



DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100



FAC-2C

September 08, 2021

John Greenewald
[REDACTED]

This responds to your Freedom of Information Act (FOIA) request, dated November 15, 2013 that you submitted to the Defense Intelligence Agency (DIA) for information concerning Requesting any reports, documents letter, ect., electronic or otherwise, which contains a list of all SGE (special government employees). I apologize for the delay in responding to your request. DIA continues its efforts to eliminate the large backlog of pending FOIA requests. In order to properly respond, it was necessary to consult with another office within the agency.

A search of DIA's systems of records located (2) documents (29 pages) responsive to your request.

Upon review, I have determined that some portions of (2) documents (29 pages) must be withheld in part from disclosure pursuant to the FOIA. The withheld portions are exempt from release pursuant to Exemptions 3, and 6 of the FOIA, 5 U.S.C. § 552 (b)(3), and (b)(6). Exemption 3 applies to information specifically exempted by a statute establishing particular criteria for withholding. The applicable statute is 10 U.S.C. § 424. Statute 10 U.S.C. § 424 protects the identity of DIA employees, the organizational structure of the agency, and any function of DIA. Exemption 6 applies to information which if released would constitute an unwarranted invasion of the personal privacy of other individuals.

If you are not satisfied with my response to your request, you may contact the DIA FOIA Requester Service Center, as well as our FOIA Public Liaison at 301-394-6253.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. You may contact OGIS by email at ogis@nara.gov; telephone at 202-741-5770, toll free at 1-877-684-6448 or facsimile at 202-741-5769; or you may mail them at the following address:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001

You may also exercise your right to file an administrative appeal by writing to the address below and referring to case number FOIA-00079-2014. Your appeal must be postmarked no later than 90 days after the date of this letter.

Defense Intelligence Agency
7400 Pentagon
ATTN: FAC-2C (FOIA)
Washington, D.C. 20301-7400

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Tumiski", written in a cursive style.

Steven W. Tumiski
Chief, Records Management and Information Services

Enclosures

This document is made available through the declassification efforts
and research of John Greenewald, Jr., creator of:

The Black Vault



The Black Vault is the largest online Freedom of Information Act (FOIA)
document clearinghouse in the world. The research efforts here are
responsible for the declassification of hundreds of thousands of pages
released by the U.S. Government & Military.

Discover the Truth at: **<http://www.theblackvault.com>**

From: (b)(6);(b)(3) 10 U.S.C. 424
Sent: Wed, 2 Jun 2021 14:43:53 -0400
To: (b)(6);(b)(3) 10 U.S.C. 424 Security Reviews
Cc: (b)(6);(b)(3) 10 U.S.C. 424
Subject: FW: Special Government Employee Documentation - Neil Wiley ***Please Expedite***
Attachments: DD 2292_Wiley, Neil.pdf, DIA Service Agreement_Wiley, Neil R.pdf, DoD Standards of Conduct.pdf
Importance: High

Classification: UNCLASSIFIED//~~FOUO~~

Good afternoon. Below and attached is the Special Government Employee (SGE) documentation for Inbound Neil Wiley (former DIA) who's scheduled to return to DIA on June 7, 2021. At your earliest convenience, please let me know if the selectee has met (b)(6);(b)(3) 10 U.S.C. 424 requirements.

Let me know if any additional information is required. Thanks and have a great day!

Neil Wiley (Inbound SGE):

SSN: (b)(6);(b)(3) 10 U.S.C. 424

Date of Birth: (b)(6);(b)(3) 10 U.S.C. 424

Place of Birth (City/State/Country):

Driver's License Number (Date Issued/State):

Personal Phone Number:

Personal Unclassified Email:

Personal Mailing Address: (b)(6);(b)(3) 10 U.S.C. 424

Emergency Contact Name and Number: (b)(6);(b)(3) 10 U.S.C. 424

Last IC/DoD or Gov't Agency: Defense Intelligence Agency (Retired 5/8/2021)

(b)(6);(b)(3) 10 U.S.C. 424

****THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.****

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Friday, May 28, 2021 2:45 PM

To: (b)(6);(b)(3) 10 U.S.C. 424

< (b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Neil Wiley

Classification: UNCLASSIFIED//~~FOUO~~

Hi (b)(6);(b)(3) 10 U.S.C. 424

Please find attached Mr. Wiley's DD 2292.

As this process is new to me, please advise on next steps.
Thank you for your assistance, greatly appreciated.

V/r,

(b)(6);(b)(3) 10 U.S.C. 424

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Thursday, May 27, 2021 9:36 AM

To: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Neil Wiley

Classification: UNCLASSIFIED//~~FOUO~~

Thanks, (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

We will get you the form today.

V/r,

(b)(6);(b)(3) 10 U.S.C. 424

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Monday, May 24, 2021 7:45 AM

To: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Neil Wiley

Classification: UNCLASSIFIED//~~FOUO~~

(b)(6);(b)(3) 10
U.S.C. 424

Good Morning,

I believe [redacted] was looking into that. I've cc'd her on this email to confirm.

(b)(6);(b)(3) 10 U.S.C. 424

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Thursday, May 20, 2021 9:09 PM

To: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Neil Wiley

Classification: UNCLASSIFIED//~~FOUO~~

Good afternoon. Just checking on the status of the DD Form 2292 for Mr. Wiley. Please advise soonest. Thanks.

(b)(6);(b)(3) 10 U.S.C. 424

****THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.****

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Monday, May 17, 2021 7:29 PM

To: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Neil Wiley

Classification: UNCLASSIFIED//~~FOUO~~

Good afternoon. Received....thank you.

(b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

****THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.****

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Monday, May 17, 2021 4:36 PM

To: (b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Neil Wiley

Classification: UNCLASSIFIED//~~FOUO~~

Team,

Attached is the signed service agreement from Mr. Wiley. I understand the DD2292 will come from the front office.

Please let me know if you need anything from me or Mr. Wiley to move to the next stage. Thank you!

Best,

(b)(6);(b)(3) 10 U.S.C. 424

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Tuesday, May 11, 2021 8:26 PM

To: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: FW: Special Government Employee Documentation - Neil Wiley

Importance: High

Classification: UNCLASSIFIED//~~FOUO~~

Good afternoon. I understand that Mr. Neil Wiley will be retiring soon and onboarding shortly afterwards as a Special Government Employee (SGE). In efforts to move forward with security processing, can you please complete the DD Form 2292 and have Mr. Wiley sign the Gratuitous Service Agreement.

