulatory constraints on such things as outside employment and political activity.

The Committee has not insisted on divestiture by special government employees whose nominations fall within the Committee's jurisdiction, such as the Regents of the Uniformed Services University of the Health Sciences. Rather, it has allowed recusal in situations in which

a personal financial interest exists.

The members of the Commission, while not full-time employees, perform government services. The following summarizes the Commission's role in the base closure process.

- By May 16, 2005, the Secretary of Defense must transmit to Congress and publish a list of installations recommended for closure or realignment. The recommendations must be based upon criteria specified in the statute, and a force structure plan and inventory which were earlier submitted to Congress.
- The Commission is to have access to all information used by the Secretary in making his recommendations.
- The Commission holds public hearings on the Secretary's recommendations.
- Not later than September 8, 2005, the Commission transmits its findings and conclusions, based upon its review and analysis of the Secretary's recommendations, to the President. Additions to the Secretary's recommendations require a site visit and an affirmative vote of at least seven members of the Commission.
- By September 23, 2005, the President must approve or disapprove the Commission's recommendations.
 - If the President approves the recommendations, he must forward them to Congress by November 7, 2005.
 - If he disapproves the recommendations, he must provide the Commission with his reasons for disapproval.
 - > Thereafter, by October 20, 2005, the Commission must submit revised recommendations to the President.
 - > If the President approves the revised recommendations, he forwards them to Congress.
 - > If the President does not transmit an approved set of recommendations to Congress by November 7, 2005, the closure process is terminated.
- If the President submits approved recommendations to Congress, the recommendations will take effect unless Congress passes a resolution of disapproval (and overrides the anticipated Presidential veto) within 45 days after

the President submits the recommendations (or by the sine die adjournment of Congress).

As illustrated by the foregoing, the Commission is an integral part of the decision-making process, not merely an advisory body. Therefore, Commission Members are subject to the basic conflict of interest requirements in 18 U.S.C. 208, which apply to part-time (special government) as well as full-time employees. Thus, members may not take actions that would have a direct and predictable effect on matters in which they have financial interests.

Generally, government employees may avoid statutory conflict of interest problems through: (1) divestiture; (2) recusal; or (3) a statutory waiver based upon a determination that the financial interests are not so substantial as to effect the integrity of the individual's government service. A waiver may be granted by the official who appointed the employee, or by the Office of Government Ethics for a class of employees.

Normally, the Committee has required Department of Defense appointees to use divestiture as the vehicle for eliminating conflicts of interest. The Committee has on occasion accepted recusal, rather than waiver, when the matter involved a closely-held, nonmarketable financial interest and the recusal would not substantially impair the ability of the nominee to fulfill the duties of office. As noted above, the Committee has accepted recusal and not insisted upon divestiture when dealing with part-time positions under its jurisdiction.

The Committee normally receives only the Standard Form 450, an abbreviated statement of a nominee's financial interests, for nominees to part-time positions. In our judgement, the Commission's functions are of such importance and sensitivity that nominees should provide the Standard Form 278, the full financial report, rather than the Form 450. The Form 278 was provided to the Committee when nominees for the 1991, 1993, and 1995 Commissions were considered. With the Form 278, the Committee will have information on the nominees' holdings equal to that it receives on nominees for full-time civilian positions in the Department of Defense.

Procedures used in the past to address conflict of interest issues in the base closure process

In many cases, the issue of whether a base closure or realignment decision would have a direct and predictable effect on a particular nominee's financial interests is a matter that cannot be determined until the Secretary's base closure list is announced, an announcement that is not due until May 16. It is likely that Committee action, confirmation, and appointment of the Commission members will have taken place by then. Accordingly, we recommend that the Committee follow the same procedure used during the 1991, 1993, and 1995 base closure rounds, which was worked out at that time between the Committee and the Department.

Under that procedure, the following actions would be taken:

(1) At the time the Secretary's list is announced, the Commission's General Counsel, (assuming one is appointed by that time), working with the DOD General Counsel and the Office of Government Ethics, will review the financial holdings of each member of the Commission and advise the member whether recusal or other remedial action (divestiture or waiver) is necessary.

(2) The Commission's General Counsel will advise the Committee of the results of the review and the actions taken by the members of the Commission.

(3) The Commission's General Counsel will establish a procedure that will provide for similar reviews, and information to the Committee, when and if the Commission considers taking action with respect to installations not on the Secretary's list.

In the base closure rounds held in the 1990s, application of this procedure resulted in some members recusing themselves from the consideration of certain installations, other members being granted waivers because of the nature and the breadth of their holdings, still others being required to divest certain holdings, and at least one member resigning from the Commission because he was unwilling to divest himself of certain interests.

In a letter dated February 22, 1993, BRAC Commission Chairman Courter provided the following additional information concerning the operation of the recusal process:

When it has been determined by the Commission's General Counsel that a Commissioner has a potential conflict of interest and the recommended remedial measure is recusal in regards to the base, to avoid a conflict of interest or perception of a conflict, the Commission will adopt the following policy: the Commissioners shall be prohibited from participation in any and all discussions, debate and actions regarding the base in question. Additionally, Commissioners will not participate in any discussions, debate or actions involving bases that are being considered as substitutes to the first base in question. The prohibition regarding substitute bases will take effect the moment the additional base(s) is/are being considered as substitute(s) to the original base.

We would anticipate that the 2005 Commission would operate under similar constraints with regard to individual members who are recused from consideration of particular bases.

Conclusion

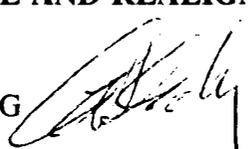
The Office of Government Ethics agreed with this procedure in the 1991, 1993, and 1995 BRAC rounds. In our judgement, these arrangements appropriately balance the necessity for adjustments caused by the statutory schedule of the Commission, the criminal conflict of interest statutes, and the Committee's accepted conflict of interest practices.

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April 12, 1995

**MEMORANDUM FOR MS. MADELYN R. CREEDON, GENERAL COUNSEL,
DEFENSE BASE CLOSURE AND REALIGNMENT
COMMISSION
MR. S. ALEXANDER YELLIN, NAVY TEAM LEADER,
DEFENSE BASE CLOSURE AND REALIGNMENT
COMMISSION**

FROM: GEORGE R. SCHLOSSBERG 

**SUBJECT: LEGAL AUTHORITY OF DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION TO CONSIDER PRIVATE
SECTOR SHIPYARD CAPACITY**

The Defense Base Closure and Realignment Act of 1990, as amended (the "Act"), as implemented and interpreted previously by the Secretary of Defense ("Secretary") and the Defense Base Closure and Realignment Commission ("Commission") in 1991 and 1993, provides this Commission with the authority, if not the duty, to consider, among other things, private sector shipyard capacity in its review of the Department of Defense's 1995 Base Closure Recommendations. Moreover, during the deliberations leading to the 1995 round of base closure recommendations, the Military Departments, the Joint Working Groups, and the Department of Defense used private sector capacity in fashioning their final recommendations to the Commission.

A. Statutory construction of the Act favors consideration of private capacity by the Commission in its closure and realignment recommendations.

To accomplish its statutory goals, the Act established a specific procedure for making recommendations for base closures and realignments. The Secretary is given the responsibility to develop a force structure plan and final criteria to be used in making closure recommendations, and the Commission is given the responsibility to review and make changes to the Secretary's closure recommendations if it determines that the Secretary "deviated substantially" from the force structure plan and final criteria.

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Significantly, however, the statute does not delineate either the final criteria themselves, or the factors that are to be encompassed within the final criteria. Rather, the statute is silent as to any of the details of the final criteria. Similarly, the legislative history of the Act reveals that Congress made no attempt to define the final criteria with any greater precision.

Given the complexity of the issues underlying base closures and the specialized nature of the Military Departments, this lack of specific statutory detail is hardly surprising. To the contrary, by declining to set forth the final criteria or the issues to be considered thereunder, Congress followed the frequently employed practice of deliberately casting statutory language in broad terms, and then entrusting an administrative agency with great experience in the field to "fill in the gaps" in the legislation by regulation and then to apply such regulations in a manner consistent with the legislative intent. See, e.g., E.I. duPont de Nemours & Co. v. Collins, 432 U.S. 46 (1977). Ultimately, the authority is given to the Commission to send to the President a final list of recommendations according to their own analysis of the issues and selection criteria.

Under similar broadly written statutory schemes, situations frequently arose where a specific issue in controversy was not addressed directly by the Congress, either in the language of the statute itself or in the legislative history. Under general principles of statutory construction and administrative law, when Congress has not spoken to the precise question at issue, the agency's interpretation of the statute is then consulted. If the agency's interpretation is consistent with the statute's intent and is rationally supported, the agency's interpretation generally is given great deference and is usually deemed to be controlling. See, e.g., Chevron, USA, Inc. v. National Resources Defense Council, 467 U.S. 837 (1984); Sullivan v. Everhart, 494 U.S. 83 (1990); Illinois E.P.A. v. U.S. E.P.A., 947 F.2d 283 (7th Cir. 1991); Difford v. of Health and Human Services, 910 F.2d 1316 (6th Cir. 1990).

These principles are appropriately applied to the issue of the consideration of private capacity in base closure recommendations. The Act is broadly written, is silent on the issue of private capacity as well as on any other factor that is to be considered under the final criteria, and the Secretary is the "expert agency" charged with "filling in the gaps."

An inquiry as to whether private capacity must be considered by the Commission in making its base closure recommendations therefore must now turn to the final selection criteria themselves as adopted by the Secretary. Significantly, however, the Secretary also deliberately left the final criteria somewhat broad and general in nature. The final selection criteria to be used by the Department of Defense to make recommendations to be reviewed by the 1995

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Commission are unchanged from the original selection criteria adopted for the 1991 Commission and used also in their entirety by the 1993 Commission. See 59 Fed. Reg. 63769 (1994). For the original criteria, as adopted for the 1995 round of closures, the Secretary of Defense stated that,

The inherent mission diversity of the Military Departments and Defense Agencies makes it impossible for DoD to specify detailed criteria, or objective measures or factors that could be applied to all bases within a Military Department or Defense Agency. See 56 FR 6374 (1991), appended hereto at **Tab A**.

In its adoption of the final criteria in 1991, its published 1991 policy guidance addressing those criteria, and its reaffirmation of those criteria in their entirety in 1993 and 1995, the Secretary established the "regulations" pursuant to which closure recommendations are to be made. Therefore, with respect to any particular issue not specifically addressed in the statute, such as whether private capacity must be considered under the final criteria, general principles of statutory construction as set forth in the Chevron line of cases require that the Secretary's interpretations are to apply, as long as they are consistent with the intent of the statute.

Therefore, that the express language of the final selection criteria does not explicitly mention private capacity is of little importance, because clearly the intent of the Secretary in adopting the final criteria was not to specify each and every factor that is to be considered under those criteria. To the contrary, such specificity was deliberately avoided.

