

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

# 18 U.S.C. § 205(a)(2): From Doctrine to Implementation

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# 18 U.S.C. § 205



(a)(1) Clause 1	Bars employees, other than in the discharge of their official duties, from acting as agent or attorney for another for prosecuting any claims against the U.S.
(a)(1) Clause 2	Bars employees, other than in the discharge of their official duties, from receiving any compensation in consideration of assistance in the prosecution of a claim against the U.S.
(a)(2)	Bars employees, other than in the discharge of their official duties, from acting as agent or attorney for another before any department, agency, or court in connection with a covered matter in which the U.S. is a party or has a direct and substantial interest.
(b)	Prohibitions applicable to employees of D.C. in connection with claims against D.C. and matters in which D.C. is a party of has a direct and substantial interest
(c)	Provides that all SGEs are subject to section 205(a) and (b) only in relation to certain covered matters involving specific parties
(d)-(g); (i)	Exceptions
(h)	Definition of “covered matter”

# 18 U.S.C. § 205(a): Three Distinct Offenses



<p>(a)(1) Clause 1</p>	<p>Bars employees, other than in the discharge of their official duties, from acting as agent or attorney for another for prosecuting any <b><u>claim</u></b> against the U.S.</p>
<p>(a)(1) Clause 2</p>	<p>Bars employees, other than in the discharge of their official duties, from receiving any compensation in consideration of assistance in the prosecution of a <b><u>claim</u></b> against the U.S.</p>
<p>(a)(2)</p>	<p>Bars employees, other than in the discharge of their official duties, from acting as agent or attorney for another before any department, agency, or court in connection with a <b><u>covered matter</u></b> in which the U.S. is a party or has a direct and substantial interest.</p>

# 18 U.S.C. § 205(a)(1)



An officer or employee [may not]		
[Clause 1]		[Clause 2]
Act as agent or attorney	OR	Receive any gratuity or any share of / interest in the claim [i.e., compensation]
For another		In consideration of assistance
For prosecuting		In the prosecution of
A <u>claim</u> against the United States		
Other than in the discharge of official duties		

# 18 U.S.C. § 205(a)(2)



<b>An officer or employee [may not]</b>		
<b>Act as agent or attorney [which requires:]</b>		
<b>1) Actual or apparent authority</b>	<b>2) Direct communication</b>	<b>3) Intent to influence</b>
<b>For another</b>		
<b>Before a Department, Agency, or Court</b>		
<b>In connection with a <u>covered matter</u></b>		
<b>In which the United States is a party of has a direct and substantial interest</b>		
<b>Other than in the discharge of official duties</b>		

# Actual or Apparent Authority



- The common law definition of agent is used in a § 205(a)(2) analysis. *O’Neill v. Dep’t of Hous. & Urban Dev.*, 220 F.3d 1354, 1360 (Fed. Cir. 2000).
- Under current case law, § 205(a)(2) requires that the employee have either actual or apparent authority to communicate on behalf of an individual. *O’Neill*, 220 F.3d at 1363. In almost all situations, this means that as a matter of law the employee is an agent.



# Routes to Acting as Agent under O'Neill & Common Law of Agency



## 1. Agency Relationship + Actual Authority

- Two questions on Flow Chart, why?
- Action by the agent alone is sufficient for a 205(a)(2) violation because there is agreement and control

### Hypo's-

A. Gov't Employee, Andy, works part-time for Fortune 500 company as financial analyst, and in that capacity writes and sends correspondence to the SEC regarding an ongoing investigation of the company. (Agency + Actual Authority—also an 18 U.S.C. 203 violation)

B. Same example, but Andy works for Fortune 500 company as an IT specialist, and advocates for the dismissal of the investigation. (Agency but no Actual Authority)

**\*\*If NO agency, you still must determine whether apparent authority is present.\*\***

# Routes to Acting as Agent under O'Neill & Common Law of Agency



## 2. Agency Relationship + Apparent Authority

- Action by Agent is outside the scope of Actual Authority
- **Principal's** manifestation, by action or acquiescence, is required
- Must be reasonable for the Gov't to believe the employee is an agent with authority

Hypo: Andy, the same IT specialist, is serving as tech. support for a teleconference with Sr. Executives, Attorneys and SEC employees. Andy makes a statement about the investigation. The company likes statement, so the Sr. Executives say nothing.



