

Ethics Training for Special Government Employees

What is a Special Government Ethics (SGE)?

- The SGE category was created by Congress as a way to apply an important, **but limited** set of conflict of interest requirements to a group of individuals who provide important, **but limited**, service to the Government.
- SGEs provide temporary service to the Government (**not to exceed 130 days during any period of 365 consecutive days with or without compensation**). SGEs are often recruited because they provide outside expertise or perspectives that might be unavailable among an agency's regular employees. SGEs are generally used as advisory committee members, individual experts or consultants. However, some SGEs serve on Boards or Commissions and are brought on as per applicable statute. (See 18 U.S.C. 202(a) for more information. [Link to text of 18 U.S.C. 202](#))
- If an agency designates you as an SGE, but you unexpectedly serve more than 130 days during 365 consecutive days, **you'll still be an SGE** for the remainder of that period. But, during the next 365-day period, the agency should reevaluate whether you should still be designated as an SGE.

Counting the Days as an SGE

- You might be wondering exactly how a "day" is counted. This is especially important for SGEs who **serve on more than one advisory committee**, work at **more than one agency** as an SGE, or perform Government work outside of their usual SGE working day (e.g., doing committee "homework").
- Generally speaking, any day on which you perform any work for the Government for which you are compensated should be counted as a day, regardless of the amount of time worked that day or the nature of the services.
- However, uncompensated activities limited to strictly administrative matters, uncompensated brief communications, and uncompensated brief periods of reading or other preparation performed at a setting away from a Government workplace, need not be counted.
- For more information, see "[Counting Days of Service for Special Government Employees](#)" from the Office of Government Ethics.

A Couple of Common Questions

- There are two fairly common questions that you might be wondering about:
- **Do the ethics rules apply to you if you receive no pay from the Government?** Answer: **Yes they do.** The definition of an SGE includes those who serve "without compensation."
- **Do the ethics rules apply on days when you perform no Government services?** Answer: **Yes they do.** They apply equally on days you serve the Government and on days you don't. Where the Government hasn't used your services for some time, but hasn't specified a termination date in your appointment or otherwise, you might wonder if you remain an SGE. In this case, you'll want to contact your agency's ethics officials for a resolution

The Bottom Line: You ARE a Government Employee

- The most important point to emphasize is that **SGEs ARE Government employees**, for purposes of the conflict of interest laws and ethics rules. It's crucial to **distinguish SGEs both from Regular Government Employees (RGEs) and from individuals who are not Government employees at all** (e.g., "interest group representatives" serving on advisory groups, or independent contractors).
- These distinctions are important because **SGEs are subject to less restrictive conflict of interest requirements and ethics rules than RGEs**, but are subject to more restrictive requirements than non-employees, who generally are not covered by the conflict of interest laws at all.
- Now, let's take a look at one of your obligations as an SGE: completing your financial disclosure report.

Financial Disclosure: Why?

- **Public service is a public trust.**
- In order to protect that public trust, it's necessary to ensure that Government employees uphold the highest ethical standards.
- One of the ways this can be accomplished is by **collecting financial disclosure information from Government employees** and reviewing it to identify any potential conflicts of interest.
- Let's examine what we mean by financial disclosure...

Requirement for Filing

- As a general rule, all SGEs must file either a public or confidential financial disclosure report.
- ***Confidential Reporting:*** Any SGE not required to file a public financial disclosure report must file a confidential financial disclosure report. Most SGEs file a confidential financial disclosure report which is not available to the public. ([Link to 5 C.F.R. 2634.904\(b\) for more information](#))
- ***Public Reporting:*** SGEs file a public financial disclosure report if they perform (or are expected to perform) the duties of their office for **more than 60 days** in a calendar year **AND** are paid at least the equivalent of **120% of the minimum rate of basic pay for GS-15** of the General Schedule. ([Link to 5 C.F.R. 2634.202\(c\) for more information](#)).

How to Report Your Financial Disclosure

- ***If you file a public report:*** You will be using the OGE Form 278e (Public Financial Disclosure Report).
- You are also required to file an [OGE Form 278-T](#) (Periodic Transaction Report) for certain reportable transactions.
- Your Agency may also require that you file this form in [Integrity](#), an electronic financial disclosure system created by the U.S. Office of Government Ethics.
- Submit the completed report to the appropriate ethics official within your agency (not to OGE) using the FDonline or Integrity system.