However, in response to concerns voiced by commenting parties on the need for more detailed information as to how the criteria were to be applied, the Secretary published in the Federal Register a "policy guidance" that had been issued to the Military Departments and Defense Agencies on the base closure process. Id. at 6375. In that policy guidance, the Secretary explicitly specifies, in response to comments recommending that the capacity of the private sector to support or perform military missions be considered, that such availability is "already included" in Final Criteria Number One and Four. Id. at 6376.

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Because the Secretary, acting as the expert agency in filling in the gaps of a general statute, has specified in a formal policy notice that consideration of private capacity is included in the final selection criteria,¹ the Commission is charged clearly with the duty to review private sector shipyard capacity during its deliberations.

However, even in the absence of this express policy guidance, private capacity still must be considered logically by the Secretary and the Commission under Criteria Number 1, in order for the agency's application of the guidelines to be consistent with the overall policies and objectives of the Act. The second clause of Criteria No. 1 ("the impact on operational readiness of the Department of Defense's total force"), by its terms, requires that the Secretary consider available private capacity when assessing the impact of a base closure on the readiness of the force, or else the goals of saving money, achieving an efficient military force, eliminating unnecessary facilities, and streamlining the defense infrastructure will not be able to be achievable.

In other words, in order for the closure process to be able to further the efficiency of the military, save money, and still meet the needs of the force, adequate private repair and maintenance facilities available in a particular area--for example, the West Coast or Southern California--must be considered. To the extent that adequate private repair and maintenance facilities are available in a particular area that can satisfy the military's need for operational readiness, the closing of a public facility in that area can be recommended for closure under this criteria. In fact, closing a public facility under such circumstances would further the legislative intent of the statute, in that military funds could instead be used more efficiently on operational activities and keeping open public repair and maintenance facilities in those areas where adequate private capacity is not already present; Criteria number 1 can therefore be satisfied through a combination of public and private facilities.

Thus, the consideration of the availability of private facilities by the Commission in the final criteria is proper, therefore making it appropriate for the Commission to consider the private capacity issue at this time. Most importantly, in a recent Supreme Court review of the Act, the Court concluded that the past actions of the Secretary and the Commission were both

¹ As stated above, the 1991 final criteria were adopted unchanged by the Secretary for use as the final selection criteria in the 1993 and 1995 closure process. See 57 Fed. Reg. 59335 (1992).

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legitimate and proper. Dalton v. Specter 114 S. Ct. 1719 (1994), 128 L.Ed. 2d 497 (1994). Accordingly, the Commission should continue to act as it has in previous rounds and review private sector capacity during its deliberations.

B. Private capacity must be considered if the goals and policy objectives of the Act are to be achieved.

The overall purposes and objectives of the Act must be a primary consideration underlying base closure recommendations. It is a general principle of statutory construction that in interpreting statutory language, the aims, principles, and policies that underlie the statute are to provide guidance. See, e.g., Crandon v. United States, 494 U.S. 152 (1990), citing Kmart Corp. v. Cartier Inc., 486 U.S. 281(1988), and Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 51(1987); Aulston v. U.S., 915 F.2d 584 (10th Cir. 1990), cert. denied, 111 S.Ct. 2011(1991). With respect to the Act, its clear language and legislative history identify the purposes and goals to be achieved through the base closure process.

The purpose of the Act, as set forth in § 2901 (b), is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." Another purpose of the Act is to save money. The legislative history of the Act provides useful background as to the purpose of the closure and realignment procedures.

The overall goal of the base closure process was succinctly stated by Congresswoman Schroeder during the floor debate on the base closure proposals of the House Armed Services Committee, as follows:

[w]e need to close bases to save money. We need to close bases as the size of the force comes down. We need to close bases because the current base structure is inefficient." 126 Cong. Rec. 7462 (daily ed. September 12, 1990).²

² Congresswoman Schroeder was one of the co-authors of the House Armed Services Committee's base closure proposals. Her debate in support of the Committee's proposal repeatedly emphasized that "the Committee proposal guarantees that bases will be closed and the taxpayers will save money." 126 Cong. Rec. 7463 (daily ed. September 12, 1990). The report of this Committee similarly "recognizes the need to close bases" because "[t]he size of the American military will likely decline by 25 percent over the next few years. Fewer troops means fewer bases will be required." H.R. Rep. No. 665, 101st Cong., 2nd Sess. 383. The Committee Report also stresses that the process for the

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An examination of the legislative history of the 1988 Defense Authorization Amendments and Base Closure and Realignment Act, as amended, P.L. 100-526, 102 Stat. 2623, the predecessor to the 1990 Act and which originated a base closure procedure similar in purpose and effect to that adopted in the 1990 Act, also is instructive.³ For example, the House Armed Services Committee Report on H.R. 4481, on which much of the text of the bill that eventually was passed by Congress in 1988 was based, states that one of the issues that would have to be considered before a base could be closed or realigned is the extent and timing of potential cost savings. H.R. Rep. No. 735(I), 100th Cong., 2nd Sess. 1, 8,11,13. In this regard, the report quotes from testimony by the Secretary before the committee that stated that "savings from closing a base are significant and perpetual." *Id.* at 8. Similarly, the committee report of the Government Operations Committee on the same bill expressed its support of the "goal of effecting savings by expediting the closure of unneeded military facilities." H.R. Rep. No. 735(II), 100th Cong., 2nd Sess. 10.

closure of military installations must be based on "economy and utility" pursuant to objective criteria designed to achieve, "effectively and efficiently," the military plans of the department as reflected in a force structure plan. *Id.* at 383, 61990 U.S. Code Cong. & Ad. News 3076. The Senate Armed Services Committee also recognized that reductions in military personnel and the need for deficit reduction would trigger a significant number of base closures. S. Rep. No. 384, 101st Cong., 2nd Sess. 295.

³ This statute created a base closure process which, like the procedure adopted in the 1990 statute, established a Commission on Base Realignment and Closure. The 1988 Commission's statutory task was to transmit a report to the Secretary and the Armed Services Committees of the Senate and the House of Representatives recommending military installations for closure or realignment; expedited procedures for approval or disapproval of the Commission's recommendations by the President and Congress were also established, and closures or realignments approved pursuant to the expedited procedures would be implemented by the Secretary according to a timetable. Defense Base Authorization Amendments and Base Closure and Realignment Act, Pub. L. No. 100-526, Title II --Closure and Realignment of Military installations (codified at 10 U.S.C. 2687 note).

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That the overall goals of the base closure statutes are to effect cost savings in an efficient and expeditious manner in order to implement defense budgetary cuts is echoed in this Commission's 1991 and 1993 Reports to the President. In its 1993 Recommendations, the Commission notes in its opening letter to the President that continuing budget constraints, along with changing national security requirements compel the United States to reduce and realign its military forces. See 1993 Defense Base Closure and Realignment Commission Report to the President at vi. In its introductory sections in the 1991 Report, the Commission states that because of DoD's plans to decrease the military by 25%, there is a need to eliminate unnecessary facilities so that the more limited military dollars may go to vital military needs. See 1991 Defense Base Closure and Realignment Commission Report to the President at vi.

The government cannot accomplish the goal of saving money if the Secretary makes base closure recommendations on the premise that Navy shipyards will perform virtually all of the Navy's ship repair and overhaul requirements, thereby ignoring the reality that private shipyards perform approximately 35 percent of those requirements. In fact, the Congress has acknowledged the important role the private sector plays in providing support to the Services as well as the need to maintain a commercial industrial mobilization base by providing that up to 40 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for that performance with the private sector. 10 U.S.C. § 2466.

Thus, the goal of achieving cost savings must include consideration of private sector capacity and capabilities. As set forth in the Government Accounting Office's March 1988 Report on Navy Maintenance, the Navy policy set forth in DoD Directive No. 4151.1 (originally adopted in 1974 and repealed in the wake of the enactment of section 2466 of title 10, United States Code), is in accord with Congress' intent to permit 40 percent of all Navy ship repair, overhaul and alteration work to go to private shipyards. GAO/NSIAD-88-109, dated March 25, 1988, Navy Maintenance, Competing Vessel Overhauls and Repairs Between Public and Private Shipyards at 18. For many years, Department of Defense Appropriation Acts directed a specified dollar amount be applied to private sector contractors that roughly equated to the then 70/30 split. Id. Because that congressional intent was well established at the time of enactment of the 1990 Base Closure Act and its predecessor 1988 Act, those Acts by necessity contemplated that the capacity of the private sector must be included for the purpose of achieving cost savings in determining which military bases to close.

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- C. Prior private capacity consideration by the Commission is appropriate and proper and this practice should be continued by the Commission in their 1995 recommendations for closure and realignment.**

That the availability of private capacity is an appropriate and necessary factor to be considered in an evaluation of base closure recommendations under the final criteria is highlighted by the fact that private capacity was considered by this Commission in making its 1991 and 1993 closure and realignment recommendations.

In 1993 the Base Closure Commission wrote in its final recommendation to the President to close Mare Island Naval Shipyard, California:

When relocating a function from a closing shipyard, the Navy should determine the availability of the required capability from another DoD entity or the private sector prior to the expenditure of resources to recreate the capability at another shipyard.

See 1993 Defense Base Closure and Realignment Commission Report to the President at 1-16.

Similarly, a significant factor in the 1991 recommendations by the Commission concerning the Philadelphia Naval Shipyard was the availability of suitable private shipyard alternatives on the East Coast. For example, in evaluating options for Philadelphia, the Commission concluded that although the need for contingency capability for carrier drydocking on the East coast existed, that need could be met sufficiently through a combination of mothballing at Philadelphia and the use of the Norfolk Naval Shipyard (a public facility), and the Newport News Shipbuilding and Dry Dock Company (a private facility.)

Moreover, the use of private capacity is further underscored by the deliberations of the Military Departments and the Joint Working Groups that led to the 1995 DoD recommendations to the Commission. For example, during the March 7, 1995 Commission hearing, Secretary of the Army Togo West testified that "civilian capacity was a player" in the Army's analysis of its hospital medical capacity and its determination as to which facilities to close and realign. Secretary West stated:

It was one of the ways in which we were able to decide that we could dispense with a center here or downgrade a hospital to a clinic there.