# Routes to Acting as Agent under O'Neill & Common Law of Agency



## 3. No Agency Relationship + Apparent Authority

- Manifestation by the **Principal** required (O'Neill case—no agency and no manifestation, so no Apparent Authority)
- Must be reasonable for Gov't to believe the employee is an agent with authority

Hypo: Andy now works for Company X, who has an IT services contract with the Fortune 500 company. Andy serves as tech. support for a teleconference with Sr. Executives, Attorneys and SEC employees. Andy makes a statement about the investigation. The Fortune 500 company likes the statement, so the Sr. Executives say nothing.

# Direct Communication



- “An employee does not act as agent or attorney in the absence of communication with . . . the government.” DO-02-018
- Behind-the-scenes activity, consisting of a communication that is only indirectly addressed to the Government, is not barred by 18 U.S.C. § 205.

# Intent to Influence



- The communication must be in connection with matter on which there is some controversy or at least potential for divergent views, such as seeking discretionary government action. See OGE 94x15.
- Routine, ministerial, or factual communications are not prohibited by 18 U.S.C. § 205(a)(2). *Id.*

# Intent to Influence



**OGE 05x2(1):** A 10-K is a “submission of facts without advocating that the facts be interpreted in a particular way.”

**Form 1040** Department of the Treasury—Internal Revenue Service (99) **2013** U.S. Individual Income Tax Return OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 2013, or other tax year beginning \_\_\_\_\_, 2013, ending \_\_\_\_\_, 20 \_\_\_\_\_ See separate instructions.

Your first name and initial \_\_\_\_\_ Last name \_\_\_\_\_ Your social security number \_\_\_\_\_

If a joint return, spouse's first name and initial \_\_\_\_\_ Last name \_\_\_\_\_ Spouse's social security number \_\_\_\_\_

Home address (number and street). If you have a P.O. box, see instructions. \_\_\_\_\_ Apt. no. \_\_\_\_\_

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). \_\_\_\_\_

Foreign country name \_\_\_\_\_ Foreign province/state/country \_\_\_\_\_ Foreign postal code \_\_\_\_\_

**Filing Status** 1  Single 4  Head of household (with one or more dependents) (see instructions) 2  Married filing jointly (even if only one had income) 3  Married filing separately. Enter spouse's SSN above and full name here. ▶ 5  Qualifying widow(er) with dependent child

Check only one box.

**Exemptions** 6a  Yourself. If someone can claim you as a dependent, do not check box 6a. 6b  Spouse

c Dependents:		(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input type="checkbox"/> If child under age qualifying for child tax on (see instructions)
(1) First name	Last name			
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

If more than four dependents, see instructions and check here

**OGE 85x3:** “It is our understanding that by simply signing another’s income tax return as the preparer, you have not yet acted as an agent, you have stated a fact.”

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0063
Expires:	April 30, 2015
Estimated average burden hours per response	. . . 1.998.78

(Mark One)

## FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended \_\_\_\_\_ or \_\_\_\_\_

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number \_\_\_\_\_

(Exact name of registrant as specified in its charter)

State or other jurisdiction of incorporation or organization

(I.R.S. Employer Identification No.)

# 18 U.S.C. § 205(a)(2)



<b>An officer or employee [may not]</b>		
<b>Act as agent or attorney [which requires:]</b>		
<b>1) Actual or apparent authority</b>	<b>2) Direct communication</b>	<b>3) Intent to influence</b>
<b>For another</b>		
<b>Before a Department, Agency, or Court</b>		
<b>In connection with a <u>covered matter</u></b>		
<b>In which the United States is a party of has a direct and substantial interest</b>		
<b>Other than in the discharge of official duties</b>		



# On Behalf of Another



- Does not bar self-representation. 94x15
- An employee may represent his own views before the Government in connection with a particular matter, including:
  - Views that are the same as those held by an organization in which the employee happens to be a member (94x15);
  - Communications that are in support of another's position (98x18); or
  - Communications that are for the benefit of another (07x7).