I kindly ask that you please return the forms soonest as I'd like to try and get the security approvals before Mr. Wiley departs for retirement. Let me know if you have any questions/concerns. Thanks.

(b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

****THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.****

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Tuesday, May 11, 2021 11:49 AM

To: (b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

Subject: Special Government Employee Documentation

Classification: UNCLASSIFIED//~~FOUO~~

Hi (b)(6);(b)(3) 10 U.S.C. 424

Thanks for the call. As discussed, attached is the documentation for SGEs. I am standing by to assist with the SOP and the legal requirements governing this situation.

1. Gratuitous Service Agreement – Informs SGE of requirements and responsibilities of entering the agreement. The SGE will sign this form agreeing to no compensation for the advising work they perform.
2. DD2292 – Documents the terms of the agreement such as organization SGE aligned to, number of days worked (only allowed to work 130 days out of every consecutive 365 days) Someone in the Chain of Command/Command Element will complete this form.
3. DoD Standards of Conduct – Informs SGE of ethics requirements
4. DoDI 5230.09 – Prepublication Review Instruction which requires any published work related to work done for the government be reviewed before release.

Additionally, the OGE 278 Public Financial Disclosure form (ethics requirement) will need to be completed by the SGE within 30 days of onboarding.

V/r,

(b)(6);(b)(3) 10 U.S.C. 424

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~
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REQUEST FOR APPOINTMENT OR RENEWAL OF APPOINTMENT OF CONSULTANT OR EXPERT		X	APPOINTMENT	REQUEST DATE (YYMMDD)
			RENEWAL	
PART I - REQUESTING AUTHORITY				
1. NAME OF PROPOSED APPOINTEE (Last, First, Middle Initial)		2. OFFICE OR COMMITTEE TO WHICH APPOINTED		
WILEY, NEIL R.				
3. ESTIMATED NUMBER OF DAYS TO BE WORKED DURING APPOINTMENT YEAR	4. PROPOSED COMPENSATION PER DAY OR INDICATE IF WOC	5. PROPOSED EOD DATE (YYMMDD)		
15	NONE	210509		
6. COMPLETE FOR RENEWAL APPOINTMENT OF CONSULTANT OR EXPERT				
a. NUMBER DAYS WORKED IN PRIOR APPOINTMENT YEAR	b. NUMBER DAYS TO BE WORKED	c. PROPOSED RATE OF PAY		
7. DUTIES OF CONSULTANT OR EXPERT (Describe the duties in sufficient detail to (1) Permit a positive determination that the position actually requires a consultant or expert; (2) Determine whether or not a possible conflict of interest might exist; and (3) Explain the need for the appointment to the Secretary of Defense. If individual is to be a member of an advisory group established by law or by DoD Directive or Instruction, cite name of advisory group, law, or defense issuance in lieu of the list of duties or services.) As senior advisor, Mr. Wiley has decades of experience in military intelligence and the understanding of operational environments. His experience will allow him to provide the Director, DIA unique counsel and advice regarding the Agency's transformation to support DoD operations in a great power competition environment to include insight into foreign national security leaders, regional partnerships, and foreign military forces and their operational environments.				
8. NUMBER OF MILITARY OR CIVILIAN PERSONNEL IN YOUR ORGANIZATION NOW PERFORMING THE SAME OR SIMILAR FUNCTION PROPOSED FOR NOMINEE (Include full or part time personnel.) NONE.				
9. DESCRIBE THE NEED FOR ESTABLISHING FUNCTION (If new or for additional support to established function, state why the services cannot be procured through regular civil service procedures; and why presently employed military or civilian personnel cannot perform the function. Not required for Advisory Group members.) Mr. Wiley's experience across multiple departments and roles leading analysis across the Intelligence Community to inform policy deliberations impacting national-level intelligence activities create a unique balance of knowledge, experience, and network needed to advise the Director, DIA. This experience cannot be replicated by presently employed military or civilian personnel.				

10. DESCRIBE NOMINEE'S BACKGROUND AND EXPERIENCE AS IT RELATES TO THE REQUIREMENTS OF THIS APPOINTMENT (Attach completed SF-171, Personnel Qualifications Statement.)

Mr. Wiley served as the Office of the Director of National Intelligence Principal Executive and reported directly to the Director of National Intelligence on all intelligence matters, providing him and his principles at home and abroad with current intelligence on fast-breaking issues.

Mr. Wiley has extensive knowledge of the challenges facing the Intelligence Community as it concentrates support on the National Defense Strategy. The pivot to great power competition requires foundational understanding of both analysis and critical support to the warfighter in a environment of change. His unique and vast intelligence experience coupled with his familiarity of the Office of the Director of National Intelligence and the Office of Secretary Defense will be of great benefit in efforts to improve the effectiveness and efficiency of IC and DoD intelligence activities. He has the required TS/SCI security clearance with an updated counterintelligence polygraph.

Current Activity: Mr. Wiley is the sole proprietor of Lyseon Consulting LLC, which provides professional consulting services to industry. Lyseon Consulting specializes in intelligence management, organizational effectiveness, and strategic risk management.

Experience: Principal Executive Office of the Director of National Intelligence; ODNI Chairman, National Intelligence Council; Director for Analysis, DIA; and multiple Office Chief positions across DIA and United States European Command Joint Analysis Center.

11. IN ACCORDANCE WITH DOD DIRECTIVE 4205.2, I HAVE SATISFIED MYSELF THAT:

- a. The position is necessary;
- b. This is a consultant/expert position;
- c. The proposed appointee meets the definition of "consultant/expert" and does, in fact, possess the kind and level of expertise to render the services the agency seeks;
- d. The work is temporary in nature; that is, will not exceed one year; requires services only irregularly (*with no regular tour of duty*) or occasionally; is of a purely advisory nature, and does not include the performance of supervision of operating functions;
- e. This authority is the most appropriate appointment authority for meeting the agency's needs;
- f. The daily rate intended to be paid the proposed appointee is commensurate with the level of work to be performed and the individual's qualifications for the work;
- g. This appointment complies with DoD Directive 5500.7; and presents no conflict of interest; and
- h. Required documentation is in order and a favorable security/suitability determination has been rendered.

i. SIGNATURE OF HEAD OF ACTIVITY

j. ACTIVITY REQUESTING APPOINTMENT

PART II - COORDINATION (If required by submitting activity)

12. SECURITY AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

13. BUDGET AND FINANCE AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

14. STANDARDS OF CONDUCT AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

15. PERSONNEL AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

PART III - APPROVAL AUTHORITY FOR APPOINTMENTS IN DEPARTMENTAL SERVICE

In approving the filling of this position without regard to the laws and regulations governing appointments in the competitive civil service, and in approving the rate of pay set for this position without regard to the classification and pay laws, I have considered the requirements of law (5 U.S.C. 3109), relevant Comptroller General decisions, FPM Chapter 304, and DoD Directive 4205.2.