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And so, at least at the level at which I reviewed it, excess civilian capacity did not influence me so much as the certainty that with civilian capacity, we could be sure that that where we were making an adjustment there were still going to be proper medical care and treatment for those who depend on the Army. [sic] [March 7, 1995 Transcript pp. 90-91]

The Army also considered private capacity in the area of military ports in the United States. Secretary West testified further before the Commission that with regard to the Army's 1995 recommendation to close Military Ocean Terminal Bayonne, New Jersey:

...we in the Army are fairly comfortable with using commercial ports in most cases. There are greater assurances of commercial port availability on the East Coast than the West. So just as a matter of prudent planning, we elected to keep Oakland open, while we felt very comfortable that we could close Bayonne and realize the savings from that action. [See March 7, 1995 Transcript pp. 101-102]

In addition, all three Military Departments considered the availability of housing in the private sector in their 1995 evaluations of their military installations. Specifically, the Department of the Navy, in its Community Infrastructure Impact Analysis, included information on the ability of existing infrastructure in the local community, to absorb additional Navy personnel and missions. Installations were asked to assess the impact of increases in base personnel on off-base housing availability, public and private school, health care facilities and other off-base private recreational activities. See page 33 of the Department of the Navy Analyses and Recommendations (Volume IV), March 1995. The Air Force, in its installation evaluation criteria considered off-base housing affordability and its suitability in its evaluation of community infrastructure, as well as, off-base recreational and hospital facilities. See page 69 of the Department of the Air Force Analyses and Recommendations (Volume V), February 1995. Similarly, the Department of the Army used off-base housing for soldiers and families in its overall evaluation of Land Facilities as provided for by the DoD. See page 24 of the Department of the Army Analyses and Recommendation (Volume II).

Private capacity was also evaluated and considered by the Joint Cross Service Groups. In particular, during the March 7, 1995 Commission hearing on recommendations by the Army, Brigadier General Shane of the Department of the Army testified that excess civilian capacity was considered in the hospital Joint Cross Service process. In response to Commissioner

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Steele's question with regard to the Army's recommended closure of Fitzsimmons Army Medical Center and the continued ability of the Services to meet the military need in the area, the General responded:

...it goes back to the question that Commissioner Robles asked in regards to excess capacity -- civilian capacity that exists. It is my understanding that the Joint Cross Servicing Group looked at that real hard and supported this recommendation from the Army, and determined that there was capacity and that there would not be a major problem with the diversion of that tri-care service throughout the area.

[March 7, 1995 Transcript pp. 95-96]

That the Commission relied upon the availability of private capacity in making closure and realignment recommendations in 1993 and 1991, and that the Military Departments and the Joint Cross Service Working Groups evaluated the capacity of the private sector when making their 1995 recommendations, is clearly dispositive as to whether private capacity may be considered by the Commission at this time as well.

D. Conclusion

One of the primary purposes of the Act is to avoid wasting money on public facilities that are excess to meeting the military's requirements. That purpose can be accomplished only if the Secretary and the Commission base their Navy shipyard closure recommendations on the Nation's entire ship repair and maintenance capability. Accordingly, we believe it is appropriate and proper for the Commission to consider private sector shipyard capacity when deciding which shipyards to recommend for closure or realignment.

Enclosure: as stated.

cc. w/ enclosure: Mr. Larry Jackson

Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.8.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Commissary Shelf Stocking & Custodial, Fitzsimmons Army Medical Center, Denver, Colorado.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-3704 Filed 2-14-91; 8:45 am]

BILLING CODE 6420-33-M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 18, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.8. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following

commodities and services to the Procurement List:

Commodities

Case, Ear Plug

6515-01-212-9452

(Remaining 20 percent of Government's Requirement)

Wash Kit, Personal

7360-00-139-1063

Bog, Paris

6105-LL-800-0208

6105-LL-800-0209

6105-LL-800-0210

6105-LL-800-9974

6105-LL-800-9975

(Requirements of Mare Island Naval Shipyard, CA)

Services

Janitorial/Custodial, Department of the Army, Coralville Reservoir, Coralville Lake, Iowa.

Janitorial/Custodial, Internal Revenue Service Center, 3651 South Interregional Highway 35, Austin, Texas

Sending and Oiling Picnic Tables, Deschutes National Forest, Bend Ranger District, Bend, Oregon.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-3705 Filed 2-14-91; 8:45 am]

BILLING CODE 6420-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States

AGENCY: Department of Defense (DoD).

ACTION: Final selection criteria.

SUMMARY: The Secretary of Defense, in accordance with section 2903(b), title XXIX, part A of the FY 1991 National Defense Authorization Act, is required to publish the proposed selection criteria to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Jim Whittaker or Ms. Patricia Walker, Base Closure and Utilization, OASD(P&L), (703) 614-5358.

SUPPLEMENTARY INFORMATION:

A. Final Selection Criteria

The final criteria to be used by the Department of Defense to make recommendations for the closure or realignment of military installations inside the United States under title

XXIX, part A of the National Defense Authorization Act for Fiscal Year 1991 as follows:

In selecting military installations for closure or realignment, the Department of Defense, giving priority consideration to military value (the first four criteria below), will consider:

Military Value

1. The current and future mission requirements and the impact on operational readiness of the Department of Defense's total force.

2. The availability and condition of land, facilities and associated airspace at both the existing and potential receiving locations.

3. The ability to accommodate contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

4. The cost and manpower implications.

Return on Investment

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

Impacts

6. The economic impact on communities.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

8. The environmental impact.

B. Analysis of Public Comments

The Department of Defense (DoD) received 169 public comments in response to the proposed DoD selection criteria for closing and realigning military installations inside the United States. The public's comments can be grouped into four topics: General, military value, costs and "payback", and impacts. The following is an analysis of these comments.

(1) General Comments

(a) A substantial number of commentors expressed concern over the proposed criteria's broad nature and similarity to the 1988 Defense Secretary's Base Realignment and Closure Commission criteria. Many of the comments noted a need for objective measures or factors for the criteria. Some commentors also suggested various standard measures or factors for

the criteria. The inherent mission diversity of the Military Departments and Defense Agencies (DoD Components) makes it impossible for DoD to specify detailed criteria, or objective measures or factors that could be applied to all bases within a Military Department or Defense Agency. We have provided the commentors' letters to each Military Department for their consideration. The similarity to the 1988 Base Closure Commission criteria is acknowledged. After reviewing the public comments we concluded that using similar criteria is appropriate.

(b) Many commentors noted that a correlation between force structure and the criteria was not present. The base closure and realignment procedures mandated by title XXIX, part A, of the National Defense Authorization Act for Fiscal Year 1991 (the Act) require that the Secretary of Defense's recommendations for closure and realignment be founded on the force structure plan and the final criteria required by the Act. DoD's analytical and decision processes for applying the final criteria will be based on the force structure plan. The military value criteria provide the connection to the force structure plan.

(c) Many commentors noted the need for more detailed information on how DoD would implement the base closure procedures required by the Act. A recurrent suggestion was to group like bases into categories for analysis. In response to this comment and suggestion, and to respond to the general comments (a) and (b) above, we have issued policy guidance to the Military Departments and Defense Agencies on the base closure process. This guidance requires them to:

- Treat all bases equally: They must consider all bases equally in selecting bases for closure or realignment under the Act, without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department. This policy does not apply to closures or realignments that fall below the thresholds established by the Act or to the 86 bases closed under Public Law 100-526;

- Categorize bases: They must categorize bases with like missions, capabilities and/or attributes for analysis and review, to ensure that like bases are fairly compared with each other; and

- Perform a capacity analysis: They must link force structure changes described in the force structure plan with the existing force and bases structure, to determine if a potential for closure or realignment exists. In the

event a determination is made that no excess capacity exists in a category, then there will be no need to continue the analysis of that category, unless there is a military value or other reason to continue the analysis;

- Develop and Use Objective Measures/Factors: They must develop and use objective measures or factors within categories for each criterion, whenever feasible. We recognize that it will not always be possible to develop appropriate objective measures or factors, and that measures/factors (whether they be objective or subjective) may vary for different categories of bases.

(d) A number of commentors recommended assigning specific weights to individual criteria. It would be impossible for DoD to specify weights for each criterion that could be applied across the board to all bases, again due to the mission diversity of the Military Departments and Defense Agencies. It appears from the comments that numbering the criteria may have been mistaken as an order of precedence associated with individual criteria. We do not intend to assign an order of precedence to an individual criterion, other than to give priority to the first four.

(e) Several commentors gave various reasons why a particular installation should be eliminated from any closure or realignment evaluation. Public Law 101-510 directs DoD to evaluate all installations equally, exclusive of those covered under Public Law 100-526 or those falling below the threshold of section 2687, title 10, U.S. Code. Public Law 100-526 implemented the recommendations of the 1988 Defense Secretary's Commission on Base Realignment and Closure. We have issued guidance to the DoD Components instructing them to consider all bases equally, this includes those previously nominated for study in the Defense Secretary's January 29, 1990, base realignment and closure announcement that are above the thresholds established in the Act. Conversely, we did not receive any requests that a particular installation be closed or realigned pursuant to section 2924 of Public Law 101-510.

(f) A number of commentors noted a need for more management controls over data collection to ensure accuracy of data. We agree with this recommendation and have issued guidance that requires the DoD Components to develop and implement internal controls, consistent with their organizational and program structure, to ensure the accuracy of data collection and analyses being performed. This

guidance incorporates the lessons learned from the General Accounting Office's review of the 1988 Base Closure Commission's work.

(g) After detailed consideration of all comments, we have determined that some of the criteria may have been unclear. We have revised the criteria for additional clarity.

(h) Some of the early comments we received recommended extending the original December 31, 1990, public comment deadline. We agreed and extended the public comment period to January 24, 1991. In addition, we accepted for consideration 19 public comments received after the January 24, 1991, deadline.

(2) Military Value Comments

(a) A majority of comments received supported DoD's decision to give priority consideration to the military value criteria. In the aggregate, military value refers to the collection of attributes that describe how well a base supports its assigned force structure and missions.

(b) Several commentors recommended that National Guard and Reserve Component forces be included as part of DoD's base closure analysis. The Department's total force concept includes National Guard and Reserve Component forces, and these forces will be reflected in the force structure plan required by the Act for this base closure process. To clarify that point, criteria number one and three were amended.

(c) Some commentors recommended DoD apply the military value criteria without regard to the DoD component currently operating or receiving the services of the base. The commentors noted that this would maximize utilization of Defense assets and therefore improve the national security. We agree with this comment. DoD must retain its best bases and where there is a potential to consolidate, share or exchange assets, that potential will be pursued. We also recognize that this potential does not exist among all categories of bases and that the initial determination of the military value of bases must be made by the DoD Component currently operating the base. Consequently, we have left the military value criteria general in nature and therefore applicable DoD-wide, where appropriate. We have also issued guidance to the DoD Components that encourages inter-service and multi-service asset sharing and exchange. Finally, we will institute procedures to ensure each DoD Component has the opportunity to improve the military value of its base structure through

analysis of potential exchanges of bases with other DoD Components.

(d) Some commentors recommended we include the availability of airspace in our considerations of military value. We agree and have revised criterion number two accordingly.

(e) Several commentors requested a geographic balance be maintained when considering installations for realignment or closure. DoD is required by Public Law 101-510 to evaluate all installations equally, exclusive of those covered under Public Law 100-528 or those falling below the thresholds of section 2687, title 10, U.S. Code. However, some measures of military value do have a geographic component and therefore military mission requirements can drive geographic location considerations.