# Before a Department, Agency, or Court



- “Department” means one of the executive departments enumerated in section 1 of title 5 (*i.e.*, strictly federal departments). See 18 U.S.C. § 6.
- “The term ‘agency’ in § 205(a) should be construed to apply only to Federal agencies, and not state and local or District of Columbia entities.” 24 Op. O.L.C. 13.
- “The term ‘court’ in the same provision covers state as well as Federal Courts ‘if the United States is a party to the proceeding or if a direct and substantial interest of the United States is involved in the proceeding.’” 24 Op. O.L.C. 13 (quoting an unpublished 1970 OLC Opinion).

# Direct and Substantial Interest



- OGE regulations interpreting § 207 provide helpful guidance on the scope of the phrase by describing its application in the context of that statute. OGE Advisory Letter 94x7.
- 5 C.F.R. § 2641.201(j)(2)(ii):
  - The component has a financial interest in the matter;
  - The matter is likely to have an effect on the policies, programs, or operations of the component;
  - The component is involved in any proceeding associated with the matter, e.g., as by having provided witnesses or documentary evidence; and
  - The component has more than an academic interest in the outcome of the matter.

# Other than in the Discharge of Official Duties



Determining whether a representational activity is “in the proper discharge” of an employee’s official duties requires the employee’s official supervisors to make a factual determination of whether the proposed representational activity falls within the scope of an employee’s official duties, *i.e.*, whether the activity is part of the employee’s job. See OGE Advisory Letter 88x14; OGE Advisory Letter 94x8.

# Special Government Employees



- (c) An SGE shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties—
  - (1) In which he/she has at any time participated personally and substantially as a Government Employee or SGE through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise; or
  - (2) Which is pending in the Department or agency of the Government in which he/she is serving.

Paragraph (2) shall not apply in the case of an SGE who has served in such Department or agency no more than 60 days during the immediately preceding period of 365 days.

# Part-time IPAs Detailed to a Federal Agency

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- IPA detailees assigned to a federal agency are subject to 18 U.S.C. § 205
- For a part-time IPA employee who is detailed for 130 days or less during any period of 365 consecutive days, 18 U.S.C. § 205 would apply only to the extent that it applies to SGEs



# Key References - 18 U.S.C. § 205

## Application to SGEs and IPAs

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- ✓ OGE Legal Advisory 90x22, Application of Restrictions on Outside Earning and Employment Activities [including SES Level SGEs] (November 15, 1990)
- ✓ OGE Legal Advisory 00x1, Summary of Ethical Requirements Applicable to Special Government Employees (February 15, 2000)
- ✓ OGE Legal Advisory 04x9, SGEs and Representatives on Federal Advisory Committees (July 19, 2004)
- ✓ OGE Website, [www.oge.gov](http://www.oge.gov), Topics/Selected Employee Categories/Special Government Employees
- ✓ OGE Legal Advisory 06x10, Intergovernmental Personnel Act Summary (October 19, 2006)
- ✓ DOJ Office of Legal Counsel Opinion, "Application of 18 U.S.C. §§ 203 and 205 to Federal Employees Detailed to State and Local Governments," (March 31, 1980)
- ✓ DOJ Office of Legal Counsel Opinion, "Application of 18 U.S.C. § 205 to Employees Serving on an Intergovernmental Personnel Act Assignment, (January 11, 1999)



# Exceptions



<b>(d)(1)(A)</b>	<b>Permitting employees to represent other employees in connection with certain disciplinary, loyalty, or other personnel administration proceedings</b>
<b>(d)(1)(B)</b>	<b>Permitting employees to represent nonprofit employee organizations in certain circumstances</b>
<b>(e)</b>	<b>Permitting the representation of an employee's parents, spouse, child, and certain other persons with whom the employee has a unique relationship</b>
<b>(f)</b>	<b>Permitting SGEs performing work under a Government grant or contract to represent in certain situations</b>
<b>(g)</b>	<b>Permitting the giving of testimony under oath and the making of statements required under penalty of perjury or contempt</b>
<b>(i)</b>	<b>Permitting representation pursuant to certain statutes that deal with labor-management relations</b>