16. DIRECTOR, ADMINISTRATION AND MANAGEMENT OR DESIGNEE

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

GRATUITOUS SERVICES AGREEMENT

1. This Gratuitous Services Agreement is entered into by and between the Defense Intelligence Agency ("DIA") and **Neil R. Wiley** (SPECIAL GOVERNMENT EMPLOYEE ("SGE")).
 2. DIA hereby agrees to appoint SGE as an uncompensated expert under 10 USC § 1601, and consistent with the Department of Defense's criteria for appointing experts and consultants under 5 USC § 3109.
 3. DIA further agrees that the scope of SGE's activities will not exceed those contemplated in the federal regulations implementing 5 USC § 3109. Specifically, DIA agrees that SGE will not be asked to perform any managerial or supervisory duties, make final decisions on substantive policies, or act on behalf of DIA in any matter.
 4. This Agreement may be terminated in writing by either party, with or without cause, with or without prior notification to the other party. Neither party may claim or seek compensation or damages of any kind from the other party or from the United States because of any termination of this Agreement.
 5. The terms of this Agreement may not be modified except by the express, written consent of both parties.
 6. SGE hereby offers to provide gratuitous services as an advisor to DIA on matters concerning the mission and operation of DIA. SGE understands and agrees that DIA has the option of accepting or declining SGE's offer of gratuitous services to the extent permitted by law.
 7. With the exception of reimbursement for travel in accordance with Government travel regulations, SGE understands and agrees that neither DIA nor the United States will provide any monetary or other compensation, financial benefit, or reimbursement in any manner to SGE for providing the gratuitous services identified in Paragraph 4, above; and SGE agrees that he/she has no expectation of receiving any such compensation, financial benefit, or reimbursement from DIA or the United States for such gratuitous services, and SGE hereby waives and will not assert any claim for compensation, financial benefit or reimbursement of any kind against DIA or the United States for or in connection with any gratuitous services provided either under this Agreement or after any termination of this Agreement.
 8. SGE acknowledges and agrees that he or she will be bound by all DIA and DoD policies concerning the pre-publication review process.
 9. DIA is committed to maintaining an ethical culture and upholding the principles of ethical conduct. As an SGE, you will be subject to the Standards of Ethical Conduct for Employees of the Executive Branch as well as the criminal conflict of interest statutes. As a new or renewal SGE, you will be required to receive ethics training within 30 days of appointment.
 10. Prior to your appointment as an SGE, you are required to electronically file the Confidential Financial Disclosure Report (OGE 450) for a conflicts of interest review. If you have any
-

questions about these requirements, or any government ethics issue, you should contact DIA Office of the General Counsel at (202) 231-7631.

11. Both parties agree that, unless renewed in writing, this SGE's appointment will automatically expire 12 months from the date this agreement is signed.

12. Both parties declare that this document constitutes the sole and complete Gratuitous Services Agreement between them.

For DIA: _____

Printed Name: _____

Printed Title: _____

Date: _____

SGE: _____

Signature

Printed Name: Wiley, Neil R.

-- Printed Title: Mr.

Date: 05/14/2021



U.S Department of Defense Standards of Conduct Office

AN ETHICS GUIDE FOR SPECIAL GOVERNMENT EMPLOYEES, INCLUDING CONSULTANTS AND EXPERTS (SUCU AS ADVISORY COMMITTEE MEMBERS)

At the Department of Defense (DoD or Department), we are fortunate to have many professionals and industry leaders provide advice to the Secretary as consultants and experts. Because many of these individuals retain ties to defense industries or other organizations related to national security, it is important to identify potential conflicts of interest that may arise while serving as a DoD consultant. This handout briefly summarizes the ethics rules. We encourage employees to consult an ethics official whenever they have questions or need more detailed information.

Good faith reliance on the advice of an ethics official will, in most cases, protect you from adverse administrative action and deter criminal prosecution. SOCO attorneys are available at (703) 695-3422 or by email at OSD.SOCO@MAIL.MIL. We have also posted considerable guidance, including information on financial disclosure reporting, on our website at: http://ogc.osd.mil/defense_ethics/.

1. What does it mean to be a Special Government Employee?

In the Department, most employees appointed as consultants and experts, including members of advisory committees, serve as "Special Government Employees" (SGEs). Upon appointment, these consultants and experts assume many of the responsibilities, obligations, and restrictions that are part of public service.

SGEs are Government employees, for purposes of the conflict of interest laws. Specifically, an SGE is "an officer or employee . . . who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Your status as an SGE is determined prospectively at the time of your appointment based upon a good faith estimate that you will not be expected to serve more than 130 days during the ensuing 365-day period. This 130-day period is an aggregate of all your Federal service, and not just your appointment to one office or advisory committee at DoD. For example, it includes days you serve as a consultant or expert in another Federal agency or department, and days you serve as a military reservist. If you have served in any capacity for a Federal agency or department within the last year or will serve in the coming 365-day period, please

share this information with the appropriate DoD official to ensure that you do not exceed the 130-day limit.

When counting days that you work as an SGE, you must count each day in which you perform services as a full day, even if you did not perform services for the entire workday. Brief non-substantive interactions, such as emails or phone calls to set up a meeting or coordinate travel, should not be counted as a day of duty. Any day for which you are paid by the Government (not including travel reimbursement) must be counted as a day.

2. Financial Disclosure

At DoD, the vast majority of SGEs are required to file a Confidential Financial Disclosure Report (OGE Form 450), or in some cases the DoD alternate form (DoD Confidential Conflict-of-Interest Statement for DoD Advisory Committee Members). As the name implies, the OGE Form 450 (or DoD alternate form) is treated as confidential and is not available to members of the public. On very rare occasions, SGEs are required to file a Public Financial Disclosure Report (OGE Form 278e) because of the nature of the duties they are being asked to perform, the level of compensation for the position, or the statute authorizing the creation of the position mandates the filing of a public report. Again, as the name implies, the OGE Form 278e can be released to a member of the public upon request. The purpose of the financial disclosure report is to enable ethics officials to determine whether your financial interests may create a conflict of interest that would hinder or preclude your service for the Department.

