
**Forest Service
Special Government
Employee (SGE)
Ethics Briefing
2010**

INTRODUCTION	1
DEFINITIONS	1
APPLICATION	1
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I. FINANCIAL DISCLOSURE	2
II. BRIBERY -- 18 U.S.C. 201 & CONFLICTS OUTSIDE OF OFFICIAL DUTIES	2
Representation before the Federal Government. 18 U.S.C. 203 & 205	2
III. CONFLICTS IN THE PERFORMANCE OF OFFICIAL DUTIES	4
A. Financial Conflicts of Interest, Loss of Impartiality & Misuse of Position	4
B. Dual Compensation. 18 U.S.C. 209	6
IV. POST-EMPLOYMENT CONFLICTS	7
A. 18 U.S.C. 207(a)(1)-- Permanent Restriction	7
B. 18 U.S.C. 207(a)(2) -- Two-Year Restriction	7
V. OTHER ETHICAL CONCERNS	8
A. Gifts From Outside Sources. 5 CFR 2635.201-205	8
B. Gifts Between Employees. 5 CFR 2635.301-304	9
C. Misuse of Title, Position & Endorsements. 5 CFR 2635.701-705	9
D. Teaching, Speaking & Writing. 5 CFR 2635.807	10
E. Fundraising. 5 CFR 2635.808	11
F. Expert Witness Testimony. 5 CFR 2635.805	11
G. Partisan Political Activity. 5 CFR Part 734	11
VI. MISCELLANEOUS RESTRICTIONS AND OBLIGATIONS	13
A. Augmentation of Appropriated Funds	13
B. Emoluments Clause of the Constitution of the United States	13
C. 18 U.S.C. 219 -- Foreign Agents	13
D. 18 U.S.C. 1913 -- Lobbying With Appropriated Funds	13
VII. ETHICS BEDROCK PRINCIPLES 5 C.F.R §2635.101	14

INTRODUCTION

New appointees, especially those that provide temporary, intermittent services only a few days a year, often are surprised by, or even resentful of, the complexity of the rules governing Federal employees. The ethics rules do not appear to many people to be logical, intuitive, or even, fair. Ignoring these rules, however, can result in serious consequences or embarrassment, both personally and for the Department. Criminal conflict of interest violations are "strict liability" offenses, and even an inadvertent, "technical" violation will require the initiation of an Inspector General investigation and possible referral to the Department of Justice. Moreover, the entire matter in which a violator participates may be considered so compromised that the Department may have to nullify, cancel, or retract any agency action that is perceived as tainted by the conflict. Therefore, if you have questions on any of the topics covered in this guidance, you should consult with the Designated Federal Official responsible for your committee or the Ethics Counselor assigned to your operating or staff division.

THIS GUIDE:

This guide is designed to be a basic ethics primer for SGE Advisory Panel Members concerning some of the restrictions most likely to impact them in the performance of their official duties, and focusing specifically upon restrictions that may have unexpected applications. In this regard, the issuance is designed to be a quick-reference compendium of pertinent rules taken from other, more specific, statutory and regulatory sources that are cited in each section. In addressing actual ethics questions, reference should always be made to the statutes and regulations themselves, particularly to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), 5 C.F.R. Part 2635. Not all ethics issues discussed herein are treated in depth. Some common issues, discussed under "Other Ethical Concerns" and "Miscellaneous Restrictions and Obligations," are treated generally. For information on any ethics-related restriction, including training modules that address most common ethics issues, see the Office of Ethics website at www.usda.gov/ethics.

DEFINITIONS

- **"CFLRAC" or "CFLRAP":** for purposes of this guide, refers solely to the members of the **Collaborative Forest Landscape Restoration Advisory Committee.**
- **Board, Committee, and Panel are used interchangeably in this reference.**
- **Definition of a Special Government Employee (SGE)** A "special Government employee" is an officer or employee in the executive branch of the Federal Government who is appointed to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. 18 U.S.C. § 202(a). This status is important because the ethics rules for SGEs are somewhat less restrictive than the rules for other Federal employees and officials. Some members of advisory committees are appointed for a multi-year term. During each year of their term of appointment, committee members generally will not be expected to perform work for the Forest Service in excess of 130 days during any period of 365 consecutive days. Thus, most committee members will be considered "SGEs."

