



AN ETHICS GUIDE FOR MEMBERS OF DAU’S BOARD OF VISITORS

As a member of the Defense Acquisition University’s (DAU) Board of Visitors (BoV), you provide important advice to the DAU President and the Under Secretary of Defense for Acquisition, Technology and Logistics on matters related to DAU’s organization management, curricula, methods of instruction, and facilities. Under Department of Defense regulations, all private citizens who serve on committees, panels, or boards of this type are considered “Special Government Employees,” and consequently are subject to certain ethics restrictions. Because many of you retain extensive links to Defense industries or other organizations related to national security, it is especially important that you avoid potential conflicts of interest that may arise in connection with your service on the Board. This guidance briefly summarizes those ethics statutes and regulations most likely to affect you in your capacity as a member of the Board.

1. Getting Advice

If you encounter a situation that you think may be covered by any of the restrictions outlined below, please contact the DAU General Counsel at 703-805-5403 (e-mail: Tim.Wray@dau.mil). You can also forward questions to the General Counsel through the Board’s Executive Secretary and Designated Federal Official (DFO), Kelley Berta, at 703-805-5412 (Kelley.Berta@dau.mil). In addition to ethics issues, the General Counsel can also answer questions that you may have in connection with completing your annual financial disclosure report. An important tip: “good faith” reliance on ethics advice from DAU’s General Counsel, or any other duly-appointed DoD ethics official, will in most cases protect you from adverse administrative action or criminal prosecution in the event of an inadvertent ethics violation.

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

Within DoD, almost all consultants and all members of advisory committees (such as DAU’s BoV) serve 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, certain 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. (When computing days worked 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 e-mails or phone calls to set up a meeting, do not have to be counted as a day of duty.) This 130-day period is an aggregate of all your Federal service, not just your appointment at DAU. For example, it includes days you might serve as an SGE for any other Federal agency or department, plus any

“active” days as a military reservist. If you have or enter into any arrangement to provide service for any other Federal agency or department in addition to your service on the DAU Board of Visitors, please make sure that Ms. Berta is aware of that fact so that she can ensure you do not exceed the 130-day limitation.

3. Financial Disclosure

SGEs are required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450) when they are first appointed, and annually thereafter throughout their tenure as an SGE. (Members of DAU’s BoV generally file the shorter OGE-450; the longer, more detailed SF-278 is required only if an SGE serves for more than 60 days during any calendar year.) The purpose of financial disclosure is to protect you from inadvertently violating any of the criminal conflict of interest statutes and ethics regulations discussed below, and to assure the public that your advice is free from any real or perceived conflicts of interest. Your financial disclosure reports are reviewed by the Board’s DFO and DAU’s General Counsel.

Confidential Financial Disclosure Reports (OGE-450) and the information they contain are kept strictly confidential, and are exempt from being released to the public under the Freedom of Information Act. DAU personnel may not release these reports, or any of the information contained in them, except pursuant to an order issued by a Federal court or as otherwise provided by law. Please bear in mind that the information you provide in your financial disclosure report must be accurate and complete, and that your signature on the form constitutes an official statement to that effect. A person who knowingly and willfully makes false or incomplete entries on his or her financial disclosure report could therefore be subject to criminal prosecution under 18 U.S.C. § 1001.

4. Criminal Conflict of Interest Statutes

As an SGE, you are required to comply with various criminal statutes. 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 future employment. The primary reason you are required to disclose your financial interests is to help alert the Board’s DFO and DAU’s General Counsel of any potential conflict of interest prior to your participation in a particular matter involving an entity in which you have a financial interest.

A financial conflict of interest might arise in many ways. For example, someone who serves as an SGE for the DoD could have a financial conflict of interest if they participate in a DoD committee that reviews whether a certain weapons program should be continued if:

- the SGE owns stock in the prime or subcontractor that supplies the weapon;
- the SGE's spouse owns stock in, or works for, the contractor(s);
- the SGE is a consultant to, or employee of, the contractor(s);
- the SGE is a member of the board of directors of the contractor(s), or
- the SGE has a contract with the contractor(s) to provide supplies, parts, or services.