3. Criminal Conflict of Interest Statutes

During your appointment you are required to comply with several criminal statutes. These statutes are codified at 18 U.S.C. §§ 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 primary financial conflict of interest statute, **18 U.S.C. § 208(a)**, prohibits all employees, including SGEs, from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or on the financial interests of any person whose interests are imputed to them. The interests of the following persons are imputed to you: your spouse; minor child; general partner; organizations which you serve as an officer, director, trustee, general partner or employee; and a person or organization with whom you are negotiating or have an arrangement concerning prospective employment. Because SGEs are typically engaged in outside employment which is related to the subject area for which the Government requests their services, it is extremely important to take this conflict rule into consideration.

A conflict may arise in various ways. An SGE would be prohibited from participating in a discussion that involves whether a certain weapons program should be continued if the SGE works for the company that manufactures the weapon, or from reviewing a contract proposal

from an association for which the SGE serves as a member of the board of directors. In these instances the SGE would be required to recuse from participating in the matter.

If you become aware of a conflict of interest, you must disqualify yourself from acting in the matter and notify your supervisor. You should also consult a DoD ethics official, since there are several regulatory exemptions that may permit you to participate even when you have certain financial interests that cause a conflict of interest.

The statute and implementing Federal regulations provide for issuance of waivers that may allow you to work on matters in which you have a financial conflict of interest. Such waivers must be issued by an authorized authority before you participate in the matter. Since waivers are complex and rarely granted, you must seek advice from a DoD ethics official.

Representational Activities

Two statutes, 18 U.S.C. §§ 203 and 205, prohibit Federal employees, including those in an SGE status, from representing another person or entity before any agency or court of the Executive or Judicial Branches. Specifically, as an SGE, section 203 prohibits the receipt of compensation for representational services only in particular matters involving a specific party: (1) in which an SGE has participated personally and substantially as a Government employee; or (2) which is pending in DoD if the SGE has served for more than 60 days in DoD (aggregating all days served at any DoD component or organization) during the immediately preceding 365 days. For example, this would include service within DoD as a regular employee, military member on active duty, and/or as an SGE. Representational services include written or oral communications and appearances made on behalf of someone else with the intent to influence the Government. Section 205 parallels section 203, except that even uncompensated representations made by an SGE are prohibited.

Limits on Representations After You Leave the Government

Finally, 18 U.S.C. § 207, prohibits former employees, including SGEs from representing another person or entity to DoD or another Federal agency or court on any particular matter involving a specific party in which the SGE participated personally and substantially while employed at DoD. This bar lasts for the lifetime of the particular matter.

4. Standards of Ethical Conduct

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

Teaching, Speaking, and Writing in a Personal Capacity

During your appointment, you may continue to receive fees, honoraria, and other compensation for teaching, speaking, and writing undertaken in your personal capacity on topics that are not directly related to your SGE position.

If you use your DoD title or position as one of several biographical details given to introduce yourself in connection with your personal teaching, speaking, or writing, and the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of DoD, you must use a disclaimer (at the beginning of your speech or prominently placed for written material), expressly stating that the views presented are yours and do not necessarily represent the views of DoD or its components.

Speaking on behalf of DoD

DoD advisory committee members provide Executive-level advice to the Secretary and the Deputy Secretary. These duties generally do not include representing DoD or its views to external entities. This means that advisory committee members may not represent the views of DoD, or give an official speech on behalf of DoD, as this is considered an inherently governmental function and as such can only be undertaken by a full-time or permanent part-time DoD employee or member of the military on active duty.

If you are asked to speak on behalf of DoD, for example, by Congress, the media, or an outside organization, please contact your supervisor or ethics official for further guidance.

Acceptance of Gifts from Outside Sources

Acceptance of gifts given to you because of your DoD position is generally prohibited. Because there are a number of exclusions or exceptions that permit the acceptance of a gift, you should consult an ethics official if you receive a gift in your SGE capacity.

Impartiality

While SGEs are prohibited from participating in matters in which they have a financial interest, there may be other circumstances in which an SGE's participation in a particular matter involving specific parties would raise a question regarding the SGE's impartiality. For example, if an SGE is asked to review a grant application submitted by their mentor or someone with whom the SGE has a close personal or professional relationship, this may raise concerns about the SGE's impartiality. In such circumstances, the SGE should seek the guidance of their supervisor or advisory committee staff to determine whether disqualification from the matter is appropriate.

Misuse of Position

SGEs are subject to a number of prohibitions intended to address the use, or appearance of "public office for private gain." These prohibitions include:

- c. Using your DoD title or referring to your Government position for your own private gain, the private gain of friends, relatives, or anyone with whom you are affiliated in a non-Governmental capacity (including nonprofit organizations at which you serve as an officer, member, employee or in any other business relationship), or for the endorsement of any product, service, or enterprise.

- c. Using your DoD title or Government position to coerce or induce another person to provide a benefit to you or another person.
- d. Using non-public Government information in a financial transaction to further your private interests or those of another, or disclosing confidential or non-public information without authorization.

Fundraising

Generally, you may fundraise in your personal capacity. You may not, however, 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 whom you know is a prohibited source and whose interests may be substantially affected by performance or non-performance of your DoD duties. Finally, you may not use or permit the use of your official title, position, or authority associated with your position to further any personal fundraising efforts.

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 limits the political activities of Federal civilian employees. SGEs are covered by the Hatch Act only when actually performing work for the Federal government. This means that an SGE may not engage in any political activities (activities associated with a partisan campaign) during the hours that he or she is "on-duty" for DoD.

Disclosure of Information

You may not disclose classified or proprietary information that you receive in the course of your DoD 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. Furthermore, you may not disclose Government information that is designated as confidential or has not been disseminated to the general public and is not authorized to be made available to the public on request. 5 C.F.R. § 2635.703.