How to Report Your Financial Disclosure

- ***If you file a confidential report:*** You must initially submit a New Entrant OGE Form 450 as part of your appointment. You will then annually file another New Entrant OGE Form 450 when you renew your appointment. As always, check with your USDA ethics officials at Ethics-REE@usda.gov to find out which form you must submit.
- The OGE Form 450 filing link will be sent to you once your USDA Ethics official has been notified of your appointment.
- Submit the completed report to the appropriate ethics official within your agency (not to OGE) using the FDonline system. [Note: USDA does not accept paper versions or other electronic versions. Forms must be submitted using the FDonline system.]

Report Contents

- What kind of information is reported in a financial disclosure form?
The format and information requested differs somewhat, depending on the form that you must complete. But in general, you'll provide information for such areas as:
 - Assets
 - Income
 - Liabilities
 - Agreements/Arrangements
 - Outside positions

What Happens After You File?

- So, what happens **AFTER** you file your financial disclosure form?
- After you submit your form, your agency's ethics officials will review it for completeness and conflicts. If the form is complete and accurate and doesn't disclose any conflicts of interest, they will sign your form.

What Else Might Happen?

- It's possible that you might get some **follow-up questions** from your ethics officials concerning your form.
- Many of these questions have to do with the need for additional information. Sometimes it's simply because you left a checkbox blank, which is why it's **important to make sure you fill out the form completely.**
- Other questions may be more complex. Remember that your ethics officials are going to be reviewing your form and will take into consideration your duties and position in order to determine whether you have any conflicts of interest.
- In any event, it's important to remember that the entire purpose of collecting and analyzing the information is to ensure that SGEs meet the highest ethical standards.
- Now, let's sum up what we learned in the "Financial Disclosure" section...

Summary

- In this section on "Financial Disclosure," you learned about:
- Requirements for financial disclosure
- Why it's important to file a financial disclosure form
- The types of information that you'll be asked to disclose
- What happens after you fill out your form
- So, let's test your new knowledge with a brief quiz...

Quiz #1: Question

- Let's say that you are being appointed as an SGE on a committee under the Federal Advisory Committee Act (FACA). You serve without pay and the committee meets 3 days/year.
- Do you have to file a financial disclosure report?

Quiz #1: Answer - YES

- It really doesn't matter if you receive compensation for your work as an SGE or whether you waive that compensation.
- The ethics officials in your agency need to determine if there are any ethics issues that arise from your financial interests. In order to do that, they need the information that you provide on your financial disclosure form (which is why it's vital to fill out the form completely and accurately).

Now, let's examine the area of "conflict of interest."

Conflict of Interest

- One of the most important purposes of the ethics rules and laws is to help employees avoid **conflicts of interest**. Agency officials regularly deal with conflict of interest statutes found in Chapter 11, Title 18 of the United States Code (sometimes abbreviated as U.S.C.). **Many of these statutes make at least some special provision for the treatment of SGEs.**
- Let's first examine one of the most important: 18 U.S.C. 208 (financial conflicts of interest)

18 U.S.C. 208: Financial Conflicts of Interest

- This statute prohibits all employees (including SGEs) from participating in any **particular Government matter** that will have a **direct and predictable effect** on their **financial interests**. It also prohibits employees from acting in Government matters that will affect the financial interests of others with whom they have certain relationships. These relationships are:
 - Spouse
 - Minor child
 - General partner
 - Organization which the individual serves as officer, director, trustee, general partner or employee
 - Person or organization with which the employee is negotiating or has an arrangement concerning prospective employment.
- Because SGEs typically have substantial outside employment and other interests which are often related to the subject areas for which the Government desires their services, issues under section 208 frequently arise. ([Link to 18 U.S.C. 208](#))

A Bit More About Financial Interests

- A conflict of interest can come up in many different ways. For example, you may have a conflict because of your interests in:
 - Stocks
 - Bonds
 - Interests through ownership, partnership, LLC (limited liability corporations), etc.
 - Consulting arrangements
 - Grants, contracts
 - Employment
- You get the idea...anything that can financially impact you or the interests of others with whom you have a certain relationship. There are certain waivers and exceptions to 18 U.S.C. 208, which we'll examine shortly. But first, let's look at what we mean by the term "particular matter."

Definition of Particular Matter

- The term "particular matter" includes deliberations, decisions, or actions that are focused upon the interests of **specific persons or entities or an identifiable class of persons or entities**. The Government interprets this term broadly.
- A particular matter **does not extend to broad policy options or considerations** directed toward the interest of a **large and diverse group of people**. A particular matter may involve **specific parties** (e.g., a contract, grant or case in litigation) or it may be a particular matter of **general applicability** that is focused on the interests of a discrete and identifiable class of persons (such as an industry).
- These distinctions can be very important. Here's why...