APPLICATION

The ethics statutes and rules discussed in this guide apply to all Forest Service employees; however the manner in which the rules apply vary according to the nature of the individual's Federal appointment.

- **CFLRAC members** are special Government employees ("**SGEs**") and, thus, while subject to the laws regarding conflicts of interest; they are subject to such laws to a more limited extent. Of note for **CFLRAC members** are the following differences:
 - **Representation Before the Federal Government.** The prohibitions on representing apply: (1) only on the days on which the SGE is in a Federal status or performs Federal duties; and (2) to a more-limited set of matters;
 - **Serving as an Expert Witness.** Restrictions on serving as an expert witness apply only if the SGE participated in the proceeding or matter as an employee;

- **Teaching, speaking and writing.** SGEs may receive compensation for teaching, speaking, and writing about agency policies, programs, and operations, so long as they were not assigned to those matters during the previous year; and
 - **Partisan Political Activity.** The rules apply to SGEs only on those days when they are in Federal status or are performing Federal duties.
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I. FINANCIAL DISCLOSURE

The advisory committee members appointed as SGEs are required under the Ethics in Government Act, as amended by the Ethics Reform Act of 1989, and 5 C.F.R. Part 2634, to file a financial disclosure report when first appointed and annually thereafter on the anniversary date of their appointment. Committee members also may be required to update the information on the report before each meeting throughout their term of appointment.

The information reported is used to determine the matters for which a committee member must be disqualified under the criminal financial conflict of interest statute, 18 U.S.C. § 208(a), and the matters for which a committee member may be granted a waiver under 18 U.S.C. § 208(b).

Complete reporting is essential to protect the committee member from inadvertently violating any of the criminal conflict of interest statutes, and to assure the public that the advice provided by the advisory committee is free from any real, or perceived, conflicts of interest. The information reported by committee members is confidential and may not be released except under the limited circumstances described in the Privacy Act notice provided with the report or by order of a Federal court. (SGEs who serve more than 60 days in any period of 365 consecutive days and who are compensated at certain pay levels may be required to file a publicly available financial disclosure report.)

II. Criminal Conflicts of Interest:

- A. **BRIBERY -- 18 U.S.C. 201.** -- As a Federal employee you may not give/receive/ request/offer anything of value to influence an official act of a government employee, or to be influenced in performing your official duties.

Application:

- Conviction for bribery requires proof of **corrupt intent** and a **quid pro quo** (something given or offered for a specific official action to be taken or not taken). Absence of corrupt intent or *quid pro quo* may still violate 18 U.S.C. 209 (below), or be prohibited under the rules concerning Gifts From Outside Sources, 5 CFR Part 2635, subpart B.
- The prohibition applies whether one is on official duty or on personal time.

B. CONFLICTS OUTSIDE OF OFFICIAL DUTIES.

Representation before the Federal Government. 18 U.S.C. 203 & 205.

General: Two very similar criminal statutes govern whether you may interact with the Federal Government on behalf of non-Federal entities during your Federal employment, 18 U.S.C. 203 and 205.

(1) **18 U.S.C. § 203.** Section 203 prohibits an SGE from receiving compensation for representational services rendered by the employee or another person before the **Forest Service** or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party (i) in which the SGE has participated personally and substantially as a Government employee, or (ii) which is pending in the Government agency in which the SGE is serving if the SGE has served for more than 60 days during the immediately preceding 365 days. Exempted from this rule are representations required in the proper discharge

of official duties. Also exempted are representations determined by the head of the agency to be required in the performance of work under a grant, contract or other agreement with or for the benefit of the government.

Particular Matter: A particular matter involving specific parties is a matter that is focused upon the interests of identified persons in a specific proceeding or an isolatable transaction or related set of transactions. Examples include, but are not limited to, reviews of grant proposals or contract applications, or similar funding decisions; recommendations or approvals of scientific studies, projects, clinical trials, new drug applications; and other actions that involve deliberation, decision, or action affecting the legal rights of identified parties.