Rev:
1/23/2018

From: (b)(3) 10 U.S.C. 424
Sent: Wed, 26 May 2021 17:30:02 -0400
To: (b)(3) 10 U.S.C. 424 Security Reviews
Cc: (b)(3) 10 U.S.C. 424;(b)(6)
Subject: FW: Special Government Employee Documentation - Ellen McCarthy (Inbound)
Attachments: DD 2292_Ellen McCarthy2.pdf, Gratuitous Service Agreement - McCarthy, Ellen.pdf, DoD Standards of Conduct.pdf

Classification: UNCLASSIFIED//~~DATA/FOUO~~

Good afternoon. Below and attached is the Special Government Employee (SGE) documentation for Inbound Ellen McCarthy who's scheduled to EOD with DIA. At your earliest convenience, please let me know if the selectee has met **Security Reviews**

(b)(3) 10 U.S.C. 424 requirements.

Let me know if any additional information is required. Thanks and have a great day!

(b)(3) 10 U.S.C. 424;(b)(6)

****THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.****

From: (b)(6)
Sent: Friday, May 21, 2021 12:53 PM
To: (b)(3) 10 U.S.C. 424;(b)(6)
Cc: (b)(6);(b)(3) 10 U.S.C. 424 (b)(6)
(b)(6)

Subject: RE: Special Government Employee Documentation - Ellen McCarthy (Inbound) ---
UNCLASSIFIED//~~DATA/FOUO~~

Classification: UNCLASSIFIED//~~DATA/FOUO~~

Email handling caveat corrected to reflect ~~UN (DATA)~~

Good afternoon,

Please see the information below. If you need anything else, please contact me.

Ellen McCarthy (Inbound SGE):

SSN: (b)(6);(b)(3) 10 U.S.C. 424

Date of Birth: (b)(6);(b)(3) 10 U.S.C. 424

Place of Birth (City/State/Country): (b)(6);(b)(3) 10 U.S.C. 424

Driver's License Number (Date Issued/State): (b)(6);(b)(3) 10 U.S.C. 424

Personal Phone Number: (b)(6);(b)(3) 10 U.S.C. 424

Personal Unclassified Email: (b)(3) 10 U.S.C. 424;(b)(6)

Personal Mailing Address: (b)(3) 10 U.S.C. 424;(b)(6)

Emergency Contact Name and Number: (b)(6)

(b)(6)

Last IC/DoD or Gov't Agency: Department of State

Thank you!

V/r,

(b)(6);(b)(3) 10 U.S.C. 424

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Thursday, May 20, 2021 9:03 PM

To: (b)(6)

(b)(6)

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Ellen McCarthy (Inbound)

Classification: UNCLASSIFIED//~~FOUO~~

=====

Good afternoon. Just checking on the status of the requested information for Ellen McCarthy. Please advise soonest. Thanks.

(b)(6);(b)(3) 10 U.S.C. 424

THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Monday, May 17, 2021 8:29 PM

To: (b)(6)

(b)(6)

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Ellen McCarthy (Inbound)

Importance: High

Classification: UNCLASSIFIED//~~FOUO~~

=====

Hi Michelle. Just checking on the status of the requested information. Please advise soonest. Thanks.

(b)(6);(b)(3) 10 U.S.C. 424

THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Wednesday, May 12, 2021 3:46 PM

To: (b)(6)

Cc: (b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Ellen McCarthy (Inbound)

Classification: UNCLASSIFIED//~~FOUO~~

(b)(6);(b)(3)
10 U.S.C.
424

Hi (b)(6) Once we receive approvals from Security someone from the gaining office or (b)(6) will provide the official start date. Typically security processing takes 1 to 6 weeks. Let us know if you have any other questions/concerns. Have a great day!

(b)(6);(b)(3) 10 U.S.C. 424

****THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.****

From: (b)(6)

Sent: Wednesday, May 12, 2021 10:22 AM

To: (b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

Subject: RE: Special Government Employee Documentation - Ellen McCarthy (Inbound) ---

UNCLASSIFIED//~~FOUO~~

Classification: UNCLASSIFIED//~~FOUO~~

(b)(6);(b)(3) 10 U.S.C. 424

I will get in contact with the Hon. McCarthy today to obtain this information for you.

For my call with her, please provide me with the expected onboarding date. Should she expect someone to be contacting her from (b)(6);(b)(3) 10 U.S.C. 424 in the near future?

Thank you,

(b)(6);(b)(3) 10 U.S.C. 424

<https://www.dia.ic.gov/homepage/cs/exrep/dos.html>

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Tuesday, May 11, 2021 8:31 PM

To: (b)(6)

(b)(6)

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: FW: Special Government Employee Documentation - Ellen McCarthy (Inbound)

Importance: High

(b)(6);(b)(3)
10 U.S.C. 424

Classification: UNCLASSIFIED//~~FOUO~~

Good afternoon. I understand Ms. Ellen McCarthy will be onboarding with DIA as a Special Government Employee (SGE). In efforts to move forward with security processing, can you please provide the information for Ms. McCarthy below so we can forward to our [redacted] for suitability processing.

I kindly ask that you please return the information soonest as we'd like to try and get the security approvals before the anticipated arrival date. Please let us know if you have any questions/concerns. Thanks.

Ellen McCarthy (Inbound SGE):

SSN:

Date of Birth:

Place of Birth (City/State/Country):

Driver's License Number (Date Issued/State):

Personal Phone Number:

Personal Unclassified Email:

Personal Mailing Address:

Emergency Contact Name and Number:

Last IC/DoD or Gov't Agency: Department of State

(b)(6);(b)(3) 10 U.S.C. 424

****THIS E-MAIL MAY CONTAIN INFORMATION THAT REQUIRES PROTECTION UNDER THE PRIVACY ACT LAW. PLEASE HANDLE AND STORE INFORMATION ACCORDINGLY.****

From: (b)(6);(b)(3) 10 U.S.C. 424

Sent: Tuesday, May 11, 2021 11:49 AM

To: (b)(6);(b)(3) 10 U.S.C. 424

Cc: (b)(6);(b)(3) 10 U.S.C. 424

(b)(6);(b)(3) 10 U.S.C. 424

Subject: Special Government Employee Documentation

Classification: UNCLASSIFIED//~~FOUO~~

Hi (b)(6);(b)(3) 10 U.S.C. 424

Thanks for the call. As discussed, attached is the documentation for SGEs. I am standing by to assist with the SOP and the legal requirements governing this situation.