Exception for Particular Matter of General Applicability

- This distinction between a particular matter of general applicability and those that involve specific parties can be important for those **SGEs serving on FACA** (Federal Advisory Committee Act) **committees**. These SGEs are covered by certain exceptions from section 208. The most significant of these is 5 C.F.R. 2640.203(g) which permits SGEs serving on FACA committees to participate in particular matters of general applicability where the disqualifying financial interest arises from the SGE's non-Federal employment or prospective employment. ([Link to 5 C.F.R. 2640.203\(g\) for more information](#))
- This exception is subject to **several important limitations**:
- the matter cannot have a "special or distinct effect" on either the SGE or the SGE's non-Federal employer, other than as part of a class and;
- the exception **does not cover** interests arising from the ownership of **stock** or other financial interests in the employer or prospective employer, and;
- the non-Federal employment must involve an actual employee/employer relationship as opposed to an independent contractor (such as certain consulting positions).

Other Exceptions

- You may be **granted an individual waiver** where the official responsible for your appointment certifies that your financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of you. ([Link to 18 U.S.C. 208\(b\)\(1\) for more information](#)).
- **Additional exception if you serve on a FACA committee:** You may also be granted an individual waiver where the official responsible for your appointment certifies in writing that the need for your services outweighs the potential for a conflict of interest posed by the financial interest involved. ([Link to 18 U.S.C. 208\(b\)\(3\) for more information](#)).
- **Additional exception not specific to SGEs, but which may be helpful:** You are permitted to participate in a particular matter affecting one campus of a multi-campus institution of higher education, where the disqualifying financial interest arises from your employment with a separate campus of the same institution, provided that you don't have multi-campus responsibilities at the institution. In other words, you may participate in particular matters (e.g., grants, contracts) that affect the financial interest of another campus in the same university system where you are employed. (Link to [5 C.F.R. 2640.203\(c\)](#) for more information).

Direct and Predictable Effect

- Lastly, it's important to understand that for a financial interest in a particular matter to be disqualifying, there must be a direct and predictable effect on your financial interests.
- A particular matter will have a direct effect on a financial interest if there is a **close causal** link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.
- However, a particular matter will not have a direct effect on a financial interest if the link is attenuated, or is contingent upon the occurrence of events that are **speculative**, or that are **independent** of, and **unrelated to**, the matter. Furthermore, a particular matter that has an effect on a financial interest only as a consequence of its **effects on the general economy** is also not considered to have a direct effect on a financial interest.
- A particular matter will have a "**predictable**" effect if there is a real (as opposed to **speculative**) possibility that the matter will affect a financial interest. It is not necessary to know the magnitude of the loss/gain and the dollar amount is immaterial.

Do Appearances Matter?

- They sure do! Sometimes, circumstances related to relationships you have outside the Government might lead to questions of whether you have an "**appearance of a lack of impartiality.**" ([Link to 5 CFR 2635.502 for more information](#)). In other words, ask yourself whether a reasonable person who is familiar with the facts would question your impartiality.
- Example: An SGE working for the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. The SGE would be correct in concluding that a reasonable person would likely question her/his impartiality if she/he were to participate in evaluating that developer's or its competitor's lease proposal.
- If you or your agency ethics officials determine that your impartiality is likely to be questioned, your ethics officials must decide whether you may participate in a particular matter. Your agency may determine that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

Summary

- In this section on "Conflict of Interest," we learned about:
- What types of conduct are considered conflicts of interest
- Why "appearances" matter
- Some exceptions to the ethics laws and regulations specific to SGEs
- Now, it's on to a brief quiz on this section...

Quiz #2: Conflict of Interest

- You are an SGE that has been asked to serve on an advisory panel to review proposals for a new library computer search system. DEF Computer Corporation, a company in which you and your spouse hold stock, has submitted a proposal.
- Do you have a conflict of interest?

Quiz 2: Answer = YES

- Let's examine why.
- The award of the contract to DEF Computer Corporation (or any other offeror) will have a direct and predictable effect on the company in which you and your spouse own stock. As part owners of DEF corporation, you have a financial interest in anything that affects the company.
- You can't participate "personally and substantially in this particular matter...it's a conflict of interest. Therefore, you may not participate on the advisory panel unless your disqualification has been waived.
- Now, let's move on to the subject of "representation."

Representation

- It's not uncommon for an SGE to want to represent an organization to the Government while being employed by the Government. For example, an SGE might want to seek a grant or contract from the Government while being employed as an SGE.
- Two conflict of interest statutes impose related **restrictions on outside activities of SGEs**, particularly activities involving the **representation of others before the Government**.
- Let's look at each of these statutes.