# 18 U.S.C. § 205(g)



Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

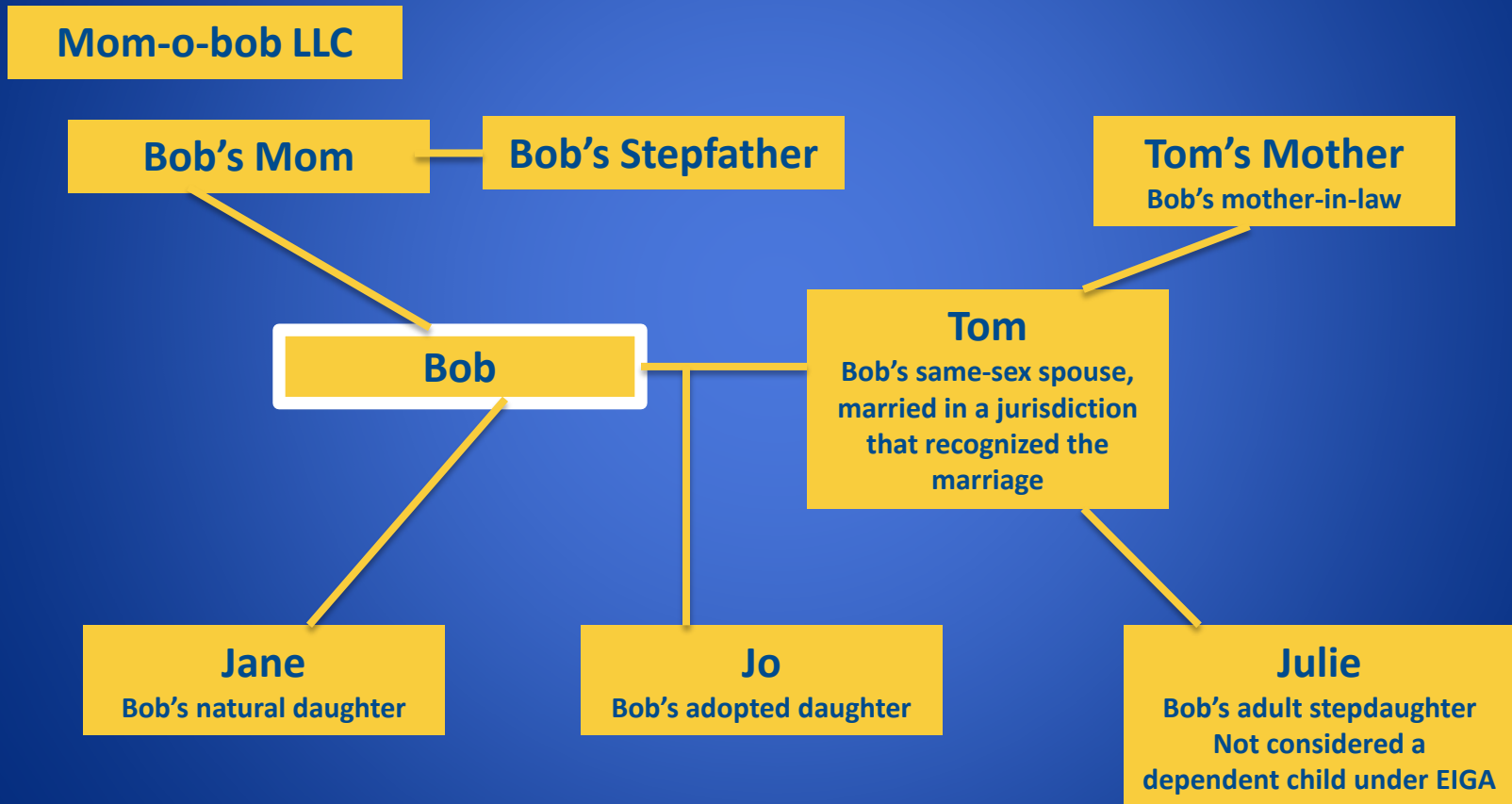
# 18 U.S.C. § 205(e)



An employee may act, with or without compensation, as agent or attorney for:

- Parent,
- Child,
- Spouse [including same-sex spouse], or
- Any person for whom, or for any estate for which, he is serving as
  - Guardian,
  - Executor,
  - Administrator,
  - Trustee, or
  - Other personal fiduciary.