1. Gratuitous Service Agreement – Informs SGE of requirements and responsibilities of entering the agreement. The SGE will sign this form agreeing to no compensation for the advising work they perform.
2. DD2292 – Documents the terms of the agreement such as organization SGE aligned to, number of days worked (only allowed to work 130 days out of every consecutive 365 days) Someone in the Chain of Command/Command Element will complete this form.
3. DoD Standards of Conduct – Informs SGE of ethics requirements

4. DoDI 5230.09 – Prepublication Review Instruction which requires any published work related to work done for the government be reviewed before release.

Additionally, the OGE 278 Public Financial Disclosure form (ethics requirement) will need to be completed by the SGE within 30 days of onboarding.

V/r,

(b)(6);(b)(3) 10 U.S.C. 424

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~ ~~DATA~~ ~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~ ~~DATA~~ ~~FOUO~~

REQUEST FOR APPOINTMENT OR RENEWAL OF APPOINTMENT OF CONSULTANT OR EXPERT		X	APPOINTMENT	REQUEST DATE (YYMMDD) 210409
			RENEWAL	
PART I - REQUESTING AUTHORITY				
1. NAME OF PROPOSED APPOINTEE (Last, First, Middle Initial) McCarthy, Ellen E.		2. OFFICE OR COMMITTEE TO WHICH APPOINTED CE		
3. ESTIMATED NUMBER OF DAYS TO BE WORKED DURING APPOINTMENT YEAR 20	4. PROPOSED COMPENSATION PER DAY OR INDICATE IF WOC None	5. PROPOSED EOD DATE (YYMMDD) 210515		
6. COMPLETE FOR RENEWAL APPOINTMENT OF CONSULTANT OR EXPERT				
a. NUMBER DAYS WORKED IN PRIOR APPOINTMENT YEAR 0	b. NUMBER DAYS TO BE WORKED 12	c. PROPOSED RATE OF PAY 0		
<p>7. DUTIES OF CONSULTANT OR EXPERT (Describe the duties in sufficient detail to (1) Permit a positive determination that the position actually requires a consultant or expert; (2) Determine whether or not a possible conflict of interest might exist; and (3) Explain the need for the appointment to the Secretary of Defense. If individual is to be a member of an advisory group established by law or by DoD Directive or Instruction, cite name of advisory group, law, or defense issuance in lieu of the list of duties or services.)</p> <p>As senior advisor, Ms. McCarthy has decades of experience in geopolitical issues and understanding of operational environments. Ms. McCarthy will use this experience to provide the director counsel and advice regarding DIA's transformation to support DoD operations in great powers competition environment to include foreign national security leaders, regional partnerships, and foreign military forces and their operational environment.</p>				
<p>8. NUMBER OF MILITARY OR CIVILIAN PERSONNEL IN YOUR ORGANIZATION NOW PERFORMING THE SAME OR SIMILAR FUNCTION PROPOSED FOR NOMINEE (Include full or part time personnel.)</p> <p>None.</p>				
<p>9. DESCRIBE THE NEED FOR ESTABLISHING FUNCTION (If new or for additional support to established function, state why the services cannot be procured through regular civil service procedures; and why presently employed military or civilian personnel cannot perform the function. Not required for Advisory Group members.)</p> <p>Ms. McCarthy's experience across multiple departments and private section and role leading policy decisions impacting national-level intelligence activities create a unique balance of knowledge, experience, and network needed to advise the DIA Director and cannot be replicated by presently employed military or civilian personnel.</p>				

10. DESCRIBE NOMINEE'S BACKGROUND AND EXPERIENCE AS IT RELATES TO THE REQUIREMENTS OF THIS APPOINTMENT (Attach completed SF-171, Personnel Qualifications Statement.)

The Honorable Ellen McCarthy, former Assistant Secretary of Intelligence and Research, was the DIA Directors counterpart at the State Department. She reported directly to the Secretary of State on all intelligence matters, providing him and his principles at home and abroad with current intelligence on fast-breaking issues and with timely and objective analyses on critical foreign policy priorities worldwide both immediate and long term. She also served as the Department's liaison with her counterparts, to include the Director of DIA, on questions of information, analysis, resources, collection and operations; prepares, in collaboration with other agencies of the IC national estimates on intelligence and foreign policy questions; and offers alternate judgements when necessary to ensure that community assessment focused on foreign policy needs. She coordinated regularly with the Director on matters relating to defense attaché operations at the Embassies/Posts and joint intelligence production.

Ms. McCarthy has extensive knowledge of human capital, military and civilian, cyber security, emerging technologies, intelligence support to law enforcement, malign influence based on her previous assignments at the Department of Defense, Department of Homeland Security, the Intelligence and National Security Alliance (INSA) and the private sector. Her unique and vast intelligence experience coupled with her familiarity of the Office of the Secretary of Defense will be of great benefit in efforts to improve the effectiveness and efficiency of DOD intelligence activities. She has the required TS/SCI security clearance with an update counterintelligence polygraph.

Current Activity: Advisor, Cyber Security Forum Initiative, a privately held non-profit, January 2021; Business Executives for National Security, member.

Experience: Assistant Secretary of State, INR/State; Chief Operating Officer, NGA; Director Human Capital Management and Security, OUSD(I&S); Deputy Director Strategy and Policy, OUSD(I&S); Director Intelligence Operations, US Coast Guard; Deputy Director Analysis, Atlantic Intelligence Command; All Source Intelligence Analyst, ONI.

11. IN ACCORDANCE WITH DOD DIRECTIVE 4205.2, I HAVE SATISFIED MYSELF THAT:

- a. The position is necessary;
- b. This is a consultant/expert position;
- c. The proposed appointee meets the definition of "consultant/expert" and does, in fact, possess the kind and level of expertise to render the services the agency seeks;
- d. The work is temporary in nature; that is, will not exceed one year; requires services only irregularly (*with no regular tour of duty*) or occasionally; is of a purely advisory nature, and does not include the performance of supervision of operating functions;
- e. This authority is the most appropriate appointment authority for meeting the agency's needs;
- f. The daily rate intended to be paid the proposed appointee is commensurate with the level of work to be performed and the individual's qualifications for the work;
- g. This appointment complies with DoD Directive 5500.7; and presents no conflict of interest; and
- h. Required documentation is in order and a favorable security/suitability determination has been rendered.

i. SIGNATURE OF HEAD OF ACTIVITY

(b)(6);(b)(3) 10 U.S.C. 424

j. ACTIVITY REQUESTING APPOINTMENT

CE

PART II - COORDINATION (If required by submitting activity)

12. SECURITY AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

13. BUDGET AND FINANCE AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

14. STANDARDS OF CONDUCT AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

15. PERSONNEL AUTHORITY

a. SIGNATURE

b. DATE SIGNED (YYMMDD)

PART III - APPROVAL AUTHORITY FOR APPOINTMENTS IN DEPARTMENTAL SERVICE

In approving the filling of this position without regard to the laws and regulations governing appointments in the competitive civil service, and in approving the rate of pay set for this position without regard to the classification and pay laws, I have considered the requirements of law (5 U.S.C. 3109), relevant Comptroller General decisions, FPM Chapter 304, and DoD Directive 4205.2.

