

**Comments on Draft Recommendation  
Recusal Rules for Administrative Adjudicators**

Submitted by Carol Ann Siciliano (EPA), Government Member  
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*These comments reflect important input from EPA's Ethics Law Office.*

**Lines 44-45:** Delete “it is entirely possible and coherent to enforce both.”

Replace with “they may be enforced simultaneously and in a manner consistent with each other.”

Rationale: Clarity

**Lines 45-46:** Delete “This is due, at least in part, to the differences in scope, form, and enforcement mechanisms between the two.”

Replace with: “Government ethics rules and recusal rules share a similar purpose, *i.e.*, to ensure public confidence that actions taken by the government are in the public interest, but they differ in scope, form, and enforcement mechanisms available.”

Rationale: Clarity

**Line 46:** Insert “Federal” and “primarily” so that the sentence now begins: “Federal ethics rules focus primarily on preventing conflicts of interest...”

Rationale: Accuracy

**Line 47:** Insert after “employees”: “and to a lesser extent appearance issues that may arise in connection with certain close familial and other relationships that federal employees may have.”

Rationale: Accuracy. This edit accounts for the impartiality rules in the Standards of Conduct. Those rules require federal employees to recuse from specific party matters involving parties with whom they have a “covered relationship,” expressed here as “certain close familiar and other relationships.”

**Line 49:** Delete: “very precise” and replace with “more prescriptive”

Rationale: Accuracy.

**Line 53:** Delete “constitute a breach of any” and replace with “necessarily violate an,” so that the sentence fragment reads: “. . . by conduct that would not **necessarily violate an** constitute a breach of any ethics rule,

**Line 54:** Delete: “, such as advocating a particular policy in a speech before a professional association.”

Replace with: “. For example, an employee could potentially violate the ethics rules by advocating, in his/her personal capacity, a particular policy in a speech before a professional association and referring to his or her official title without a disclaimer that the views expressed in the speech were his or her own and did not necessarily reflect the views of the Agency.”

Rationale: Accuracy.

**Lines 54-56:** Edit: “The enforcement mechanisms **for each set of rules** ~~is~~ also different. A potential ethics issue **may be raised by a federal employee or an agency ethics official and will be reviewed privately by inside the agency the ethics official, whose determination constitutes official agency action.** In contrast, the recusal process is public . . . “

Rationale: Ethics issues are not “reviewed privately.” There is no attorney-client privilege between an ethics official and a federal employee. In addition, many ethics determinations, such as written determinations regarding attendance at widely attended gatherings, are releasable under FOIA.

**Lines 66-70:** Edit: “~~The Agency~~ recusal rules should also apply to adjudicators who conduct internal agency appellate review of decisions from those hearings, but **should** not necessarily **apply** to agency heads. When adopting ~~such~~ **recusal** rules, agencies should consider **both** the actual and perceived integrity of agency adjudications ~~and~~ **as well as** the effectiveness and efficiency of adjudicative proceedings.”

Rationale: Clarity.

**Lines 103-106:** Edit: “4. Agency recusal rules should also include procedural provisions for agencies to follow in determining when recusal is appropriate. At a minimum, those provisions should include: **[NOTE new subheadings]**

- a. the right of petition for parties seeking recusal;
- b. **referral (for decision by an agency ethics official) of allegations of improper financial interest or impartiality arising under the Standards of Ethical Conduct for Employees of the Executive Branch;** ;

- c. initial determination by the presiding adjudicator **in appropriate cases;** and
- d. internal agency appeal.”

Rationale: Financial conflicts of interest and impartiality determinations must be made by an Agency ethics official. Silence might imply that someone other than an Agency ethics official would make those decisions.