Generally, DAU's BoV advises only on broad policy matters, not "particular matters" within the meaning of this statute. 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. A deliberation that focuses on a discrete and identifiable class of persons as part of a broader policy deliberation, however, would not be a particular matter. For example, if a DoD advisory committee deliberates on the topic of whether the military services should upgrade certain non-tactical vehicles by adding blast-resistant shielding, and the shielding for those vehicles is manufactured only by a limited number of companies, then committee deliberations would likely be a particular matter: the outcome of the deliberations would likely affect the financial interests of that finite group of manufacturers. If, on the other hand, the topic is generally whether DoD should require all tactical and non-tactical vehicles to meet certain blast-resistance standards, then committee deliberations probably would not be a particular matter because manufacturers of blast-resistant shielding would only be affected within the context of the larger policy. In the first example, however, any committee members who have a financial interest in a company that manufactures the blast-resistant shielding would have a conflict of interest if they participated in the advisory committee discussion.

As mentioned above, DAU's BoV rarely (if ever) considers "particular matters" within the meaning of this statute. Nevertheless, ***if the Board takes up a matter in which you think you might have a financial conflict of interest, you must disqualify yourself from participating in any action or deliberation related to that matter and notify the Board's DFO.*** The Board's DFO will then consult with the DAU General Counsel, since there are several regulatory exceptions that might permit you to participate even if you have certain financial interests that could 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.)

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 criminal 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 DoD and the SGE previously 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, such as an application for Federal funding, a progress report regarding a cooperative agreement, or a pending investigation, is not necessarily a representation.

Because members of DAU's BoV generally will serve less than 60 days per year, and because the Board rarely if ever considers "particular matters" within the meaning of this statute, it is unlikely that you would ever encounter a situation in which these statutes would apply to you. ***The key point to remember is that you should seek advice from DAU's General Counsel before you represent a third party to any Federal agency or court in connection with something that you participated on as a member of the Board, or that was pending during your service as a member of the Board.***

Limits on Representations After You Leave Government Service

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

5. Standards of Ethical Conduct for Government Employees

In addition to the criminal conflict-of-interest *statutes* summarized above, Federal employees are also subject to certain ethics *regulations*, specifically the Standards of Ethical Conduct regulations at 5 C.F.R. Part 2635. The paragraphs below summarize important standards-of-conduct regulations that pertain to members of DAU's BoV.

Teaching, Speaking, and Writing in a Personal Capacity

During your term of appointment to the DAU BoV, you may generally continue to receive fees, honoraria, and other compensation for teaching, speaking, and writing undertaken in your personal or non-Government capacity. However, please bear in mind that 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 as a member of DAU's BoV (or any other Federal position you may hold) 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.

You cannot use of your DAU title or position in connection with your personal teaching, speaking, or writing, except that it may be included as one of several biographical details in a written or verbal summary of your background and provided that the DAU service is not given any greater prominence than any other biographical detail. Also, if the subject of any permissible teaching, speaking, or writing that you engage in deals in significant part with any ongoing or announced policy, program, or operation of DAU or the DoD, you should make a disclaimer that the views presented are your own and do not necessarily represent the views of DAU, DoD, or the United States Government.

Acceptance of Gifts from Outside Sources

You may always accept gifts given to you solely because of your personal, outside business, or employment relationships. However, any gift with a value greater than \$20, including meals, travel and accommodations, personal items, and anything else with “monetary value” that is (1) offered to you by someone who does business with or is seeking business with DAU, or (2) that is offered to you solely because of your service on the DAU BoV, might be prohibited. Because the rules pertaining to gifts are often fact-specific, you should consult the DAU General Counsel if you are unsure about the propriety of accepting any gift.

Providing Expert Testimony

Under certain circumstances, SGEs may not serve, except on behalf of the United States, as an expert witness in a court proceeding or in a hearing before any agency of the Federal Government if the United States is a party or has a direct and substantial interest in the matter. If you encounter a situation in which you are asked to be an expert witness during your tenure as a member of DAU’s BoV, please contact the DAU General Counsel for guidance.