(f) Some commentors recommended that the availability of trained civil service employees be considered as well as the capacity of the private sector to support or perform military missions. DoD's civil service employees are an integral part of successful accomplishment of defense missions, as are defense contractors whether they be nationally or locally based. To the extent that the availability of trained civilian or contractor work forces influences our ability to accomplish the mission, it is already included in criteria number one and four.

(g) Several commentors recommended that mobilization potential of bases be considered and that those bases required for mobilization be retained. Contingency and mobilization requirements are an important military value consideration and were already included in criterion number three. The potential to accommodate contingency and mobilization requirements is a factor at both existing and potential receiving locations, and we have amended criterion number three accordingly.

(h) One commentor recommended retaining all bases supporting operation Desert Shield/Storm and another recommended including overseas bases. DoD must balance its future base structure with the forces described in the force structure plan, and not on the current basing situation. Some forces currently supporting Operation Desert Storm are scheduled for drawdown between 1991 and 1997. DoD must adjust its base structure accordingly. Overseas bases will also be closed in the future as we drawdown DoD's overseas forces. However, Congress specifically left overseas base closures out of the base closure procedures established by the Act.

(3) Cost and "Payback" Comments

(a) Some commentors recommended calculating total federal government costs in DoD's cost and "payback" calculations. A number of such comments gave as examples of federal government costs, health care and unemployment costs. The DoD Components annually budget for health care and unemployment costs. We have instructed the DoD Components to include DoD costs for health care and unemployment, associated with closures or realignments, in the cost calculations.

(b) Several commentors noted the absence of a "payback" period and some felt that perhaps eight or ten years should be specified. We decided not to do this; we did not want to rule out making changes that were beneficial to the national security that would have longer returns on investment. The 1988 Base Closure Commission felt that a six-year "payback" unnecessarily constrained their choices. The DoD Components have been directed to calculate return on investment for each closure or realignment recommendation, to consider it in their deliberations, and to report it in their justifications. Criterion number five has been amended accordingly.

(c) Some commentors recommended including environmental clean-up costs in base closure cost and payback calculations. Some also noted that the cost of environmental clean-up at a particular base could be so great that the Department should remove the base from further closure consideration.

The DoD is required by law to address two distinctly different types of environmental costs.

The first cost involves the clean-up and disposal of environmental hazards in order to correct past practices and return the site to a safe condition. This is commonly referred to as environmental restoration. DoD has a legal obligation under the Defense Environmental Restoration Program and the Comprehensive Environmental Response, Compensation and Liability Act for environmental restoration at sites, regardless of a decision to close a base. Therefore, these costs will not be considered in DoD's cost calculations. Where installations have unique contamination problems requiring environmental restoration, these will be identified as a potential limitation on near-term community reuse of the installation.

The second cost involves ensuring existing practices are in compliance with the Clean Air, Clean Water, Resource Conservation and Recovery Act, and other environmental acts, in

order to control current and future pollution. This is commonly referred to as environmental compliance. Environmental compliance costs can potentially be avoided by ceasing the existing practice through the closure or realignment of a base. On the other hand, environmental compliance costs may be a factor in determining appropriate closure, realignment, or receiving location options. In either case, the environmental compliance costs or cost avoidances may be a factor considered in the cost and return on investment calculations. The Department has issued guidance to the DoD Components on this issue.

(d) Some commentors recommended DoD change the cost and "payback" criteria to include uniform guidelines for calculating costs and savings. We agree that costs and savings must be calculated uniformly. We have improved the Cost of Base Realignment Actions (COBRA) model used by the 1988 Base Closure Commission and have provided it to the DoD Components for calculations of costs, savings, and return on investment.

(4) Impacts Comments

(a) Many commentors were concerned about social and economic impacts on communities and how they would be factored into the decision process. We have issued instructions to the DoD Components to calculate economic impact by measuring the effects on direct and indirect employment for each recommended closure or realignment. These effects will be determined by using statistical information obtained from the Departments of Labor and Commerce. This is consistent with the methodology used by the 1988 Base Closure Commission to measure economic impact. We incorporated the General Accounting Office's suggested improvements for calculation of economic impact. DoD will also determine the direct and indirect employment impacts on receiving bases. We have amended criterion number six to reflect this decision.

(b) The meaning of criterion number seven, "the community support at the receiving locations" was not clear to several commentors. Some wondered if that meant popular support. Others recognized that this criterion referred to a community's infrastructure such as roads, water and sewer treatment plans, schools and the like. To clarify this criterion, we have completely re-written it, while also recognizing that a comparison must be made for both the existing and potential receiving communities.

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d 2-14-91; 8:45 am]

Department of the Army

Environmental Assessment; Exoatmospheric Discrimination Experiment (EDX) Program

AGENCY: U.S. Army Strategic Defense
Command (USASDC); DOD.

COOPERATING AGENCY: Strategy Defense
Initiative Organization, DOD U.S.
Department of the Navy, DOD.

ACTION: Notice of Availability of finding
of no significant impact.

SUMMARY: Pursuant to the Council on
Environmental Quality regulations for
implementing the procedural provisions
of the National Environmental Policy
Act (40 CFR parts 1500-1508), Army
Regulation 200-2, Chief of Naval
Operations Instruction 5090.1, and the
Department of Defense (DOD) Directive
6050.1 on Environmental Effects in the
United States of DOD actions, the
USASDC has conducted an assessment
of the potential environmental
consequences of conducting EDX
program activities for the Strategic
Defense Initiative Organization. The
Environmental Assessment considered
all potential impacts of the proposed
action alone and in conjunction with
ongoing activities. The finding of no
significant impact summarizes the
results of the evaluations of EDX
activities at the proposed installations.
The discussion focuses on those
locations where there was a potential
for significant impacts and mitigation
measures that would reduce the
potential impact to a level of no
significance. Alternatives to the EDX
launch facility were examined early in
the siting process but were eliminated
as unreasonable. A no-action alternative
was also considered. The Environmental
Assessment resulted in a finding of no
significant impact. Construction will
proceed as scheduled, however, due to
budgetary constraints, the flight program
implementation has been delayed.
When the flight schedule becomes firm,
this document will be reviewed and
revised, as necessary, in light of any
changes to the program.

DATES: Written comments are required
by March 18, 1991.

POINT OF CONTACT: Mr. D.R. Gallien,
Address: U.S. Army Strategic Defense
Command, CSSD-EN, Post Office Box
1500, Huntsville, AL 35807-3801, Fax
(205) 953-3958.

SUPPLEMENTARY INFORMATION: The
USASDC was assigned the mission of
acquiring critical mid-course data on
ballistic missile re-entry vehicles and
decoys; EDX would accomplish this
mission. The EDX program would use

the ARIES booster to launch a
suborbital sensor into space to observe
a target ballistic missile re-entry
complex during the mid-course phase of
its flight. The proposed EDX program
would involve nine flights over three
years from two different launch sites
after October 1993: The target complex
would be released from a MINUTEMAN
I missile launched from Vandenberg Air
Force Base, California and the EDX
booster and sensor payload vehicle
would be launched from the Kauai Test
Facility (KTF), located on the Pacific
Missile Range Facility (FMRF), Kauai,
Hawaii. Current launch use activities
would continue, however, public access
through these areas would be limited for
a total of less than 1 day over a three
year period.

The EDX program would include a
number of activities to be conducted at
seven different sites. These activities
are categorized as design, fabrication/
assembly/testing, construction, flight
preparation, launch/flight/data
collection, payload recovery, sensor
payload vehicle refurbishment, data
analysis, and site maintenance/
disposition. The locations and types of
EDX activities are: Vandenberg Air
Force Base, California/Western Test
Range, flight preparation, launch/flight/
data collection; Pacific Missile Range
Facility, Kauai, Hawaii, construction,
flight preparation, launch/flight/data
collection, payload recovery, sensor
payload vehicle refurbishment, site
maintenance/disposition; Sandia
National Laboratories, New Mexico,
design, fabrication/assembly/testing;
U.S. Army Kwajalein Atoll, Republic of
the Marshall Islands, flight preparation,
launch/flight/data collection; Hill Air
Force Base, Utah, fabrication/assembly/
testing; Space Dynamics Laboratory,
Utah State University, Logan, Utah,
design, fabrication/assembly/testing,
data analysis; and Boeing Aerospace
and Electronics, Kent Space Center,
Kent, Washington, design, fabrication/
assembly/testing, sensor payload
vehicle refurbishment, data analysis.

To determine the potential for
significant environmental impacts as a
result of the EDX program, the
magnitude and frequency of the tests
that would be conducted at the
proposed locations were compared to
the current activities and existing
conditions at those locations. To assess
possible impacts, each activity was
evaluated in the context of the following
environmental components: Air quality,
biological resources, cultural resources,
hazardous materials/waste,
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A BRIEF WRAP ON ETHICS

An Ethics Pamphlet for Executive Branch Employees

April 2000

INTRODUCTION

This pamphlet provides a brief overview of the rules of ethical conduct that all employees should know and follow. The pamphlet covers only the highlights of these ethics rules which are called "ethics" rules. It answers everyday questions and provides examples of common situations that employees face. It does not describe each specific rule of conduct or cover unusual circumstances. If you have a question that is not answered here, you should discuss it with your supervisor or with an ethics official at your agency. Public service is a public trust. As Federal employees, each of us must always place loyalty to high ethical standards above private gain. Understanding and observing ethics rules is an essential element in fulfilling that trust.

April 2000

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FOURTEEN PRINCIPLES OF ETHICAL CONDUCT FOR FEDERAL EMPLOYEES (EXECUTIVE ORDER 12674)

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution and its principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

- (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (12) Employees shall satisfy in good faith their obligations as citizens, including all financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.
- (13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in the Standards of Ethical Conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.
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These principles form the basis for the standards of ethical conduct regulation (5 C.F.R. part 2635) that is discussed and illustrated by examples on the following pages. A violation of the rules could result in disciplinary action or, for certain offenses, even prosecution under related criminal statutes on conflict of interest. So you should become familiar with the rule and talk to your agency ethics officials if you have any questions or need more information. Your agency will also conduct periodic ethics training that may benefit you.

GIFTS FROM OUTSIDE SOURCES

When can I accept a gift?

Generally, anything that has monetary value is considered a gift. With some exceptions mentioned later, you may not accept a gift from anyone who is giving the gift to you because of your Government position. Ask yourself if the gift would have been offered if you were not working for the Government. If the answer is no, then the gift is being offered because of your Government position and you cannot accept it.

Also, you may not accept a gift from people or organizations who are "prohibited sources" -- those who do business with, or seek to do business with your agency, who seek some official action from your agency, or who have activities regulated by your agency. Gifts from these people or groups are prohibited, whether or not you deal with them when doing your job. You must also turn down a gift from those who have interests that may be significantly affected by your official duties, as they are also considered "prohibited sources."

What about accepting a cup of coffee?

