

ETHICS GUIDE FOR CASAs

At the Department of the Army, we are fortunate to have many experts and industry and community leaders from outside of the Government to provide advice to the Secretary as consultants. CASAs are Special Government Employees (SGE) hired as Consultants. This means that upon appointment, you assume the responsibilities, obligations, and restrictions that are part of public service, though certain restrictions are modified because SGEs are not full-time employees.

Because many of you retain extensive links to defence industries or other organizations related to the military or national security, it is important that you understand potential conflicts of interest that may arise from your appointment to this Department. This guidance briefly summarizes those statutes and regulations most likely to affect you.

1. Getting Advice

It is not feasible to include in this Guide each and every ethics law and rule that may apply to you. Therefore, this Guide is designed to assist you in recognizing potential issues so that you can seek ethics advice where necessary. If you have questions or concerns regarding how the law may apply to a specific situation or action, please contact the Army Office of the General Counsel (OGC) at (703) 695-4296, or fax us at (703) 697-5553. Ms. Susan Sutherland is the lead ethics officials available to assist you

OGC 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 is persuasive for, but not binding upon, the Department of Justice in any criminal prosecution.

2. Counting Days is Important!

A CASAs term of office serves as Secretary of the Army authorization to re-appoint that CASA each year, provided that the CASA has met all statutory and regulatory requirements for re-appointment. The Army cannot re-appoint a CASA in violation of the law.

Under Federal personnel laws, the total number of days a CASA may work shall not exceed 130 days during any period of 365 consecutive days, which begins on the anniversary date of the CASA's appointment each year. If a CASA's work in a 365 day period exceeds the 130 days, Federal personnel law prohibits renewal of their appointment in subsequent years.

Counting days is also important for determining certain ethics restrictions as well. For purposes of applying ethics restrictions, all Federal work (not just CASA work) must

be aggregated in counting days to be worked. 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 Secretary's CASA office, 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 substantive services, or numerous or lengthy activities, even if they do not amount to an entire workday. Administrative or brief activities, such as completing your financial disclosure report, or 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 a Confidential Conflict-of-Interest Statement for Civilian Aides to the Secretary of the Army (Form A450-AC) when you are first appointed, and annually thereafter if you are reappointed. 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. A DoD ethics official reviews the reported information, which is not releasable to the public under the Freedom of Information 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 Secretary 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.

Note that conflict only arises IF you participate in a particular matter affecting the interests described above. Generally, CASAs advise Army officials regarding broad policy matters, not particular matters. This greatly reduces the potential for conflicts of interest. A particular matter is a matter that involves deliberation, decision or action that

is focused upon the interests of specific persons, or a discrete and identifiable class of persons.

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 CASA office or Army OGC. There are several regulatory exemptions that may permit you to participate even when you 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 fund. An employee may also act in particular matters affecting companies in which the aggregate value of the employee's holdings does not exceed the regulatory "de minimis" value (currently, \$15,000). If a potential conflict of interest arises, you should contact OGC prior to taking action so that OGC can assist you in determining whether your participation would violate the law.

The statute and implementing Federal regulations provide for waivers that may also 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 Army OGC.

You should also keep in mind that, even though deliberations may not involve a particular matter under the criminal statute, having an interest in or being affiliated with any company that is the focus of a deliberation would require your recusal from discussions. A combination of DoD policy, and appearance and misuse of position concerns under the Standards of Conduct regulations, would prohibit your participation.

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 non-federal entities before any agency or court of the Executive or Judicial Branches. The statutes are substantially identical, with § 203 covering compensated representational activities and § 205 covering uncompensated representational activities. For both, the restrictions are somewhat different for SGEs, depending on the number of days the SGE has served. For SGEs who have served 60 days or less, the law prohibits representation only in a particular matter involving a specific party where the SGE has participated personally and substantially in that matter as a Government employee. For SGEs who have served over 60 days but not more than 130 days, the law prohibits representational services in any particular matter involving a specific party that is pending in this Department, regardless of whether the SGE actually participated in the matter. For SGEs who have served more than 130 days, the full representational restrictions apply and you may not

represent any non-federal entity before any agency or court of the Executive or Judicial Branches. 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.

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.

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 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 as a CASA will raise concerns and is prohibited unless a regulatory exception applies. 5 C.F.R. § 2635.202. Prohibited sources include anyone doing business with or seeking official decision from DoD. There are regulatory exceptions permitting you to accept gifts given to you because of your personal, outside business, or employment relationships. There are several other exceptions, but since they are often fact-specific, you should consult Army OGC.

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 Army General Counsel.

In addition, if you 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 Army 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 provide advice concerning a program supported by someone with whom you have a close personal or professional relationship. 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, CASA duties 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 a matter could subject you to criticism, please contact the Army OGC to determine whether you should be disqualified from participation in the matter, or authorized to participate in the matter.

Serving Two Masters

As indicated in the above regulation on impartiality, you cannot represent two entities and retain impartiality. For example, you may be an employee of a corporation or nonprofit organization which intends to submit its views to Government officials regarding the same subject matter on which the local Commander has requested your views. In such a situation, you must recuse yourself from participation in either the corporation or nonprofit organization's recommendation, or, recuse yourself from advising the Commander. If you find yourself in this situation, consult the CASA office or Army OGC.

Endorsement of Non-Federal Entities

Many Army CASAs hold senior and influential positions in their private lives. However, please remember that you may not use, or permit the use of, your CASA title, position, organization name, or authority associated with your Government position to imply a DoD, Army, 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.

This issue frequently arises in regard to charitable organizations whose work benefits the military and/or its members. While these entities often do great work to assist DoD missions and personnel, Federal employees, including CASAs, cannot appear to support or endorse these entities in their official capacity and may not use their title or position while doing so in their personal capacity.

Misuse of Position

Primarily because of the stature and visibility of many of our CASAs, actions that may be perceived as the misuse of their public office tend to receive local public scrutiny. This regulation, 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.

A good example is when a private entity issues a press release announcing that one of its employees will serve as a CASA. To many, selection to serve as a CASA confirms the SGE's expertise and wisdom, and therefore tends to lend similar credence to the private entity. It also suggests Department of the Army's endorsement of the private organization. Thus we discourage private companies from issuing such press releases.

Fundraising

There are several rules that cover fundraising activity, both in an official capacity and in a personal capacity, that are applicable to DoD employees, including SGEs. Generally, you may fundraise in your personal capacity. However, you may not fundraise in the Federal workplace (except for collecting gifts-in-kind, such as food, clothing, and toys), and you may not solicit funds from any person that you know is a prohibited source whose interests may be substantially affected by performance or non-performance of your official duties. Finally, please do not use or permit use of your official title, position, or authority associated with your position to further the fundraising effort. If you are soliciting people with whom your relationship is primarily tied to your CASA position or duties, there may be the appearance that you are using your authority as a CASA. You also may not solicit for the Army or Army personnel in your official capacity.

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 CASA, must be coordinated with the Army.

As a private citizen, you may express your personal views (but not the views of the Army or DoD) to anyone. In doing so, you may state your affiliations with the Army, may factually state the Army's official position on the matter (to the extent that only public information is used), but may not represent your positions or views as the Army'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.

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 Army OGC.

Hatch Act

The Hatch Act, which limits the political activities of Federal civilian 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.