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 DOJ website at:
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
+Days+of+Service+for+Special+Government+Employees. 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.