A cup of coffee is all right. It is such a modest refreshment that it is not considered a gift. So you may accept it without worrying about who is giving the food and refreshment items such as donuts, cards, and bank loans at commercial rates, publicly available discounts, certain contest prizes, and things for which you pay fair value. But remember that the definition of a gift is very broad. If you have a question about a gift, ask your ethics official.

May I accept a lunch?

Meals are gifts. If the person who wants to pay for your lunch is a "prohibited source" or if the meal is offered because of your position, then the rule on not accepting gifts applies. However, you may be able to accept a lunch or other meal under an exception for gifts valued at \$50 or less. But you may not go to because there is a \$50 per year limit on gifts from any one source.

Can the \$20 exception be used for any thing other than lunch?

Yes, but no cash! The \$20 exception may be used to accept any gift that is not worth more than \$20. If you don't know the actual value of an item, you may make a reasonable estimate.

There are some other things you should keep in mind before you use the \$20 exception. First, it allows you to accept, but not to ask for, something worth \$20 or less. Second, the rule allows you to accept gifts worth \$20 or less on a single occasion. That means if several gifts are given at the same time, their total value cannot exceed \$20. Again remember, there is a \$50 per year limit on gifts from the same source.

There are other exceptions that would allow you to accept (but not to ask for) gifts, that would otherwise be prohibited, such as the "friends and family" exception for gifts based on personal relationships. Other examples are special discounts (such as from your agency credit union), gifts that result from an outside job for you or your spouse when they are not given because of your Government position, achievement awards, and certain dinners or other events that your agency approves for you to attend. All of the exceptions are subject to certain limits and some have conditions that must be met. For example, you cannot accept a gift for an official act, because of a criminal statute (18 USC 201). Before using an exception, the best course to follow is to ask your ethics official about it. Your ethics official can also tell you how you may properly dispose of a gift that you have received but are not allowed to keep.

Some Things That May be Accepted

* Alex may keep a pen worth \$15 that is given to him by a person whose license application he has processed.

* Janine may accept a tennis racket from her brother on her birthday, even though he works for a company that does business with her agency, as long as he, not his company, paid for the gift.

* Louise may accept two \$8 tickets to a craft show that are offered to her by a company that has applied to her agency for a grant.

GIFTS BETWEEN EMPLOYEES

What about gifts to the boss?

With a few exceptions, the general rule is that you cannot give, make a donation to, or ask for contributions for, a gift to your official superior. An official superior includes your immediate boss and anyone above your boss in the chain of command in your agency. Also, an employee cannot accept a gift from another employee who earns less pay, unless the person giving the gift is not a subordinate and the gift is based on a strictly personal relationship.

When can I give my boss a gift?

You may give your boss a gift on an anniversary, or Christmas, or after a vacation trip. At those times, gifts valued at \$10 or less - but not cash - are permitted.

You may contribute a nominal amount for food that will be shared in the office among several employees including your boss, or you could bring food to share. You can also invite your boss to your home for a meal or a party. If your boss invites you to his or her home, you can take the same type of gift for your boss that you would normally take to anyone else's home for a similar occasion.

You may also give your boss a gift on a special, infrequent occasion of personal significance, such as marriage, illness, birth or adoption. And you may give your boss a gift on an occasion that ends your employee-boss relationship, such as retirement, resignation or transfer.

For these special, infrequent occasions, employees are also allowed to ask for contributions or nominal amounts from fellow employees on a strictly voluntary basis for a group gift.

Remember that gift giving is strictly voluntary. A boss may never pressure you to give a gift or contribute to a group gift.

Some Gifts Permitted Between Employees

- * Nadia may collect voluntary contributions from other persons in her office in order to buy a cake to celebrate the birthday of her supervisor or a co-worker.
- * Clarissa may participate in the exchange of gifts in the office holiday grab bag by buying and contributing a tape cassette worth \$10.
- * Kailash may collect contributions to purchase a fishing rod and tackle box for his boss when his boss retires, and may suggest a specific, but nominal amount, provided that he makes it clear to his coworkers that they are free to contribute less or nothing at all.
- * Ralph may bring a jar of macadamia nuts to his boss when he returns from his vacation in Hawaii.

CONFLICTING FINANCIAL INTERESTS

Suppose I don't own any shares of stock. Do I still have to think about financial conflicts of interest?

You might. A federal criminal law (18 USC 208) says that you cannot work on Government matters that will have an effect on your own personal financial interests. Stock in a company that would be affected by your job is only one example of something that could give you such an interest. For instance, you could not act on something that would enable you personally to share in some grant or contract issued by the Government, because you would have a financial interest in the matters.

You also must be concerned about the financial interests of your spouse, your minor children, and outside persons or businesses that employ you. You should be concerned if anything you are asked to work on would affect them. Also, if you are an officer or director in an outside organization, you may not act on a Government matter that would affect that organization. If you think you do have a conflict, you should discuss it with your supervisor or your ethics official, so that steps can be taken to prevent the conflict. This might include not working on the Government matter, selling stocks, or obtaining a special waiver from your agency, if legally permitted.

Some Conflicts to Avoid

- * Rachael's husband works for a contractor that does business with her agency and receives a bonus, based on the success of the contract. Rachael may not participate in the evaluation of the contractor's performance under the contract.
- * Carlo is an officer in a neighborhood improvement organization that has applied to his agency for a rehab loan. Carlo may not work on his agency's review of the organization's application.
- * Helen's husband owns a janitorial service company that does business with the Government. Helen cannot act on a proposal by the company to provide services to her agency.

IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

What is meant by "improper appearances" and "a lack of impartiality?"

Think of it as a question of fairness. Suppose you went to a baseball game and you found out that the umpire was the uncle of a player on one of the teams. Most people would say that the umpire should not work that game, because there would be a strong appearance that he might not make the calls fairly and impartially.

A similar rule applies to you when you are doing your job. You should not act on a matter if a reasonable person who knew the circumstances of the situation could legitimately question your fairness. For example, your fairness might reasonably be questioned if you were to work on a project that could directly benefit a relative. The rule lists a number of such "covered relationships" with people and organizations that could pose a question of an "improper

appearance."

If you have a situation that you think might raise such a concern, then you should talk to an ethics official at your agency. He or she will be able to tell you whether or not there is an appearance problem and give you advice on how to deal with it.

Some Situations Where Fairness May be Questioned

* Marvin's handling of a consumer complaint that has been submitted to his agency by his business associate, or by a close friend, would raise a question about his impartiality.

* After 20 years with the same company, Pam accepts a job with the Government. For one year, she should consider whether her fairness would be questioned if she were to act on matters that specifically involve her former employer.

* Roy's work on an investigation of a company that is being represented by his brother would raise a question about his impartiality.

* Susan should have concerns about reviewing grant applications to her agency if one of the applicants for a particular grant is an outside organization where her father serves on the board of directors.

SEEKING OTHER EMPLOYMENT

Suppose I'm looking for a part-time job to earn more money. Is there any problem with this?

No, but there are rules that may apply to you if you are looking for a job, whether it is on a part-time basis or whether you are planning to leave the Government for a full-time position.

First, you need to know whether the person or company that you are thinking about working for could be affected by projects and other matters you work on for the Government. If the prospective employer could not be affected by the Government project, then the rules do not apply. If the project could affect your prospective employer, then you may need to stop working on that project, before you begin making any contacts with him.

These rules may apply to you sooner than you think. Depending on the circumstances and the type of prospective employer, even sending out a letter and resume could trigger the requirement under the Standards of Conduct regulation that you avoid working on any project that could affect that prospective employer. If you are actually discussing a position with a potential employer, you may be restricted by a criminal statute (18 USC 208) from working on Government matters that affect that employer.

Talk with an ethics official before you look for a job, whether full or part-time. He or she can advise you about the rules on seeking employment. If you are thinking of looking for a part-time job, your ethics official can also tell you whether or not your agency has specific rules that apply to certain kinds of outside employment or that require you to obtain permission before you take a part-time job. The ethics official can also tell you about those things you will not be able to do for your new employer.

Looking for a Job

* A company that is regulated by Todd's agency has asked him if he would like to talk about possible employment. Unless he responds by rejecting the invitation, Todd is seeking employment with that company and cannot work on Government matters that would affect it.

* Bernie has told a private company that he needs some more time to think about the company's job offer. As long as the offer is pending, Bernie cannot work on Government matters that will affect that company.

* Diane has written to the personnel office of a company that her agency regulates, requesting only that they send her a job application form. She has not begun seeking employment by simply asking for an application, and she may work on matters affecting that company until she submits the application.

* More than two months have passed without a response of any kind since Claudia sent an unsolicited letter and resume to a company that is a party to a proceeding before her agency.

time, Claudia is no longer considered to be seeking employment with the company.

MISUSE OF POSITION

Suppose a friend asks me to help her with a complaint that she made to my agency about a problem that she is having with a finance company. Is it all right if I ask the consumer affairs office to act more quickly on her problem?

You cannot use your position with the Government for your own personal gain or for the benefit of others. This includes family, friends, neighbors, and persons or organizations that you are affiliated with outside the Government. In this case, you would be using the access you have to the consumer affairs office because of your Government job to obtain special treatment for your friend. You may also be violating a criminal law (18 USC 205) if you act as a spokesperson on behalf of your friend to any Federal agency. But you could find out if there is anyone who routinely takes calls from the public about the status of their complaints and provide that information to your friend.

At lunch, some of my coworkers were talking about developing some specifications for a project that my agency will soon be putting out for bids. A friend of mine works for a company that is in the business, and it might help him if he knew about what's coming along. Can I tell him about the project, without discussing the specifications?

That depends on whether the project itself is public information. You cannot use (or allow someone else to use) non-public information to benefit yourself or some other person. If information about the project has not been made known to the public and is not authorized to be made known upon request, then it is nonpublic information and cannot be disclosed. It makes no difference that you heard about it at the lunch table and not as a result of your official duties. If the fact that the agency is going to pursue the project is public, you can certainly make sure your friend knows when the agency publishes or makes available information about the project.

May I use the photocopier at work to make copies of a flyer for a bake sale at my child's school?

No. You must conserve and protect Government property and you cannot use Government property to allow its use, other than for authorized purposes. It makes no difference whether you gain personally or whether the group you are helping is 15 nonprofit. You may not use the photocopying machine, or any other Government property, including supplies, computers, telephones, mail, records or Government vehicles for purposes other than doing your job (unless your agency has rules permitting some types of incidental use).

Suppose my boss asks me to help him do some work connected with some outside groups he belongs to. If I have free time during the day, is that something that I may do?

Official time at work

is to be used for the performance of official duties. So the answer is no, unless there is some other specific authority which allows you to use your time at work for other purposes.