Key Statutes

- **18 U.S.C. 203 prohibits** Federal employees from receiving, agreeing to receive, or soliciting **compensation for representational services**, rendered either personally or by another, before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the **United States is a party or has a direct and substantial interest**. ([Link to 18 U.S.C. 203 for more information](#))
- **18 U.S.C. 205 prohibits** Federal employees from **personally representing anyone** before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the **United States is a party or has a direct and substantial interest**. Unlike section 203, this prohibition applies whether or not the employee receives any compensation for her or his representational activity. Furthermore, this section also **prohibits** an employee from **representing anyone in the prosecution of a claim against the United States**, or from receiving any gratuity, or share or interest in a claim, as a consideration for assistance in prosecuting the claim. ([Link to 18 U.S.C. 205 for more information](#))
- Violation of either of these statutes can result in criminal prosecution.

Applications to SGEs

- Both section 203 and section 205 are **limited in their application to SGEs**. One of the most significant limitations is that SGEs are **restricted only in connection with particular matters involving specific parties**. Such matters typically involve a specific proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties. This would include such things as contracts, grants, applications, requests for rulings, litigation or investigations.
- Unlike regular employees, **SGEs may represent others or receive compensation for representational service in connection with particular matters of general applicability**, such as broadly applicable policies, rulemaking proceedings, and legislation--**which do not involve specific parties**.
- Furthermore, the restrictions on SGEs are narrowly drawn to focus **only** on those particular matters in which the SGE at any time participated substantially and personally, as well as (in some cases) those matters pending in the agency where the SGE is working.

Some Examples for Sections 203 and 205

- **Example of when the restrictions don't apply:**
- A toxicologist is appointed to serve as an SGE on an Environmental Protection Agency (EPA) advisory committee to review research conducted by grantees on water quality. The EPA is also seeking grant applications for air quality research. The SGE has never been involved in air quality issues for the Agency.
- The SGE may apply, on behalf of his private employer, for an EPA air quality research grant because it is a different particular matter than any work he has done for the Government (as long as he doesn't serve as an SGE for more than 60 days).
- **Example of when the restrictions do apply:**
- An SGE employed by the Department of Housing and Urban Development previously reviewed a specific city's application for Federal assistance for a renewal project. The SGE may not represent this city with regard to matters concerning this application.

Watch Those Days: 60 Day Trigger

- SGEs who have served the Government for **more than 60 days** (that is, days that you actually serve) during the immediately preceding period of 365 consecutive days are subject to an **additional restriction**.
- Such SGEs are subject to the prohibitions of sections 203 and 205 in connection with **any covered matter** that is pending in the department or agency of the Government in which [the SGE] is serving. (Link to [18 U.S.C. 203\(c\)\(2\)](#) and [18 U.S.C. 205 \(c\)\(2\)](#) for more information).
- In other words, you may represent someone before the same agency in connection with a matter in which you haven't been involved as a Government Employee or a Special Government Employee, until you reach 60 days of actual service. **On the 61st day, you have to stop that representation and you may not represent anyone back to the agency where you work as an SGE.**
- Let's look at some examples...

One Additional Waiver

- SGEs also may be eligible for a **special waiver that permits certain representational activities** in connection with work under **Federal grants and contracts**. An agency head may authorize an SGE to present another before the Government "in performance of work under a grant by, or a contract with or for the benefit of, the United States."
- The purpose of this exception is to take care of any situations **involving the national interest** where an intermittent employee's (e.g., an SGE) special knowledge or skills may be required by her/his employer or other private person to effect the proper performance of a Government contract or grant but where her/his service may be unavailable in the absence of a waiver.
- Such a waiver may be **granted only by the agency head** and must be based on a written certification, published in the Federal Register, that it is required by the national interest. (Link to [18 U.S.C. 203\(e\)](#) and [205\(f\)](#) for more information)

One Final Word on 203 and 205

- Finally, even where the restrictions on representation are inapplicable, you should avoid any activity that creates an appearance of using your position as an SGE to further private interests.
- (Link to [5 C.F.R. 2635.702](#) and [OGE Memorandum 00x01](#) for more information).

Summary

- In this section on "Representation," we learned about:
- The key statutes on representation
- How these laws apply to SGEs
- The need to avoid even the appearance of using your public office for private gain.
- As you might have guessed by now, it's time to exercise that new knowledge with a quiz...