Impartiality

As discussed above in the section on the criminal conflict-of-interest statutes, you are prohibited by 18 U.S.C. 208(a) from participating in matters in which you have a financial interest. However, there may be other circumstances in which—although you do not have a personal financial interest in the matter—your participation could nevertheless raise a question regarding your impartiality. (For example, one of the parties to the matter might be a personal friend, a former employer, or someone with whom you have an outside business or contractual relationship.) *If you think that a reasonable person, with knowledge of all the relevant facts, would question your impartiality in a matter before the Board, you should not participate in that matter until you have consulted with DAU's General Counsel.* This is a prudent precaution to make sure that the actions of DAU's BoV are not tainted by the appearance of partiality or favoritism.

Serving Two Masters

You cannot fairly represent two entities and retain impartiality. For example, if you are an employee of a corporation or nonprofit organization that intends to submit its views to DAU or DoD officials regarding a subject that you are also reviewing as a member of DAU's BoV, you must recuse yourself from participation in either the corporation or nonprofit organization's recommendation or recuse yourself from participation Board's consideration of that matter. If you encounter such a circumstance, please contact DAU's General Counsel for specific advice.

Endorsement of Non-Federal Entities

Members of DAU's BoV are commonly distinguished individuals who may also hold influential positions in their private lives. 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 that DAU, DoD, or the Federal Government endorses or promotes any non-Federal entity, event, product, service, or enterprise. 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. Please contact DAU's General Counsel if you need clarification about how this rule applies to any particular set of circumstances.

Misuse of Position

Federal employees must avoid situations where it might appear that they are misusing their public office. This broad prohibition generally encompasses such things as:

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 anyone affiliated with you as described 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, resources or time for unauthorized purposes.*

Fundraising

Members of DAU's BoV generally will not be involved in any official fundraising activities. You may freely engage in outside fundraising activities in your personal capacity. Please do not use or permit the use of your official title, position, or authority associated with your position to further any private fundraising effort.

Lobbying Activities

While the time you spend performing official duties as a member of the DAU BoV 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 means, for example, that while you are performing service in connection with DAU's BoV, you cannot write, call, or send e-mails to friends or associates urging them to contact members of Congress in connection with some legislative matter of interest to DAU or DoD. (Please note that this restriction only applies during the time that you are actually performing official duties as part of the DAU BoV. It does not restrict your actions on days when you are not performing Board-related activities.) This statute also 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 in connection with your duties as a member of the DAU BoV must be coordinated with the DAU President.

As a private citizen, you may publicly express your personal views about any matter. You should not, however, represent to anyone that your positions or views are those of the DAU BoV, DAU, or the DoD. Moreover, 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

During your tenure as a member of DAU's Board of Visitors, 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. If such a situation arises, please contact the Board of Visitors' DFO immediately.

Hatch Act

The Hatch Act, which limits the political activities of Federal employees, applies to you only while you are conducting Government business. The key thing to bear in mind is that, while you are “on duty” as a Board member, you cannot engage in any partisan political activity. This includes wearing a partisan political button or emblem, or urging someone to support any particular candidate or political party, or soliciting a contribution to a candidate, party, or partisan political organization. ***Note that use of official Government e-mail to send any partisan political message is prohibited at all times.*** If you have questions about whether any prospective political activity might be prohibited by the Hatch Act, contact the DAU General Counsel beforehand for advice.

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 may be proprietary, not releasable under the Freedom of Information Act, protected by the Privacy Act, or otherwise restricted, please contact the BoV DFO or the DAU General Counsel for guidance.

6. Conclusion

Please feel free to contact the Board of Visitors’ DFO, Kelley Berta, if you have questions or concerns about your status as a member of the Board or as an SGE. DAU’s General Counsel, Tim Wray, is available to assist with questions about the interpretation or application of ethics statutes and regulations, including those pertaining to financial disclosure.

Prepared by: DAU General Counsel
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