Some Things That Cannot Be Done with Government Time, Information and Resources

- * Ken cannot tell his friend to sell his stock in a company that Ken knows is under investigation by his agency, unless that information is available to the public.
 - * Joyce, who works as a real estate broker in the evenings and on weekends, may not make or take calls at her Government office to or from potential real estate clients.
 - * Ahmad cannot use agency letterhead for a letter of recommendation for his brother-in-law for a job with an office supply company. Letters of recommendation on agency letterhead are permitted only when recommending someone who worked for you in the Federal Government or who is seeking Federal employment.
 - * An agency employee cannot use her official title or refer to her Government position in a book jacket endorsement of a novel that she likes or in a newspaper's review of the book.
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OUTSIDE ACTIVITIES

What about activities off the job, on my own time?

Activities you cannot engage in outside employment or any outside activity if it conflicts with your Government job. It could be prohibited by a law or regulation that applies to your agency or it might present a conflict because the outside activity would disqualify you from performing a significant amount of your Government duties. Also, you should check with your agency ethics official to see whether or not you need agency approval before you engage in an outside activity.

Suppose I teach the course on beginner swimming in the physical education department at the community college. Is that alright?

There are restrictions that apply to outside teaching, speaking and writing. Generally, if the activity relates to your official duties, the rule is that you cannot be paid for it. However, even if the course does relate to your work, there is an exception for teaching a course in the regular program of certain educational institutions that would allow you to teach the community college course. If your Government job requires you to deal with the community college or in a way affects the college's financial interests, you should check with your ethics official first before you accept the teaching position. And note that high-ranking non-career employees are subject to additional restrictions on outside earned income. Check with your agency ethics official for those rules.

What about fundraising?

There are rules that apply to fundraising as a private individual. Basically you can engage in private fundraising outside the workplace as long as you do not ask for a contribution from a subordinate or from someone who is regulated by, does business with, or seeks official action from your agency, or has interests that may be substantially affected by you when you do your job. Also, you cannot use your title, position, or authority, or Government time or equipment, to further the fundraising effort. And you must avoid any action that would violate any of the other conduct rules. Fundraising in your official capacity is highly restricted by other laws and rules, so you should always ask your ethics official first before engaging in that activity.

Some Things That Can and Can't Be Done off the Job

* Carter's agency requires prior approval of outside activities, including service as an officer or director of an organization. With his agency's approval, Carter may serve as an officer of an association. Of course, he may still have to disqualify himself from working on official matters that could affect that association.

* Victoria may work as a part-time salesperson with a clothing store in the local shopping center so long as her official duties do not affect the company that owns the chain of clothing stores.

* Yolanda may not use her job title or position with a Federal law enforcement agency to raise funds for the police officers' association in her county. But she could do it on her own time as a private citizen and not in a Government uniform.

* George, who processes Medicare claims, may not be paid for teaching a one-day seminar for a senior citizens' group on the Medicare program and how to fill out Medicare claims.

* Ian works for the Department of Agriculture. Because of a criminal statute (18 USC 205), he cannot call the IRS on behalf of a neighbor (even if he will not be paid by her), to ask for reduction of a penalty assessed against her for late payment.

RESTRICTIONS ON FORMER EMPLOYEES

Suppose I take a job in the private sector. Am I subject to any rules after I leave the Government?

There is a Federal statute (18 USC 207) known as the post-employment law that applies to all former employees after they leave the Government. In general, this law does not prohibit you from working for any particular employer. It may, however, restrict the kinds of things that you can do for that employer, depending on what you worked on or were responsible for when you were working for the Government.

APPENDIX F

FINANCIAL DISCLOSURE & ETHICS REQUIREMENTS

- Standards of Conduct Fact Sheet
- Ethics Guide for Consultants and Advisory Committee Members at the Department of Defense
- Keeping Committees Clear of Ethical Problems: An Ethics Guide for Designated Federal Officials of DoD Advisory Committees
- OGE Form 450, Executive Branch Confidential Financial Disclosure Report
- Standard Form 278, Executive Branch Personnel Public Financial Disclosure Report
- Sample Disqualification
- DD Form 2859, Foreign Activities Questionnaire

STANDARDS OF CONDUCT FACT SHEET

As a consultant in the Office of the Secretary of Defense, you are a "special Government employee." This Fact Sheet summarizes the standards of conduct that apply to you.

Conflicting Government and Personal Interests

A criminal law, section 208 of title 18, United States Code, bars you from giving advice or doing other work for the Government on a contract, claim, application, or other "particular matter" that could affect the financial interests of:

1. You, your spouse, or minor child;
2. Your general partner;
3. A non-Federal organization in which you are serving, with or without compensation, as an officer, director, trustee, general partner, or employee; or
4. An individual or non-Federal organization with which you are negotiating employment or have any arrangement for prospective employment

In addition to this criminal statute, a regulation for the Executive Branch bars you from giving advice or doing other work for the Government on a particular matter unless you have received authorization from your supervisor, if:

1. Either the matter could affect the financial interests of a member of your household, a relative, or friend, or a person with whom you have a "covered relationship" is or represents a party to the matter, and
2. You determine that a reasonable person would question your impartiality in the matter.

You have a "covered relationship" with:

1. An individual or organization with which you have or seek a business relationship other than a routine consumer transaction;
2. Any member of your household, and a relative with whom you have a close personal relationship;
3. An individual or organization for which your spouse, parent, or dependent child is, to your knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
4. An individual or organization for which you have, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; and
5. An organization (other than a political party) in which you are an active participant.

Financial Disclosure

You must notify your employing organization of your financial interests so that you are not assigned duties that may pose a conflict of interest for you. Notice of your financial interests is in the financial disclosure report that you must file. It is primarily your responsibility to be alert to any potential conflict between your Government duties and your personal interests. It is essential that your financial disclosure report be both current and accurate.

Representation

Since you are a special Government employee you generally may not represent anyone before a Federal agency or court, or accept any compensation for a representation made by anybody before a Federal agency or court, if:

1. The representation is in a particular matter involving the Government, and
2. Either (A) you have worked on the matter for the Government, or (B) you have performed duties for the Department of Defense for more than 60 of the preceding 365 days and the matter is pending in the Department.

You generally may not serve in the U.S. Government if you are acting as an agent of a foreign principal and thereby have to register under the Foreign Agents Registration Act of 1938 or the Lobbying Disclosure Act of 1995. Please contact our office immediately if you are acting as an agent of a foreign principal. Waivers to the bar on Federal service may be given to special Government employees in some cases.

Procurement Integrity

It is unlikely that you will become involved in a specific procurement. If you do Government work on procurement and have questions about the effects of the Procurement Integrity law, please contact our office.

Political Activities

The Hatch Act limits your partisan political activities. You may contact our office for advice if you plan to engage in such activities while you are a special Government employee.

Disclosure of Information

Another law, section 1905 of title 18, United States Code, imposes penalties for the improper disclosure of information that you receive in the course of your official duties. Before disclosing information that is proprietary or otherwise restricted, it is important that you confirm that it may be released.

Lobbying Congress

Section 1913 of title 18, United States Code, forbids you from using Government funds to lobby a member of Congress.

Questions

If a potential conflict arises, please notify your supervisor or administrative officer right away. If necessary, a remedy such as a change in your duties may be suggested. Any questions should be directed to the following offices:

General Counsel
Washington Headquarters Services
Department of Defense
Office – 703-693-7374

Standards of Conduct
Office of the General Counsel
Department of Defense
Office – 703-695-3272

AN ETHICS GUIDE FOR CONSULTANTS AND ADVISORY COMMITTEE MEMBERS AT THE DEPARTMENT OF DEFENSE

At the Department of Defense (DoD), we are fortunate to have many experts and industry leaders from outside of the Government to provide advice to the Secretary as consultants or members of an advisory committee. Because many of you retain extensive links to Defense industries or other organizations related to national security, it is important that you understand potential conflicts of interest that may arise from your appointment to this Department. Recognizing your demanding schedules, this guidance only briefly summarizes those statutes and regulations most likely to affect you, and does not describe each element or exception.

1. Getting Advice

If you believe your situation may be affected by any of the guidance below, please contact the Standards of Conduct Office (SOCO) of the Office of the DoD General Counsel at (703) 695-3422, fax us at (703) 697-1640, or email us at SOCO@dodgc.osd.mil. We also have considerable guidance, including financial disclosure reporting, on our website at: http://www.defenselink.mil/dodgc/defense_ethics.

SOCO is available to provide advice on any ethics question you may have, many of which may be answered in a telephone call or by email. Good faith reliance on the ethics advice from an ethics official will, in most cases, protect you from adverse administrative action and deter criminal prosecution.

2. What Does It Mean to be a Special Government Employee?

In the Department, almost all consultants and all members of advisory committees are appointed as Special Government Employees (SGEs). This means that upon appointment, you assume the responsibilities, obligations, and restrictions that are part of public service. Because SGEs are not full-time employees, several of these restrictions apply to you only in limited circumstances.

Service as an SGE may be compensated or uncompensated, but it is always temporary. In fact, you should not serve for more than 130 days during any period of 365 consecutive days. This 130-day period is an aggregate of all your Federal SGE service, not just your appointment at the Department of Defense. For example, it includes days you have served as an SGE in other Federal agencies or departments, and even days as a military reservist. If you have served in other Federal agencies or departments within the last year, please advise the appropriate committee manager, executive director, or Designated Federal Official (DFO), so that you do not exceed the 130-day period of appointment.

When computing days that you work as an SGE, count each day in which you perform services, even if it does not amount to an entire workday. Brief non-substantive interactions, such as emails or phone calls to set up a meeting, do not have to be counted as a day of duty.

3. Financial Disclosure

You are required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450) when you are first appointed, and annually thereafter if you are reappointed. As a member of an advisory committee, you may also be required to update the report before each meeting throughout your term of appointment. The purpose of financial disclosure is to protect you from inadvertently violating any of the criminal conflict of interest statutes, discussed below, and to ensure the public and this Department that your advice is free from any real or perceived conflict of interest. The supervisor or DFO, and a DoD ethics official review the reported information, which is not releasable to the public if it is a confidential financial disclosure report, except as authorized by the Privacy Act.

4. Criminal Conflict of Interest Statutes

You are required to comply with various criminal statutes while you are an SGE. These statutes are codified at 18 U.S.C. 201, 203, 205, 207, and 208, and are divided into the following subject areas: (1) financial conflicts of interest; (2) representational activities; and (3) limits on representation after you leave the Government.

Financial Conflicts of Interest

The main financial conflict of interest statute, **18 U.S.C. 208(a)**, prohibits you from participating personally and substantially in any particular matter that affects your financial interests, as well as the financial interests of your spouse, minor child, general partner, an organization in which you serve as an officer, director, trustee, general partner, or employee, or an organization with which you are negotiating or with which you have an arrangement for prospective employment. The primary reason you are required to disclose your financial interests is to alert the supervisor or DFO, and agency ethics official of any potential conflict of interest prior to your participation in a particular matter involving an entity in which you have a financial interest.