Quiz #3: Representation

- Let's say that you work for the University of South Woebegone and that you serve on a standing Food and Drug Administration advisory committee. A few months ago, you participated in review of a new drug named methylethylhelp (MEH). This drug is manufactured solely by ABC Pharmaceuticals.
- ABC Pharmaceuticals would like to hire you to represent them to highlight the effectiveness of MEH to this committee. What do you tell the ABC Pharmaceuticals? Can you accept the job?

Quiz #3: Answer = NO

- No, you cannot accept the job.
- **If you accepted the job, the problem is that you would be representing back to the Government on the very same particular matter involving specific parties that you are working on.** That's a violation of law (18 U.S.C. 205 to be precise).
- Now let's investigate the area of "misuse of position".

Misuse of Position

- **Public service is a public trust.**
- These words begin the first section of the Standards of Ethical Conduct for Employees of the Executive Branch. ([Link to 5 C.F.R. 2635.101 for more information](#)) The Standards of Ethical Conduct also state that "Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain."
- In order to ensure that every citizen can have complete confidence in the integrity of the Government, it's vital that employees (including SGEs) do not misuse their public position for private gain. In this section, we'll examine many of the areas covered under the "Standards of Ethical Conduct."
- Let's begin...

Use of Nonpublic Information

- Nonpublic information is any **information that you receive because of your Federal employment** that you know or reasonably should know has not been made available to the general public.
- You may not engage in a financial transaction using nonpublic information or allow the improper use of nonpublic information to **further your own private interest or that of another**, whether through advice or recommendation or knowing unauthorized disclosure.

Endorsements

- Generally, you **cannot use or permit use of your Government position, title, or any authority** associated with your public office in a manner that could reasonably be construed **to imply that Government sanctions or endorses** a fundraising or other activity of a private organization or cause, no matter how worthy.
- For example: You are speaking at a convention on the subject of the use of a new product to reduce the influence of extraterrestrials upon Earth's environment. You introduce yourself as a member of an advisory committee for a Government agency deliberating on the utility of this very same product. Your speech might be construed an official endorsement of this product.

Use of Government Property

- Employees have a duty to protect and conserve Government property and must not use such property, or allow its use, for other than authorized purposes.
- Here are some definitions that you might find helpful:
- **Government Property:** Includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as a right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.
- **Authorized Purposes:** Are those purposes for which the Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.
- ([Link to 5 C.F.R. 2635.704 for more information](#))

Use of Official Time

- It goes without saying that all of us who are Government employees are paid for an honest day's work and an honest effort to perform our official duties. ([Link to 5 C.F.R. 2635.705 for more information](#)).

Teaching, Speaking, or Writing as Part of Your Official Duties

You might be prohibited from receiving outside compensation for teaching, speaking, or writing when the activity relates to your official duties. The teaching, speaking, or writing is related to your official duties if:

- The activity is undertaken as part of your official duties
- The circumstances indicate that the invitation to engage in the activity was extended to you primarily because of your official position rather than your expertise on a particular subject matter
- the invitation to engage in the activity or the offer of compensation for the activity was extended to you (directly or indirectly) by a person who has interests that may be affected substantially by performance or nonperformance of your duties
- The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information
- During a 1-year period of your current appointment
 - if you serve for more than 60 days and the subject of the activity deals in significant part with any matter to which you are presently assigned or were assigned during the previous 1-year period, or
 - if you serve 60 days or less and the subject deals in significant part with a particular matter involving specific parties in which you participated or are participating personally and substantially.
- Check with your ethics officials for more details. ([Link to 5 C.F.R. 2635.807 more information](#)).

The Bottom Line

As was stated earlier in this section, **public service is a public trust.**

- SGEs are typically recruited for **temporary service to the Government** because they provide outside expertise or perspectives that might be unavailable among an agency's regular employees.
- Although SGEs are temporary Government employees, they are an essential part of how Government conducts its business. SGEs are Government employees and must **not put their private interests above the interests of the American public.**

Summary

In this section on "misuse of position," you learned about:

- Misuse of nonpublic information
- Endorsements
- Misuse of Government property
- Teaching, speaking and writing
- Now let's see how well you can apply these concepts...with another quiz.

Quiz #4: Misuse of Position

You are an ethics official in an agency that employs an SGE to work on various telecommunications regulations.

As part of her private consulting business, she is planning to meet with a telecommunications firm where she will discuss the details of certain regulations that she is drafting. The firm wants her to help it figure out the most economical way to comply with the new requirements.

- What's your reaction to this?

Quiz #4: Answer

You're concerned and believe that she might be using her public office for private gain.