# 18 U.S.C. § 205(e)



# 18 U.S.C. § 205(e)



An employee may act, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

- (1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or
- (2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.



# Ethical Quandaries or What Hat Am I Wearing Today?





**18 U.S.C. 205**: GR = Prohibition against Federal employees representing others before Federal agencies if...

- the Government Employee is acting as an agent or attorney...
  - (a)(1) For prosecuting any claim against the U.S., or
  - (a)(2) In connection with any covered matter in which the U.S. is a party or has a direct and substantial interest?

“AS YOU CAN SEE, I'M NOT WEARING MY 'GOVERNMENT EMPLOYEE' HAT TODAY.”



# THE OVERSEAS CONTRACTOR

**A fantastic opportunity has come up!**

**An old friend has just landed a contract with a government agency, and you would be perfect for it.**

**You're furloughed and have the time to go overseas to work for the contractor.**

**This is a great professional opportunity for you.**

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**Here are the Facts to clear with your Ethics Counselor...**



# THE FACTS:

- **Employee's Government Position:** Senior Advisor, primarily providing policy guidance to the agency's senior leadership.
- **Prospective Outside Employment:** Member of an "evaluation team," reviewing USG agricultural development programs in a foreign country, in concert with the country's Agriculture Ministry.
- **Contractor's relationship with Employee's agency:** None.
- **Employee's Role:** Conduct interviews with USG staff, Agriculture Ministry staff, program stakeholders and program beneficiaries to determine the progress of the USG programs. Present an oral briefing and prepare a report for USG agency that will develop usable metrics, assess the progress of the programs and make recommendations to the USG.



# ITEMS OF INTEREST

## These SOW items...

- From a technical management perspective, the evaluation team will work closely with a USG staff member.
- For the preliminary exit briefing, the evaluation team will submit and deliver a PowerPoint presentation for the USG agency, summarizing the draft report.
- USG staff will provide comments and these will be incorporated, and a second draft of the report will be prepared.
- The final report will contain recommendations for improved methodology on data collection.

## May lead to these questions

- What are the details of the interactions with USG officials on the evaluation work?
- What assignments require the employee to discuss contract performance activities with the USG?
- Are any assignments *behind the scenes*?
- Will the employee be presenting in person briefings to the USG?
- Will the employee prepare and be identified as an author of the final report?

# POSSIBLE VIOLATION OF REPRESENTATIONAL RESTRICTIONS



- Personally briefing USG
- Personally providing analysis of USG program to USG officials
- Briefing the CO or COR on contract status
- Personally providing actionable recommendations to USG officials
- Substantive interactions with USG employees
- Creating and presenting contractor briefings and reports to USG officials

# The Furloughed Lawyer



“... Yes, I’m absolutely available to take some short-term work!”

“I need this to pay the bills until I get another paycheck.”

“Hopefully there’s still someone in the ethics office who can let me know if this is okay...”



# The Facts:



- The Furloughed Lawyer is an Attorney for the Public Rights Division, which enforces the Fair Play Act (FPA).
- He is a career employee with no supervisory duties.
- The offer to do legal research is from a law firm with no matters before the agency.

# Assignment #1

The employee will be assigned to conduct legal research on contracts and real estate law to determine if a real estate broker is entitled to keep certain fees for customer services.

## FACTS:

- The firm is representing a client before a state court.
- No USG involvement or interest.

# Assignment #2

The Assignment requires the employee to interview possible witnesses, file court documents and draft motions.

## FACTS--

- The firm is representing a client before a Federal court. The USG is not a party in the case.
- The assignment relates to a case involving the Special Playbook Act (SPA), a Federal law.
- The Public Rights Division does not enforce the SPA. It is enforced by another Federal agency.
- The question in the case may raise public rights issues.