For example, you could have a conflict of interest if you were to participate in an advisory committee meeting that reviews whether a certain weapons program should be continued and:

- you own stock in the prime or subcontractor that supplies the weapon;
- your spouse owns stock in, or works for, the contractor(s);
- you are a consultant to, or employee of, the contractor(s);
- you are a member of the board of directors of the contractor(s), or
- you have a contract with the contractor(s) to provide supplies, parts, or services.

Generally, DoD advisory committees address broad policy matters, not particular matters. This greatly reduces the potential for conflicts of interest. In certain instances, however, the committees may address matters that focus on the interests of specific persons or a discrete and identifiable class of persons. For example, an advisory committee may recommend that the Department purchase more unmanned aerial vehicles (UAVs). Since only two or three companies manufacture UAVs, the committee's review and recommendation would constitute a particular matter. If any SGEs had financial interests in these companies, they would have a conflict of interest if they participated in the advisory committee discussion.

If you become aware of such a financial conflict of interest, you must disqualify yourself from acting in a governmental capacity in the matter and notify the DFO, committee manager, or supervisor. You should also consult your ethics official, since there are several regulatory exemptions that permit you to have certain financial interests that cause a conflict of interest. For example, employees are permitted to participate in particular matters affecting companies that they own as part of a diversified mutual trust. Employees may also act in particular matters affecting companies in which the aggregate value of the employee's holdings does not exceed \$15,000. Since there are other exemptions, you should contact your ethics official.

The statute and implementing Federal regulations provide for waivers that may allow you to work on matters in which you have a financial conflict of interest. Such waivers must be obtained before you participate in the matter. Since waivers are complex, you should seek advice from your DoD ethics official.

Another Federal statute, **18 U.S.C. 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.

Representational Activities

Two statutes, 18 U.S.C. 203 and 205, prohibit Federal employees, including SGEs, from acting as an agent or attorney for private entities before any agency or court of the Executive or Judicial Branches. For SGEs, section 203 prohibits the receipt of compensation for representational services only in any particular matter involving a specific party: (1) in which the SGE has participated personally and substantially as a Government employee; or (2) which is pending in this Department and the SGE served for more than 60 days during the immediately preceding 365 days. Representational services include written or oral communications and appearances made on behalf of someone else with the intent to influence or persuade the Government. An inquiry into the status of a pending matter is not necessarily a representation, but could give rise to an appearance of a prohibited representation. Examples of such matters include applications for Federal funding, progress reports regarding Cooperative Research and Development Agreements or clinical trials, and pending investigations. Section 205 parallels section 203, except that even uncompensated representations by employees are prohibited.

Limits on Representations After You Leave the Government

The final statute, 18 U.S.C. 207, prohibits former employees, including SGEs, from representing another person or entity to this Department or to another Federal agency or court in any particular matter involving a specific party in which the former SGE participated personally and substantially while with the Government. This bar lasts for the lifetime of the particular matter.

Additionally, if you were paid for your services as an SGE, and your basic rate of pay was \$134,000/year or over (in 2003), and you served 60 days or more as an SGE during the 1-year period before terminating service, you are also subject to the same 1-year cooling-off period that is applicable to former senior officials. For 1 year after terminating your appointment, you would be prohibited from making a communication or appearance on behalf of any other person, with the intent to influence, before any employee of the agency in which you served, in connection with any matter on which such a person seeks official action. Please note that this bar is not limited to particular matters, but includes policy matters as well, and that it does not apply to the entire Department of Defense, but only to the component in which you were appointed.

SGEs who qualify for the above restriction are also prohibited, for 1 year after their appointment terminates, from representing a foreign entity before any Federal agency, or aiding or advising a foreign entity, with the intent to influence a decision by that agency.

5. Standards of Ethical Conduct

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

Teaching, Speaking, and Writing in a Personal Capacity

Generally, during your term of appointment, you may continue to receive fees, honoraria, and other compensation for teaching, speaking, and writing undertaken in your personal or non-Government capacity, but there are several limitations.

You are prohibited from receiving compensation for teaching, speaking, or writing (“activity”) that “relates to the employee’s official duties.” 5 C.F.R. 2635.807. For you, the “relatedness” test is met if:

- the activity is undertaken as an official Governmental duty;
- the invitation was extended to you primarily because of your position in the Government rather than your expertise on the particular subject matter; the invitation was extended to you, directly or indirectly, by a person who has interests that may be affected substantially by the performance or nonperformance of your official duties;
- the information conveyed through the activity draws substantially on ideas or official data that are confidential or not publicly available; or
- during a 1-year period of your current appointment,
 1. if you serve for more than 60 days and the subject of the activity deals in significant part with any matter to which you are presently assigned or were assigned during the previous 1-year period, or
 2. if you serve 60 days or less and the subject deals in significant part with a particular matter involving specific parties in which you participated or are participating personally and substantially.

Notwithstanding the above limitations, you may receive compensation for teaching, speaking, or writing on a subject within your discipline or inherent area of expertise based on your educational background or experience. In addition, these restrictions do not apply to teaching a course requiring multiple presentations that is part of the regularly established curriculum of an institution of higher education, an elementary or secondary school, or a program of education or training sponsored and funded by the Federal, state, or local governments.

If you use or permit the use of your military rank or your DoD title or position as one of several biographical details given to identify yourself in connection with your personal teaching, speaking, or writing, whether or not compensated, and if the subject of the teaching, speaking, or writing deals in significant part with any ongoing or announced policy, program, or operation of the Department of Defense, you should make a disclaimer that the views presented are your views and do not necessarily represent the views of this Department or its components.

Acceptance of Gifts from Outside Sources

Any gift given to you from a DoD prohibited source or because of your service on the advisory committee or as a consultant to this Department will raise concerns and may be prohibited. 5 C.F.R. 2635.202. You may accept gifts given to you because of your personal, outside business, or employment relationships. There are other exceptions, but since they are often fact-specific, you should consult your agency ethics official.

Providing Expert Testimony

If you participated while a Federal employee in a particular United States judicial or administrative proceeding or in a particular matter that is the subject of the proceeding, you may not serve, except on behalf of the United States, as an expert witness, with or without compensation, in that proceeding if the United States is a party or has a direct and substantial interest. 5 C.F.R. 2635.805. However, such testimony may be authorized by the DoD General Counsel.

In addition, if you are appointed by the President, serve on a commission established by statute, or have served or are expected to serve for more than 60 days in a period of 365 consecutive days, you may not serve, except on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a United States court or agency in which the Department of Defense is a party or has a direct and substantial interest, unless authorized by the DoD General Counsel.

Impartiality

Although you are prohibited by 18 U.S.C. 208(a) from participating in matters in which you have a financial interest, there may be other circumstances in which your participation in a particular matter involving specific parties would raise a question regarding your impartiality in the matter. For example, you may be asked to review a grant application submitted by your mentor or someone with whom you have a close personal or professional relationship. Or your advisory committee may consider a weapons program operated by your former employer or former client. This may raise a concern about your impartiality in the review.

While the impartiality rule is quite complex and very broad in scope, there are several triggers that are helpful. 5 C.F.R. 2635.502.

1. Your official duties must involve a particular matter involving specific parties [As discussed above, DoD advisory committees usually focus on policy-level issues and do not consider particular matters involving specific parties],
2. The circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality, and
3. a) The matter is likely to have a direct and predictable effect on the financial interests of a member of your household, or
b) someone with whom you have a relationship (such as a relative, a business or financial entity, a former employer, an employer or client of your spouse, or an organization in which you are an active participant) is, or represents, a party to the matter.

Considering the breadth of this prohibition and how much it depends upon the perception of the beholder, if you believe your participation in advisory committee discussions could subject you to criticism, please contact your supervisor, DFO, or agency ethics official to determine whether you should be disqualified from participation in the matter, or granted authorization to participate in the matter.

Endorsement of Non-Federal Entities

Many DoD SGEs hold senior and influential positions in their private lives. However, please remember that you may not use, or permit the use of, your official title, position, organization name, or authority associated with your Government position to imply a DoD or Government endorsement of a non-Federal entity, event, product, service, or enterprise. 5 C.F.R. 2635.702. Provided that you act exclusively outside the scope of your official position and abide by the restrictions discussed above, you may participate and support the activities of non-Federal entities in your personal capacity.

Misuse of Position

Primarily because of the stature and visibility of many of our consultants and members of advisory committees, actions that may be perceived as the misuse of their public office tend to receive uncommon public scrutiny. The prohibition, which applies to all Federal employees, bars the use of public office for private gain. 5 C.F.R. 2635.702. This broad prohibition generally is triggered by the following:

1. Using your title, position, or authority for your own private gain, or the private gain of friends, relatives, clients, or anyone with whom you are affiliated in a non-Governmental capacity (including nonprofit organizations in which you serve as an officer, member, employee, or persons with whom you have or seek an employment or business relationship);
2. Using your title, position, or authority to coerce or induce another person to provide any benefit to yourself or any person identified above;
3. Using non-public information in a financial transaction to further your private interests or those of another, or disclosing confidential or non-public information without authorization; or
4. Using Government property and time for unauthorized purposes.

Lobbying Activities

While the time you spend performing official duties as an SGE is usually brief, please remember that during those periods, you are prohibited from engaging in any activity that directly or indirectly encourages or directs any person or organization to lobby one or more members of Congress. (18 U.S.C. 1913) This statute does not bar you, in your official capacity, from appearing before any individual or group for the purpose of informing or educating the public about a particular policy or legislative proposal, or from communicating to members of Congress at their request. Communications to members of Congress initiated by you, in your official capacity as a member of an advisory committee or as a consultant, must be coordinated through the Office of Legislative Affairs.

As a private citizen, you may express your personal views (but not the views of the advisory committee as a whole or the opinions of this Department) to anyone. In doing so, you may state your affiliations with the advisory committee, may factually state the committee's official position on the matter (to the extent that non-public information is not used), but may not represent your positions or views as the committee's or the Department's position on the matter. Moreover, in expressing your private views, as with all other personal (non-Government) activities, you are not permitted to use Government computers, copiers, telephones, letterhead, staff resources, or other appropriated funds.

Emoluments Clause

The Constitution prohibits Federal employees, including SGEs, from accepting any compensation from, or employment with, a foreign government or the political subdivision of a foreign government, including a public university, a commercial enterprise owned or operated by a foreign government, or an international organization controlled by a foreign government. The ban does not apply to a foreign privately-owned corporation. U.S. Constitution, Art. 1 § 9, cl. 8. If you have a contract with, or are consulting for, a foreign government, please promptly contact SOCO.

Foreign Gifts and Decorations Act

During the period of your appointment as an SGE, you may not accept a gift above a minimum value (\$285 in 2004) from a foreign government or an international organization. You may be surprised to learn that this prohibition applies to gifts offered to you by foreign governments even if such gifts have no nexus to your Government appointment. The restriction extends to your spouse and dependents, but does not apply to travel and related expenses from a foreign government incurred as part of your official duties. 5 U.S.C. § 7342.