- It doesn't matter whether she can help this firm comply with the new regulations or not.
- What's important here is that **she is going to use her public position (as an SGE) for private gain by using inside information to help the firm.**
- Now, let's examine a few other laws and regulations...

Other Laws and Regulations

There are a number of other ethics laws and regulations that apply to SGEs. In this section, we'll cover some that are of most interest.

- Let's start with the "**Emoluments Clause**" of the United States Constitution.
- As an SGE, you may be subject to the Emoluments Clause of the United States Constitution. The Emoluments Clause prohibits persons who hold offices of profit or trust in the U.S. Government from having any position in or receiving any payment from a foreign government. This may include foreign universities and entities partially owned or controlled by a foreign government.
- Whether you are subject to the Emoluments Clause may depend on the nature of your duties. So, check with your ethics officials before accepting a position or payment from a foreign government or entity. In addition to the above, you are subject to the Foreign Gifts and Decorations Act and the Foreign Agent Prohibition.

Prohibition on SGEs Serving While Federally Registered Lobbyists

- SGEs may not serve in their individual capacity on advisory committees, boards, and commissions if they are federally registered lobbyists. This ban does not apply if they are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.), or state or local governments.

Gifts

- What about gifts? SGEs, like all employees, are subject to 5 C.F.R. 2635.202(a), which **prohibits the acceptance of gifts from a “prohibited source” and gifts given because of an employee’s official position.**
- The definition of “prohibited source” includes any person seeking official action from the employee’s agency, doing or seeking to do business with the employee’s agency, conducting activities regulated by the employee’s agency, or having interests that may be substantially affected by the employee’s official duties; the definition also includes organizations the majority of whose members fall within any of these categories. ([Link to 5 C.F.R. 2635.203\(d\) for more information](#))
- SGEs pose unique issues, because many SGEs are employed by, or have substantial professional and business relationships with, such prohibited sources. However, SGEs (and other Government employees) may accept various benefits resulting from outside business or employment activities, where it is clear that such benefits are **not offered or enhanced because of the employee’s official position.** For example, you may attend a holiday party held by your employer or use their transportation, if provided. This exception continues to be of particular importance to SGEs. ([Link to 5 C.F.R. 2635.204\(e\)\(2\) for more information](#))

Bribery

- Needless to add, SGEs (like all Government employees) also are subject to the criminal bribery and illegal gratuity statute, which prohibits, under certain circumstances, the receipt of anything of value in connection with official acts.
- This is a criminal statute.
- [\(Link to 18 U.S.C. 201\(b\), \(c\) for more information\)](#)

The Hatch Act

The Hatch Act restricts certain political activities of Government employees, **including SGEs when engaged in Government business**). ([Link to 5 C.F.R. 734 for more information](#))

In 1993, Congress passed legislation that substantially amended the Hatch Act, allowing most Federal and D.C. employees to engage in many types of political activity. However, certain restrictions on political activity still remain. For example, you may not use official authority to:

- Interfere with an election
- Solicit or discourage political activity of anyone with business before their agency
- Solicit or receive political contributions (may be done in certain limited situations by Federal labor or other employee organizations)
- Be a candidate for public office in partisan elections
- Engage in political activity while on duty, in a Government office, wearing an official uniform, using a Government vehicle or wear partisan political buttons on duty
- The U.S. Office of Special Counsel promotes compliance by Government employees with legal restrictions on political activity by providing advisory opinions on, and enforcing, the Hatch Act. [Link to the Office of Special Counsel web site for more information](#)

Fundraising

All employees, including SGEs, are subject to certain restrictions on **personal fundraising for nonprofit organizations**. These include restrictions on the use of official title, position and authority, and the solicitation of subordinates. ([Link to 5 C.F.R. 2635.808\(c\) for more information](#)).

- Additionally, employees may not personally solicit funds or other support from a person known by the employee to be a “prohibited source.”
- With respect to SGEs, however, this restriction is limited to a narrower subset of the definition of prohibited source. **SGEs are prohibited only from personally soliciting persons whose interests may be affected substantially by the performance or nonperformance of the SGE’s official duties.**

Expert Testimony

- A Government employee may not (other than on behalf of the United States) serve as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest unless authorized to do so. ([Link to 5 CFR 2635.805 for more information](#))
- However, this prohibition applies to SGEs **only if they have participated as Government employees in the particular proceeding or in the particular matter that is the subject of the proceeding**. This prohibition is in place during the entire time of their appointment (not just when they are working as SGEs).
- A more restrictive standard applies to a smaller class of SGEs who:
 - Are appointed by the President or
 - Serve on a commission established by statute or
 - Have served or are expected to serve more than 60 days in a period of 365 consecutive days
- For these SGEs, the restriction applies to **any proceeding** in which the SGE's own agency is a party or has a direct and substantial interest.

