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Memorandum dated February 22, 2007,
from Robert I. Cusick, Director,
to Designated Agency Ethics Officials
Regarding New OLC Opinion on SGE Day-Counting

On January 26, 2007, the Office of Legal Counsel (OLC), Department of Justice, issued an opinion reaffirming the longstanding executive branch interpretation that service by a special Government employee (SGE) for part of any day counts as service for a full day, for purposes of relevant limits on the number of days of service under the conflict of interest laws. Memorandum of Steven G. Bradbury, Acting Assistant Attorney General, OLC, to William J. Haynes II, General Counsel, Department of Defense, January 26, 2007, available on the OGE website at: http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/other_gdnc/olc_01_26_07.pdf. The opinion specifically rejected the interpretation that "a single day for counting purposes would comprise eight hours of work, even if performed over several days." *Id.* at 1.

The subject of SGE day-counting also is addressed in our own recent DAEOgram, "Counting Days of Service for Special Government Employees," DO-07-002 [Informal Advisory Memorandum 07x1], issued January 19, 2007. See http://www.usoge.gov/pages/daeograms/dgr_files/2007/do07002.pdf. That DAEOgram likewise affirmed that a part of a day of service should be counted as a full day. *Id.* at 3-4. At the same time, the DAEOgram recognized that certain activities by an SGE on a given day may be so insubstantial or de minimis that days on which those activities alone are performed need not be counted toward any applicable day limits. The new OLC opinion briefly discusses the DAEOgram and notes that OGE's guidance concerning de minimis activities "mitigates some of the effects the existing rule may have on [an agency's] ability to attract and retain consultants as SGEs" and also "weighs against any argument that the practical administrative demands of the Government require a change to the existing rule." OLC Opinion at 9 n.4.