Foreign Agents

You may not act as an agent or lobbyist of a foreign principal required to register under the Foreign Agents Registration Act or the Lobbying Disclosure Act of 1995 unless the head of the agency certifies that your employment is in the national interest. 18 U.S.C. § 219. If you have registered under either of these statutes, please contact SOCO.

Hatch Act

The Hatch Act, which limits the political activities of Federal employees, applies to you only while you are conducting Government business. 5 U.S.C. §§ 7321-7326.

Disclosure of Information

You may not disclose classified or proprietary information that you receive in the course of your official duties. Before disclosing information that is proprietary, not releasable under the Freedom of Information Act, protected by the Privacy Act, or otherwise restricted, please confirm that it may be released. 18 U.S.C. § 1905.

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KEEPING COMMITTEES CLEAR OF ETHICAL PROBLEMS:

AN ETHICS GUIDE
FOR
DESIGNATED FEDERAL OFFICIALS OF DOD ADVISORY
COMMITTEES

DoD General Counsel
Standards of Conduct Office
(703) 695-3422
SOCO@dodgc.osd.mil
Pentagon 3D941

Introduction:

As a director or manager of a Department of Defense (DoD) advisory committee, you are a Designated Federal Official (DFO) and are largely responsible for the successful operation of the committee and the completion of the committee's mission. While you have substantial administrative and regulatory duties, ensuring that the committee's deliberations and recommendations are free from conflicts of interest and other ethical problems cannot be overemphasized. Many hours of hard work may be nullified if the findings of the committee are challenged because of allegations that even one of the members had a conflict of interest, was not impartial, or was otherwise improperly influenced.

To help you to protect the integrity of the advisory committee's work, the Standards of Conduct Office (SOCO) of the Office of the DoD General Counsel offers this guide. Our goal is to bring to your attention issues, such as conflicts of interest, that have caused problems for past committees, and to assist you in preventing or resolving these problems. Since dealing with such issues is a major task of our office, please don't hesitate to contact us at the number on the front page. **While it is our job to help you to resolve these issues, we depend upon you to alert us when such issues, conflicts of interest, or appearances of conflicts arise in your committee.**

Appointment as a Special Government Employee

DoD appoints all consultants and committee members as Special Government Employees (SGEs). By doing so, these personnel become Government employees, who must follow many Federal ethics rules and are required to file financial disclosure reports.

Financial Disclosure Report

A Government-wide regulation, 5 C.F.R. 2634, and chapter 7 of the DoD 5500.7-R (Joint Ethics Regulation) require that all SGEs file either a public or confidential financial disclosure report (SF 278 or OGE Form 450) prior to their appointment (and yearly thereafter if reappointed), and in any event no later than assuming duties, giving advice, or attending their first advisory committee meeting.

The timing is essential so that the DFO and this office may review the reports prior to any possibility of an inadvertent violation to determine if there are any conflicts that the SGEs may have between their financial interests and their duties and responsibilities on the advisory committee. **This review by the DFO is crucial.** We depend on you to compare each SGEs financial interests with the agenda and topics of discussion of the committee, and note potential conflicts of interest. If you identify a potential conflict of interest, please contact an ethics official in SOCO immediately so that we may help resolve the issue. You should also perform this review before each meeting.

If there are no conflicts, you should sign the financial disclosure report as the "supervisor" of the SGE, and forward the report to this office, where we will review it for completeness, regulatory compliance, and conflicts of interest. Please remember, however, that we are not aware of the content of advisory committee discussions, so our ability to detect potential conflicts of interest is very limited. For that, we rely on the DFO. A copy of the OGE Form 450, the report most likely filed, is included as Attachment A. We recommend using the form in Excel format that is posted on the SOCO web site, at http://www.defenselink.mil/dodgc/defense_ethics/, under the Ethics Resource Library, Forms,

OGE Form 450. By using this form and saving the information, the SGE will be able to file the report in subsequent years merely by updating the current form rather than completing an entirely new form. The computer-generated form is also easier to read.

What's a Conflict of Interest?

A conflict of interest or the appearance of loss of impartiality occurs when a Federal employee, who has an interest in a particular matter, takes some official action that has a direct and predictable affect on that interest. Official actions by the employee that affect the interests of persons with a relationship to the employee, such as spouses, children, business associates, and employers, may also trigger a conflict of interest.

For example, an employee may have a conflict of interest or the appearance of a loss of impartiality if she participates in an advisory committee meeting that reviews whether a certain weapons program should be continued and:

- the employee owns stock in the prime or subcontractor that supplies the weapon;
- the spouse of the employee owns stock in, or works for, the contractor(s);
- the employee is a consultant, employee, or former employee of the contractor(s); or
- the employee is a member of the board of directors of the contractor(s).

Official participation in particular matters that are part of the conflict is generally barred by either a criminal statute or regulation. The above examples illustrate a very important point: employees may participate in official matters in which they have a conflict of interest without realizing they have such a conflict. They either may be unaware that the particular matter conflicts with their personal financial interests, or that the interests of persons with whom they have a relationship may also cause a conflict. A lack of intent to defraud the Government or improperly profit from their official duties does not absolve them from prosecution.

Conflict of Interest Rules

The conflict of interest statute most commonly involved is 18 U.S.C. 208(a), which prohibits Government employees, including SGEs,

- from officially participating personally and substantially (including making a recommendation, giving advice, or performing an investigation)
- in any particular matter (such as a dispute, contract, license, or agreement)
- that could affect, to their knowledge, their financial interests
 - as well as the financial interests of their spouse, minor child, general partner, an organization in which they serve as an officer, director, trustee, general partner, or employee, or an organization with which they are negotiating or with which they have an arrangement for prospective employment.

The regulation dealing with the appearance of a loss of impartiality is 5 C.F.R. 2635.502, which prohibits Government employees, including SGEs,

- from officially participating personally and substantially (including making a recommendation, giving advice, or performing an investigation)
- in any particular matter involving specific parties (such as a dispute, contract, license, or agreement)

- that, to their knowledge,
 - is likely to have a direct and predictable effect on the financial interests of a member of their household, or
 - has a party, or representative of a party, with whom he has a covered relationship
 - “Covered relationships” include: relative with close personal relationship; person with whom the employee has a business, contractual, or financial relationship; organization in which employee is an active participant; any person for whom either the employee has served in the last year, or the employee’s spouse, parent, or dependent child is serving or seeking to serve, as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.
- Where a reasonable person with knowledge of the relevant facts would question the employee’s impartiality.

Preventing Conflicts of Interest

To prevent conflicts of interest, we take several precautions:

1. Consultants and committee members are appointed as Special Government Employees (SGEs), whether or not they are compensated.
2. All SGEs file a financial disclosure report that discloses their financial interests.
3. All SGEs sign a written statement disqualifying them from participation in particular matters that may affect any financial interest disclosed on their report.
4. DFOs and a DoD ethics official review financial disclosure reports to screen SGEs from matters in which they may have conflicts of interest.
5. All SGEs complete a foreign activities questionnaire to prevent violation of the U.S. Constitution.
6. Written ethics training material is provided to SGEs prior to appointment to inform them about conflicts of interest and other Government standards of conduct.
7. We orally brief committee members at meetings to remind them of these requirements.
8. DoD Ethics officials are readily available to SGEs and DFOs to answer questions or otherwise assist.

Resolving Conflicts of Interest

Generally, DoD advisory committees address broad policy matters, not particular matters. This greatly reduces the potential for conflicts of interest. In certain instances, however, the committees may address matters that focus on the interests of specific persons or a discrete and identifiable class of persons. For example, an advisory committee may recommend that the Department purchase more unmanned aerial vehicles (UAVs). Since only two or three companies manufacture UAVs, such a recommendation would constitute a particular matter. Under the law, if an SGE has any of the interests discussed above in relation to one or more of those manufacturers, the SGE may have a conflict of interest.

If a conflict of interest is determined to exist, please consult with your ethics official to determine if a regulatory exemption exists. Such exemptions, for example, cover interests held in diversified mutual funds, or securities with aggregate values of less than \$15,000. There are other exemptions, as well.

If no exemption exists, the conflict is usually resolved by **disqualification**, meaning that the SGE does not participate in the particular matters. Commonly, the SGE simply leaves the room during such discussions. **DFOs should ensure that advisory committee minutes reflect that the SGE was not present during the relevant discussions.** SGEs are aware of the requirement to disqualify themselves because, when they submitted their financial disclosure reports, they also submitted written disqualifications from participating in particular matters affecting their financial interests. A copy of this form is included as Attachment B.

If it is not possible to disqualify an SGE, another (but less favored) option is to obtain a waiver from the Government official responsible for appointing the SGE. Such waivers are possible when the interest is not so substantial as to be deemed likely to affect the integrity of expected services. SOCO drafts waivers, which are ultimately reviewed by another Federal agency, the U.S. Office of Government Ethics. Employment interests generally cannot be waived. Stock interests may be waived if the stock is worth less than 5% of the SGE's total financial portfolio.

Foreign Activities Questionnaire

SGEs must also complete the Foreign Activities Questionnaire. This document is required to determine if the SGE has accepted a position, title, or pay from a foreign government, all of which are prohibited by the Emoluments Clause of the U.S. Constitution. If an SGE declines to give up such a position or pay, he or she cannot serve on the advisory committee or as a Federal employee.

The Questionnaire, DD Form 2859, is available on the DoD web site, at http://www.defenselink.mil/dodgc/defense_ethics/, under Ethics Resource Library, Forms. A copy is attached, along with the DoD General Counsel's cover letter, and a set of examples to assist you when advising SGEs. See Attachment C.

Training

SGEs are required to receive initial ethics training pursuant to 5 C.F.R. 2638. Initial ethics training may be accomplished by providing instructional materials. (A copy, Attachment D, is attached.) In addition, ethics officials from SOCO seek to address each advisory committee at least annually. We use these briefings to highlight recent changes to regulations, remind the SGEs of how regulations apply to their personal and official activities, and answer questions from the SGEs. These in-person briefings are very useful for drawing out questions and assisting the SGEs in applying the regulations to their individual circumstances.

Bottom Line

You, as the DFO, play a key role in preventing conflicts of interest. We, in SOCO, will assist, but we need your eyes and ears to alert us to potential problems. If you help us, we'll help you. Give us a call.

Attachments: (Not Included)
OGE Form 450
Sample Disqualification Statement
Foreign Activities Questionnaire
Training Material (not included)

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SAMPLE DISQUALIFICATION LETTER

DATE:

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE, PERSONNEL AND READINESS

SUBJECT: Disqualification Statement

I understand that my employment by the Department of Defense is a public trust which places ethical standards and the law above private gain.

In connection with my duties as a consultant to the Department of Defense, I disqualify myself from participation in any matters that will have a direct and predictable effect on the following organizations (including DoD contractors) in which I have a financial interest.

All organizations identified as financial interests on the attached financial disclosure report, except for any organization for which a waiver has been granted pursuant to Title 18 U.S.C. 208 (b) (3).

Signature _____

Printed Name _____