Summary

In this section on "Other Laws/Regulations," you learned about:

- Emoluments
- Foreign Gifts and Decorations Act
- Federally Registered Lobbyist Ban
- Foreign Agent Prohibition
- Gifts
- Bribery
- The Hatch Act
- Fundraising
- Expert Testimony

By now, you can expect that we'll test all that new knowledge that you've gained with...another quiz!

Quiz #5: Other Laws and Regulations

Let's assume that you are an SGE currently appointed to assist an agency in drafting regulations on a particular matter concerning tax regulations for certain organizations. One day you get a call from one of the organizations that will be impacted by these regulations. They ask whether you would be willing to appear as an expert witness on its behalf concerning a different particular matter than what you are currently doing as an SGE. One more thing: the United States is one of the parties in the case, but your agency isn't.

So, what are you going to do? Are you going to:

- A. Accept the invitation to appear as an expert witness
- B. Reject the invitation to appear as an expert witness

Quiz #5: Answer = A

- Well, that's actually an acceptable answer. Here's why:
- As an SGE, the **restrictions** on appearing as an expert witness in a matter where the United States is a party are **substantially narrowed**. You are only prohibited from appearing as an expert witness **where you actually participated in the same proceeding or particular matter** that is subject of the proceeding. Since the subject matter of the proceeding and your work as an SGE are different, the prohibition doesn't apply to you (unless you fall under one of the categories that are subject to heightened restriction).
- But, can you still serve as an SGE on the committee? If you appear as an expert witness for this organization, it's possible that **questions might be raised concerning your impartiality** with your current SGE work. (Remember the discussion on "appearance of a lack of impartiality" a few sections ago?)
- So, while it's permissible to accept the invitation, you should check with your ethics officials to make them aware of what you are planning to do

Quiz #5: Answer = B

Well, that's actually an acceptable answer. Here's why:

- As an SGE, the **restrictions** on appearing as an expert witness in a matter where the United States is a party are **substantially narrowed**. You are only prohibited from appearing as an expert witness **where you actually participated in the same proceeding or particular matter** that is subject of the proceeding. Since the subject matter of the proceeding and your work as an SGE are different, the prohibition doesn't apply to you (unless you fall under one of the categories that are subject to heightened restriction) .
- But, can you still serve as an SGE on the committee? If you appear as an expert witness for this organization, it's possible that **questions might be raised concerning your impartiality** with your current SGE work. (Remember the discussion on "appearance of a lack of impartiality" a few sections ago?)
- So, if you decided to accept the invitation after all, you should check with your ethics officials to make them aware of what you are planning to do.

Now that we've examined many of the ethics laws and regulations that apply to you while you work as an SGE, let's examine what happens after you leave Government service...

After You Leave

- Now that you are familiar with the ethics regulations while you are an SGE, you should also know that there may be **restrictions on your employment AFTER you leave Government service.**
- (Quick note for filers of the OGE-278e public financial disclosure form: You may not directly negotiate or have any agreement of future employment unless, within three business days after commencement of such negotiation or agreement, you file a notification statement with your Agency's ethics office. See OGE's Legal Advisory [LA-12-01](#) for more information.)
- The criminal post-employment statute ([Link to 18 U.S.C. 207](#)), imposes a number of different restrictions on the activities of former Government employees. Several of these restrictions provide **no special treatment for SGEs**. The provisions of section 207 that apply in the same way to both SGEs and regular employees include a:
 - **Lifetime prohibition** on representing another person or organization back to the Government in connection with the same particular Government matter involving specific parties in which the former employee participated personally and substantially
 - **Two-year prohibition** on representing another person or organization back to the Government in connection with the same particular Government matter involving specific parties that was pending under the employee's official responsibility during the last year of Government employment
 - **One-year prohibition** on representing, aiding, or advising others about certain ongoing trade or treaty negotiations on the basis of certain nonpublic information.

One-Year Cooling Off Period for Senior Employees

Other parts of section 207 do contain special provisions for SGEs. The most significant provision is found in section 207(c), the so-called “**one year cooling off period**” for former “senior employees.” Section 207(c) **prohibits** former senior employees from **representing anyone before their former agency or department for one year after terminating their senior position, in connection with any matter.**

- This restriction generally applies to positions:
- For which the rate of **pay is fixed according to the Executive Schedule;**
- For which the rate of basic **pay is equal to or greater than 86.5% of pay for Level II of the Executive Schedule;**
- **Appointed by the President** under 3 U.S.C. § 105(a)(2)(B) or by the **Vice President** under 3 U.S.C. 106(a)(1)(B); and
- Held by an **active duty commissioned officer** of the uniformed services serving at pay grade or rank 0-7 or above.