# Assignment #3

The Assignment requires the employee to conduct research concerning whether the client received appropriate treatment from a state agency under the Special Playbook Act.

## FACTS--

- A client matter is not yet being litigated. If litigated, the case would be brought in Federal Court.
- The matter may involve the client's public rights under the Fair Play Act.
- It is possible that the USG would be a party to the case if the matter is litigated.

# **AND DON'T FORGET...**

Other ethics statutes and regs that may come into play with outside activities, including...

- 18 U.S.C. § 208
- 5 C.F.R. § § 204 and 502, and Subparts G and H
- Agency Supplemental regs for approval for outside activities
- Including positions on financial disclosure reports

# Selected References

- OGE Legal Advisory DO-06-023: Communications made as employees of government contractors are subject to 18 U.S.C. 203 and 205.
- OGE Legal Advisory DO-02-018: 18 U.S.C. 205 would not prohibit serving on an organization with no representational activity anticipated.
- OGE Legal Advisory DO-99-049: “Representational services” defined.
- OGE Legal Advisory 96 x 6: Employees may provide “behind the scenes assistance.”
- OGE Legal Advisory 94x7: A representation involving a federal statute and a federal forum do not, standing alone, create a direct and substantial interest, but the surrounding facts must be analyzed to determine whether there is or is not a U.S. interest.

See Also,

- OGE Legal Advisory 00x10
- OGE Legal Advisory 99x19
- OGE Legal Advisory 98x18
- OGE Legal Advisory 82x20



*Further Questions?*

Contact:



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*Assistant Counsel*

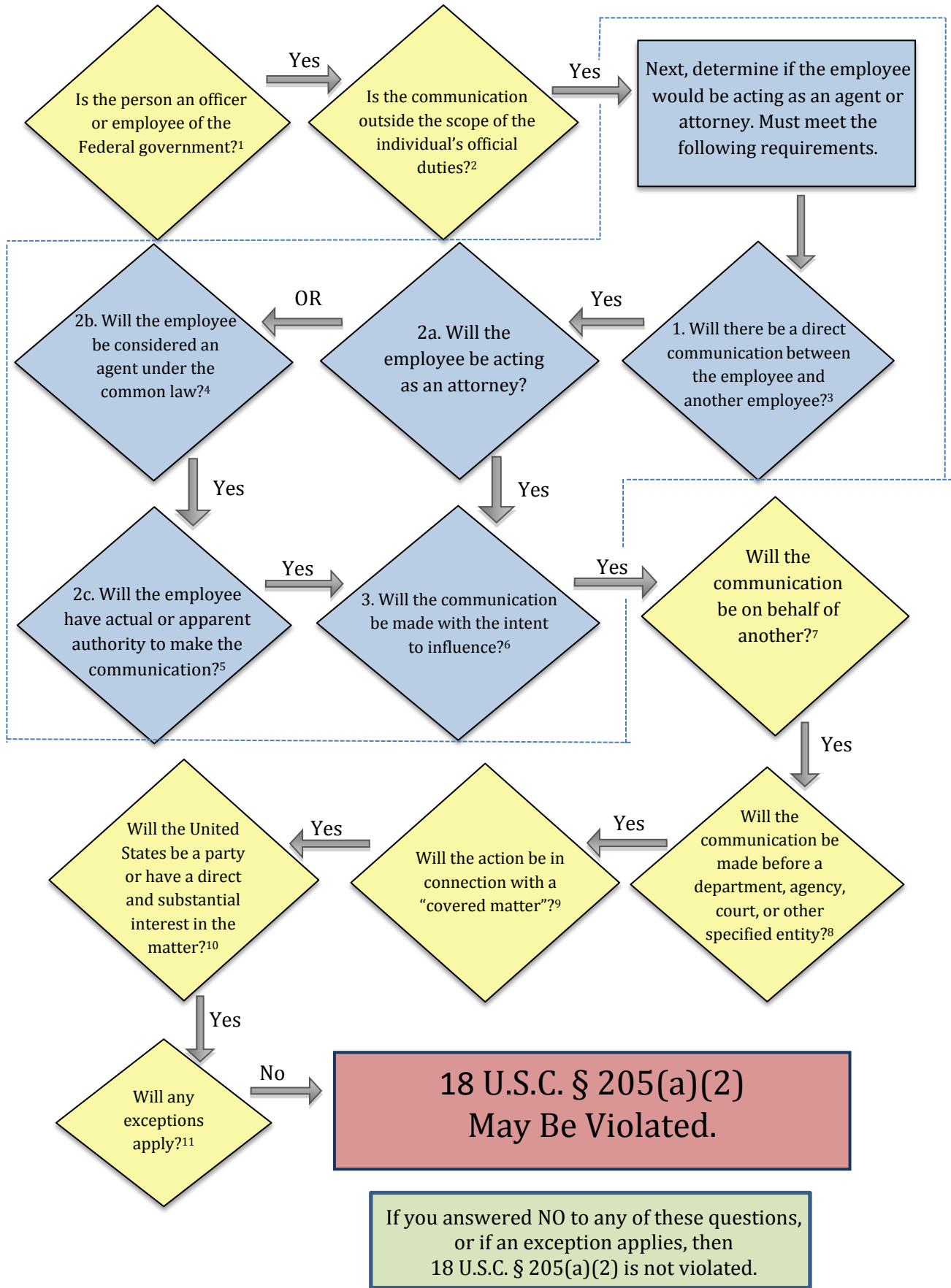
*202-482-9313*

**Ethics Rules for Executive Branch Employees**

	<b>SGE, i.e. "special government employee"</b>	<b>IPA Detail (via OF-69 agreement)</b>
<b>Conflict of Interest-</b> do not participate in agency matters that affect financial interests of yourself, organizations where you serve or are employed, family members, or future employers. (18 U.S.C. 208 and 5 C.F.R. 2635 Subpart D)	same	same
<b>Misuse of Position-</b> never use federal position for private gain of yourself or others, including use of non-public information gained as result of fed duties. (5 C.F.R. 2635 Subpart G; also bribery rule at 18 U.S.C. 201)	same	same
<b>Financial Disclosure-</b> if paid above the GS scale, then must file a public financial disclosure report (OGE-278); if in a GS position that has decision making authority, then must file a confidential report (OGE-450).	must always file a 278 or 450, except in very limited circumstances	same, but determined by the fed position occupied instead of salary amount from home employer
<b>Providing representation before the Executive Branch or Federal Courts-</b> cannot act as agent or attorney (for pay or pro-bono) for another party in a matter where the federal government has an interest. (18 U.S.C. 203/205)	60 days or less of fed service limited to matters on which SGE personally worked 61 days or more of fed service only for agency matters instead of the entire Executive Branch	detail is 60 days or less limited to matters on which detailee personally worked detail is 61 days or more must treat detailee the same as full employee
<b>Receiving outside compensation for federal duties-</b> ban on supplementation of government salary by outside organizations. (18 U.S.C. 209)	does not apply	does not apply to salary from home employer; otherwise same as full employee
<b>Receiving compensation for teaching, speaking, or writing in personal or official capacity-</b> ban on receiving any form of compensation for teaching, speaking, or writing related to official duties or agency's mission. (5 C.F.R. 2635.807)	same	same

\*Product developed by FEMA

**Does an Employee's Activities Implicate 18 U.S.C. § 205(a)(2)?\***



\*This is a summary and should not be considered legal advice

**Section 205(a)(2) of Title 18 generally bars an officer or employee of the United States from, among other things, “acting as agent or attorney for anyone” before any department, agency, or court in connection with a covered matter in which the United States is a party or has a direct and substantial interest. [Compensation is not an element.]**

**1. Officer or Employee of the Federal Government.** Generally, officers or employees of the United States, including employees in all three branches, are subject to § 205(a). The prohibition, however, is inapplicable to the President, Vice President, a Member of Congress, or a Federal judge. *See* 18 U.S.C. § 202(c). Employees of the Office of the U.S. Attorney for the District of Columbia are also subject to § 205(b), which deals with outside activity in connection with claims against the District of Columbia and matters in which the District of Columbia is a party or has a direct and substantial interest. Finally, special Government employees (SGEs), as defined in 18 U.S.C. § 202(a), are subject to less restrictive prohibitions, as set forth in § 205(c).