16. DIRECTOR, ADMINISTRATION AND MANAGEMENT OR DESIGNEE

a. SIGNATURE

(b)(6);(b)(3) 10 U.S.C. 424

b. DATE SIGNED (YYMMDD)

GRATUITOUS SERVICES AGREEMENT

1. This Gratuitous Services Agreement is entered into by and between the Defense Intelligence Agency ("DIA") and The Honorable Ellen E. McCarthy (SPECIAL GOVERNMENT EMPLOYEE ("SGE")).
2. DIA hereby agrees to appoint SGE as an uncompensated expert under 10 USC § 1601, and consistent with the Department of Defense's criteria for appointing experts and consultants under 5 USC § 3109.
3. DIA further agrees that the scope of SGE's activities will not exceed those contemplated in the federal regulations implementing 5 USC § 3109. Specifically, DIA agrees that SGE will not be asked to perform any managerial or supervisory duties, make final decisions on substantive policies, or act on behalf of DIA in any matter.
4. This Agreement may be terminated in writing by either party, with or without cause, with or without prior notification to the other party. Neither party may claim or seek compensation or damages of any kind from the other party or from the United States because of any termination of this Agreement.
5. The terms of this Agreement may not be modified except by the express, written consent of both parties.
6. SGE hereby offers to provide gratuitous services as an advisor to DIA on matters concerning the mission and operation of DIA. SGE understands and agrees that DIA has the option of accepting or declining SGE's offer of gratuitous services to the extent permitted by law.
7. With the exception of reimbursement for travel in accordance with Government travel regulations, SGE understands and agrees that neither DIA nor the United States will provide any monetary or other compensation, financial benefit, or reimbursement in any manner to SGE for providing the gratuitous services identified in Paragraph 4, above; and SGE agrees that he/she has no expectation of receiving any such compensation, financial benefit, or reimbursement from DIA or the United States for such gratuitous services, and SGE hereby waives and will not assert any claim for compensation, financial benefit or reimbursement of any kind against DIA or the United States for or in connection with any gratuitous services provided either under this Agreement or after any termination of this Agreement.
8. SGE acknowledges and agrees that he or she will be bound by all DIA and DoD policies concerning the pre-publication review process.
9. DIA is committed to maintaining an ethical culture and upholding the principles of ethical conduct. As an SGE, you will be subject to the Standards of Ethical Conduct for Employees of the Executive Branch as well as the criminal conflict of interest statutes. As a new or renewal SGE, you will be required to receive ethics training within 30 days of appointment.
10. Prior to your appointment as an SGE, you are required to electronically file the Confidential

Financial Disclosure Report (OGE 450) for a conflicts of interest review. If you have any questions about these requirements, or any government ethics issue, you should contact DIA

(b)(6);(b)(3) 10 U.S.C. 424

11. Both parties agree that, unless renewed in writing, this SGE's appointment will automatically expire 12 months from the date this agreement is signed.

12. Both parties declare that this document constitutes the sole and complete Gratuitous Services Agreement between them.

For DIA: (b)(6);(b)(3) 10 U.S.C.
424

Printed Name: (b)(6);(b)(3) 10 U.S.C.
424

Printed Title: (b)(6);(b)(3) 10 U.S.C.
424

Date: 9 April 2021

SGE: Ellen E. McCarthy

Printed Name: Ellen E. McCarthy

Printed Title: The Honorable

Date: 10 Apr 2021



U.S Department of Defense Standards of Conduct Office

AN ETHICS GUIDE FOR SPECIAL GOVERNMENT EMPLOYEES, INCLUDING CONSULTANTS AND EXPERTS (SUCH AS ADVISORY COMMITTEE MEMBERS)

At the Department of Defense (DoD or Department), we are fortunate to have many professionals and industry leaders provide advice to the Secretary as consultants and experts. Because many of these individuals retain ties to defense industries or other organizations related to national security, it is important to identify potential conflicts of interest that may arise while serving as a DoD consultant. This handout briefly summarizes the ethics rules. We encourage employees to consult an ethics official whenever they have questions or need more detailed information.

Good faith reliance on the advice of an ethics official will, in most cases, protect you from adverse administrative action and deter criminal prosecution. SOCO attorneys are available at (703) 695-3422 or by email at OSD.SOCO@MAIL.MIL. We have also posted considerable guidance, including information on financial disclosure reporting, on our website at: http://ogc.osd.mil/defense_ethics/.

1. What does it mean to be a Special Government Employee?

In the Department, most employees appointed as consultants and experts, including members of advisory committees, serve as "Special Government Employees" (SGEs). Upon appointment, these consultants and experts assume many of the responsibilities, obligations, and restrictions that are part of public service.

SGEs are Government employees, for purposes of the conflict of interest laws. Specifically, an SGE is "an officer or employee . . . who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Your status as an SGE is determined prospectively at the time of your appointment based upon a good faith estimate that you will not be expected to serve more than 130 days during the ensuing 365-day period. This 130-day period is an aggregate of all your Federal service, and not just your appointment to one office or advisory committee at DoD. For example, it includes days you serve as a consultant or expert in another Federal agency or department, and days you serve as a military reservist. If you have served in any capacity for a Federal agency or department within the last year or will serve in the coming 365-day period, please

share this information with the appropriate DoD official to ensure that you do not exceed the 130-day limit.

When counting days that you work as an SGE, you must count each day in which you perform services as a full day, even if you did not perform services for the entire workday. Brief non-substantive interactions, such as emails or phone calls to set up a meeting or coordinate travel, should not be counted as a day of duty. Any day for which you are paid by the Government (not including travel reimbursement) must be counted as a day.

