

ETHICS PRIMER

FOR REPRESENTATIVES SERVING ON
ADVISORY COMMITTEES AND BOARDS

OF THE

U.S. DEPARTMENT OF EDUCATION



September 2010

ETHICS ADVICE FOR REPRESENTATIVES

The Department of Education has several advisory committees, boards, commissions and councils. Individuals appointed to these bodies serve as either “special government employees (SGEs),” or as “representatives.” The Department makes the decision to designate an individual as either an SGE¹ or a representative after consultation with the Office of the Counsel to the President, and the Office of Government Ethics. In your case, you have been deemed to serve as a “representative.”

What is a “representative” and what do representatives do?

A representative:

1. Is not a federal government employee.
2. Typically serves on advisory bodies—committees, boards, commissions or councils. (We will use the term “committee” to include “board,” “commission” and “council.”)
3. Represents the points of view of a specific interest group or groups that have an interest in the subject or matter under the committee’s charge.
4. Does not act as a spokesperson for or act on behalf of the United States or a government agency—as, for example, at a conference; if you do, you would be acting as an officer or employee of the government.
5. Does not receive compensation from the government for services (other than travel expenses and per diem).

What ethics laws and rules apply to me as a representative?

As a representative, you are not subject to either the ethics rules (Standards of Ethical Conduct for Employees of the Executive Branch) or the criminal conflict of interest laws that apply to regular federal employees and SGEs. You also do not need to complete financial disclosure reports. This is because representatives do not owe a duty to promote the interests of the federal government. Rather, as a representative, you are expected to advocate on behalf of a particular industry, group, or other entity.

If the ethics laws and rules do not apply, what does apply to my conduct as a representative?

Even as a representative who is not covered by the ethics laws and rules, there are still some laws that apply to you and some “ethical principles” that you should follow as you carry out your responsibilities. You should:

1. Comport yourself with integrity so as not to trade upon your position as a representative on a committee for your own personal benefit or the private gain of others-- for example, comply with applicable federal travel regulations and reimbursement procedures. Not only will you avoid potential criticism or

¹ A special government employee is subject to federal ethics laws and regulations.

embarrassment, but also the work of your committee will not be unnecessarily questioned.

2. Not use your service as a representative on a committee to promote yourself, your services or products or those of other private parties– for example, do not include your affiliation with a committee in marketing materials promoting a recent publication, unless your service on the committee is included only as one of several biographical entries and your service is not more prominently mentioned.

Are there any other laws that apply to me as a representative?

LOBBYING

Subject to applicable policies and procedures, you and your committee may communicate directly with Congress in your official capacity on matters that are related to legislation or appropriations deemed necessary to conduct the committee’s “public business” (i.e., the committee’s statutory and regulatory functions and responsibilities). However, the Anti-Lobbying Act, 18 U.S.C. § 1913, and the Department’s appropriations statutes, prohibit you, **in your official capacity as a committee member**, from engaging in “grass-roots lobbying” (i.e., suggesting or requesting that others contact Congress or a state legislature to urge the passage or defeat of proposed or pending legislation), even if it is related to the committee’s public business. Section 1913 also requires that any permissible direct communications with Congress, in your official capacity as a committee member, be made only through official channels of the Department.

None of these restrictions prohibits you from lobbying members of Congress or state legislatures, or urging others to do so, **on your own time in your personal capacity**. If you lobby Congress or state legislatures in your personal capacity, and the issue is related to Committee business, you should make it clear that you are not representing the Department committee, and not acting in your official capacity as a committee member. Also, please note that when you are acting in your personal capacity, you are not permitted to use government resources or equipment (including, but not limited to, computers, telephones, fax machines, copy machines, stationery, etc.), or to seek assistance from committee staff, to engage in lobbying activities.

POLITICAL ACTIVITY

The Hatch Act, 5 U.S.C. § 7321 – 7326, which governs the partisan political activities of federal employees, is not applicable to you. However, the Department is not permitted to use appropriated funds to engage in partisan political activity.² Accordingly, you may not engage in partisan political activity **in your official capacity as a Department committee member**. As with lobbying, you may engage in partisan political activity **on your own time in your personal capacity** but, when you are acting in your personal capacity, you are not permitted to use government resources or equipment (including, but not limited to, computers, telephones, fax machines, copy machines, stationery), or seek assistance from committee staff, to engage in partisan political activity.

² “Partisan political activity” means any activity designed to promote or defeat a partisan political candidate or party.

What ethics laws and rules apply to committee staff and members who are regular federal employees?

Individuals appointed to the Committee, who are otherwise federal employees, and committee staff remain subject to all federal ethics laws and regulations, and should contact the Ethics Division with any questions.

**Ethics Division
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