**2. Other than in the proper discharge of official duties.** An employee will not be in violation of § 205(a)(2) if the activity is “in the proper discharge of his official duties.” Determining whether a representational activity is “in the proper discharge” of an employee’s official duties requires the employee’s official supervisors to make a factual determination of whether a proposed representational activity falls within the scope of an employee’s official duties, *i.e.*, whether the activity is part of the employee’s job. *See* OGE Advisory Letter 88x14; OGE Advisory Letter 94x8.

**3. Direct Communication.** An employee does not act as agent or attorney before the Government “in the absence of communication with . . . the Government.” *See* Legal Advisory DO-02-018. The communication must be direct, *i.e.*, between the employee and another Government employee – not through another. “Behind-the-scenes” assistance consisting of a communication that is only indirectly addressed to the Government is not barred by § 205(a)(2). *See* OGE Advisory Letter 04x12.

**4. Agent.** The common law definition of agent is used in a § 205(a)(2) analysis. *O’Neill v. Dep’t of Hous. & Urban Dev.*, 220 F.3d 1354, 1360 (Fed. Cir. 2000).

**5. Actual or Apparent Authority.** Being an agent is necessary but not sufficient under § 205(a)(2). Under current case law, § 205(a)(2) also requires that the employee have either actual or apparent authority to act on behalf of a principal to make a communication. *O’Neill*, 220 F.3d at 1360.

**6. Intent to Influence.** Acting as agent or attorney requires intent to influence. The communication “must be in connection with a matter on which there is some controversy or at least potential for divergent views.” *See* OGE Advisory Letter 94x15. Communications of a “purely ministerial nature,” such as requesting factual information or responding to requests from the Government for factual information, are not barred by § 205(a)(2). *Id.*

**7. On Behalf of Another.** Section 205(a) does not bar self-representation. *See* OGE Advisory Letter 94 x 15. It also does not bar representation of the United States Government, even if the representation is other than in the proper discharge of official duties. *See* 4 Op. O.L.C. 498 (1980).

**8. Department, agency, court, or other specified entity.** The term “agency” in § 205(a)(2) encompasses Federal agencies, including those in the Executive and Legislative branches. 5 Op. O.L.C. 194 (1981). The term likely covers Judicial branch agencies as well. *See id.* (explaining that the definition of agency for title 18 is expansive and “in effect, establishes a presumption that a government entity is an agency” for purposes of the conflict of interest statutes). However, § 205(a)(2) “was not intended to prohibit services before ‘Congress or its committees.’” *Id.* The term “agency” also “does not apply to state agencies or agencies of the District of Columbia.” 24 Op. O.L.C. 13 (2000). However, the term “court” in the same provision “covers state as well as Federal courts.” *Id.*

**9. Covered Matter:** The term “covered matter” means “any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.” 18 U.S.C. § 205(h). The meaning of “particular matter” under 18 U.S.C. § 208 may be applied in the context of § 205(a)(2).

**10. Direct and Substantial Interest.** There is no statutory definition of the phrase “direct and substantial” as used in § 205(a)(2), but the phrase does appear in other criminal conflict of interest statutes, notably 18 U.S.C. §§ 203 and 207. OGE regulations interpreting § 207, at 5 C.F.R. § 2641.201(j)(2), provide helpful guidance on the application of this phrase. OGE Advisory Letter 94x7.

**11. Exceptions.** *See* 18 U.S.C. §§ 205(d)(1)(A) (permitting representation in connection with certain disciplinary, loyalty, or other personnel administration proceedings); 205(d)(1)(B) (permitting employees to represent nonprofit employee organizations in certain circumstances); 205(e) (permitting the representation of an employee’s parents, spouse, children, and certain other persons); 205(f) (permitting SGEs performing work under a Government grant or contract to represent in certain situations); 205(g) (permitting the giving of testimony under oath and the making of statements required under penalty of perjury or contempt); and 205(i) (permitting representation pursuant to certain statutes that deal with labor management relations).