However, with respect to SGEs, the application of section 207(c) is limited, based on the number of days the individual served during the last year in a senior position. Specifically, the **one year cooling off period applies only to former SGEs who served 60 days or more** during the one-year period described above before terminating their services as a senior employee. [\(Link to 18 U.S.C. 207\)](#)

One-Year Prohibition for Very Senior Employees

- Additionally, 18 U.S.C. 207(d) imposes a **one-year prohibition on “very senior employees” against representing others before their former agency or before any official appointed to an Executive Schedule position.**
- On its face, section 207(d) makes no special provision for SGEs; however, it is unclear whether an SGE would ever occupy a position that falls within the “very senior” category, as described in the statute. ([Link to 18 U.S.C. 207\(d\)\(1\) for more information](#)).

Post-employment with Foreign Entities for Senior and Very Senior Employees

- There is also a section which generally imposes a one-year prohibition on representing, aiding, or advising certain covered foreign entities in connection with any official decision of an officer or employee of the United States.
- **However, for SGEs, this section is limited to certain senior and very senior employees.**
- As always, check with your ethics officials if you have questions.

Procurement Integrity Act

- Former (and current) SGEs are subject to the provisions of the [Procurement Integrity Act](#) Procurement Integrity Act to the same extent as all Federal employees.
- So, if you were involved in a Government procurement as an SGE, you should get advice from your ethics officials about how the Procurement Integrity Act applies to you.

Another Exception

SGEs, like all employees, may be eligible for another exception under 18 U.S.C. 207(j).

- This section states that the restrictions don't apply to acts done in carrying out official duties on **behalf of the United States or the District of Columbia or as an elected official of a State or local government.**
- This section also includes a number of other exceptions as well. ([Link to 18 U.S.C. 207 for more information](#))

Let's try to sum all this up...

Summary

In this section on "After You Leave," we learned about:

- One-year, two-year and lifetime prohibitions
- One-year cooling off period for certain senior and very senior employees
- Post-Government employment with foreign entities
- Procurement Integrity Act restrictions
- The regulations concerning "post-Government employment" can be quite complex, as you can see. As always, ask your ethics officials if you have questions.

Now, let's move on to the final quiz of this course...

Quiz #6: After You Leave

- You are an SGE who just finished participating in an Environmental Protection Agency (EPA) advisory committee to approve the use of a new pesticide called Phytoassist, a chemical solely manufactured by Phytoassist Corporation.
- Now that the advisory committee work is over, Phytoassist Corporation would like you to represent them back to EPA to challenge the findings of the committee that you worked on.
- May you represent Phytoassist Corp. back to EPA?

Quiz #6: Answer = NO

No, you can't represent Phytoassist Corporation back to EPA on this particular matter. EVER!

The bottom line is that you have a lifetime prohibition on representing others in connection with the same particular matter involving specific parties in which you participated personally and substantially. There's NO exception for SGEs.

Now, let's move on to the final section of this course, "Where to Get Help."

Where to Get Help

- Congratulations...you're now at the final section of this course.
- We've examined many areas concerning ethics for SGEs and how **SGEs are Government employees upholding a public trust.**
- Many of the ethics laws and regulations are straightforward and others can be complex. That's why it's important for you to **contact your [Agency Ethics Advisors](#)** if you have any questions or concerns. In some cases (e.g., when you work on a FACA advisory committee), you may be able to contact your Designated Federal Officer (DFO) for additional help.
- There are also other references that you might find helpful...

Some Useful References

Here are some references you might find useful:

- [Standards of Ethical Conduct for Employees of the Executive Branch](#): This covers the standards of ethical conduct for Government employees (which cover, with exceptions, SGEs).
- [To Serve with Honor](#): A guide on the ethics rules that apply to advisory committee members serving as Special Government Employees.
- [Supplemental Standards of Ethical Conduct for USDA Employees](#)
- [Office of Government Ethics Web Site](#)

Remember, your agency might have [additional information](#) specifically for SGEs. So, always remember to check with your [ethics officials](#) for the latest information.

Certification

You've now come to the end of this course.

For REE agency collaborators to receive credit for completion of this course, please visit <https://www.surveymonkey.com/r/P9PPMLK> If you would like a paper copy of the certificate, please print before clicking on the “Done” button.

Thank you for your time in completing this important requirement.