2. Financial Disclosure

At DoD, the vast majority of SGEs are required to file a Confidential Financial Disclosure Report (OGE Form 450), or in some cases the DoD alternate form (DoD Confidential Conflict-of-Interest Statement for DoD Advisory Committee Members). As the name implies, the OGE Form 450 (or DoD alternate form) is treated as confidential and is not available to members of the public. On very rare occasions, SGEs are required to file a Public Financial Disclosure Report (OGE Form 278e) because of the nature of the duties they are being asked to perform, the level of compensation for the position, or the statute authorizing the creation of the position mandates the filing of a public report. Again, as the name implies, the OGE Form 278e can be released to a member of the public upon request. The purpose of the financial disclosure report is to enable ethics officials to determine whether your financial interests may create a conflict of interest that would hinder or preclude your service for the Department.

3. Criminal Conflict of Interest Statutes

During your appointment you are required to comply with several criminal statutes. These statutes are codified at 18 U.S.C. §§ 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 primary financial conflict of interest statute, **18 U.S.C. § 208(a)**, prohibits all employees, including SGEs, from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or on the financial interests of any person whose interests are imputed to them. The interests of the following persons are imputed to you: your spouse; minor child; general partner; organizations which you serve as an officer, director, trustee, general partner or employee; and a person or organization with whom you are negotiating or have an arrangement concerning prospective employment. Because SGEs are typically engaged in outside employment which is related to the subject area for which the Government requests their services, it is extremely important to take this conflict rule into consideration.

A conflict may arise in various ways. An SGE would be prohibited from participating in a discussion that involves whether a certain weapons program should be continued if the SGE works for the company that manufactures the weapon, or from reviewing a contract proposal

from an association for which the SGE serves as a member of the board of directors. In these instances the SGE would be required to recuse from participating in the matter.

If you become aware of a conflict of interest, you must disqualify yourself from acting in the matter and notify your supervisor. You should also consult a DoD ethics official, since there are several regulatory exemptions that may permit you to participate even when you have certain financial interests that cause a conflict of interest.

The statute and implementing Federal regulations provide for issuance of waivers that may allow you to work on matters in which you have a financial conflict of interest. Such waivers must be issued by an authorized authority before you participate in the matter. Since waivers are complex and rarely granted, you must seek advice from a DoD ethics official.

Representational Activities

Two statutes, 18 U.S.C. §§ 203 and 205, prohibit Federal employees, including those in an SGE status, from representing another person or entity before any agency or court of the Executive or Judicial Branches. Specifically, as an SGE, section 203 prohibits the receipt of compensation for representational services only in particular matters involving a specific person (1) in which an SGE has participated personally and substantially as a Government employee; or (2) which is pending in DoD if the SGE has served for more than 60 days in DoD (aggregating all days served at any DoD component or organization) during the immediately preceding 365 days. For example, this would include service within DoD as a regular employee, military member on active duty, and/or as an SGE. Representational services include written or oral communications and appearances made on behalf of someone else with the intent to influence the Government. Section 205 parallels section 203, except that even uncompensated representations made by an SGE are prohibited.

Limits on Representations After You Leave the Government

Finally, 18 U.S.C. § 207, prohibits former employees, including SGEs from representing another person or entity to DoD or another Federal agency or court on any particular matter involving a specific person in which the SGE participated personally and substantially while employed at DoD. This bar lasts for the lifetime of the particular matter.

4. Standards of Ethical Conduct

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

Teaching, Speaking, and Writing in a Personal Capacity

During your appointment, you may continue to receive fees, honoraria, and other compensation for teaching, speaking, and writing undertaken in your personal capacity on topics that are not directly related to your SGE position.

If you use your DoD title or position as one of several biographical details given to introduce yourself in connection with your personal teaching, speaking, or writing, and the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of DoD, you must use a disclaimer (at the beginning of your speech or prominently placed for written material), expressly stating that the views presented are yours and do not necessarily represent the views of DoD or its components.

Speaking on behalf of DoD

DoD advisory committee members provide Executive-level advice to the Secretary and the Deputy Secretary. These duties generally do not include representing DoD or its views to external entities. This means that advisory committee members may not represent the views of DoD, or give an official speech on behalf of DoD, as this is considered an inherently governmental function and as such can only be undertaken by a full-time or permanent part-time DoD employee or member of the military on active duty.

If you are asked to speak on behalf of DoD, for example, by Congress, the media, or an outside organization, please contact your supervisor or ethics official for further guidance.

Acceptance of Gifts from Outside Sources

Acceptance of gifts given to you because of your DoD position is generally prohibited. Because there are a number of exclusions or exceptions that permit the acceptance of a gift, you should consult an ethics official if you receive a gift in your SGE capacity.

Impartiality

While SGEs are prohibited from participating in matters in which they have a financial interest, there may be other circumstances in which an SGE's participation in a particular matter involving specific parties would raise a question regarding the SGE's impartiality. For example, if an SGE is asked to review a grant application submitted by their mentor or someone with whom the SGE has a close personal or professional relationship, this may raise concerns about the SGE's impartiality. In such circumstances, the SGE should seek the guidance of their supervisor or advisory committee staff to determine whether disqualification from the matter is appropriate.

Misuse of Position

SGEs are subject to a number of prohibitions intended to address the use, or appearance of "public office" for private gain." These prohibitions include:

- c. Using your DoD title or referring to your Government position for your own private gain, the private gain of friends, relatives, or anyone with whom you are affiliated in a non-Governmental capacity (including nonprofit organizations at which you serve as an officer, member, employee or in any other business relationship), or for the endorsement of any product, service, or enterprise.

- c. Using your DoD title or Government position to coerce or induce another person to provide a benefit to you or another person.
- d. Using non-public Government information in a financial transaction to further your private interests or those of another, or disclosing confidential or non-public information without authorization.

Fundraising

Generally, you may fundraise in your personal capacity. You may not, however, 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 whom you know is a prohibited source and whose interests may be substantially affected by performance or non-performance of your DoD duties. Finally, you may not use or permit the use of your official title, position, or authority associated with your position to further any personal fundraising efforts.

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 limits the political activities of Federal civilian employees. SGEs are covered by the Hatch Act only when actually performing work for the Federal government. This means that an SGE may not engage in any political activities (activities associated with a partisan campaign) during the hours that he or she is "on-duty" for DoD.

Disclosure of Information

You may not disclose classified or proprietary information that you receive in the course of your DoD 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. Furthermore, you may not disclose Government information that is designated as confidential or has not been disseminated to the general public and is not authorized to be made available to the public on request. 5 C.F.R. § 2635.703.

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