In contrast, a particular matter of general applicability is a matter that is focused on the interests of a discrete and identifiable class of persons or entities, but does not involve specific parties.

Examples include recommendations or consideration of legislative proposals, regulatory initiatives, or policy development that affect an industry, group of manufacturers, or health care providers.

Pay close attention to which type of particular matter is involved in your assignment because the ethics rules may differ depending upon whether a "specific party matter" or a "general policy matter" is involved. The terms "matter" or "particular matter," without more description, are deemed to encompass both types.

Definitions:

Representational Services: Representational services include communications (drafting documents, proposals, bids, and other support activities short of actual representation) generally with the intent to influence or persuade (provide direct and knowing support a representation) the Government. An inquiry as to the status of a pending matter is not necessarily a representation, although depending upon the context of the inquiry, it could give rise to the appearance of a prohibited representation.

(2) 18 U.S.C. § 205. Section 205 prohibits an SGE from representing a party, with or without compensation, before the **USDA** or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the United States is a party or has a direct and substantial interest: (i) that the SGE participated in personally and substantially as a Government employee; or (ii) which is pending in the agency in which the SGE is serving, if the SGE has served for more than 60 days during the immediately preceding 365 days.

Definitions:

Representing means acting as agent or attorney for another person by communicating with (either orally or in writing) or appearing before, the Executive or Judicial Branches of the Federal government.

Application: Prohibitions apply to CFLRP Panel members as follows:

- Any particular matter involving a specific party or parties (e.g., a contract, loan, grant, claim, law suit, etc.) in which you participated personally and substantially while a Federal employee; **and**
- If you served more than 60 days during the preceding 365-day period, any particular matter (this would include the above matters, as well as most policies, programs, and initiatives) pending before USDA (including any agency, office, or component thereof).

Exceptions: You may however:

- Represent yourself; however, this exemption does not cover your acting on behalf of your personal or family corporation.

- Represent your parents, spouse, child, or person/estate for whom you are serving as personal fiduciary **with¹ or without compensation**, so long as you did not take official action on the matter or so long as the matter is not subject to your official responsibility.
- Give testimony under oath.
- Represent others on work done under a grant or contract with the U.S. or one that benefits the U.S., if the USDA certifies in the Federal Register that it is in the national interest.
- Where not inconsistent with one's official duties, and **without compensation**, represent one who is subject to disciplinary, loyalty, or other personnel administrative proceedings; and
- To the extent permitted under 5 C.F.R Part 251, represent an organization comprised primarily of Federal employees in certain dealings with the agency concerning employment issues.

Examples²:

CFLRAP members:

- *Could not perform such duties while on **official time** (e.g., on any day that she performs services of any significant nature as an **CFLRAP members**). For purposes of this rule, where on official travel, official time would cover the entire time that she is engaged in official travel, or in a Federal pay status, not just the time actually spent performing CFLRP duties.*
- *Who served less than 60 days during the past 365 calendar days, could, on her **personal time**, represent her company, or receive compensation for services in support of another's representation of her company in connection with an application that her company has pending before the Forest Service if that application has nothing to do with matters that would come before her as a member of the CFLRAP.*
- *However, if she served more than 60 days during the past 365 calendar days, then she would not be able to engage in representational activities of any sort regarding any matters pending before any part of USDA.*
- *Irrespective of length of SGE service, an **CFLRAP member** may neither represent another before the CFLRAP panel, nor assist another in their representations before the CFLRAP. This is based, not on the foregoing representation statutes, but upon the prohibition against misusing one's official title and position on behalf of another. See III.A., below.*

III. CONFLICTS IN THE PERFORMANCE OF OFFICIAL DUTIES

A. Financial Conflicts of Interest, Loss of Impartiality & Misuse of Position

General: At the core of Federal ethics laws and regulations is the concept that official duties shall be performed based upon what is in the best interests of the public, vice what is specifically in your interest or specifically in the interests of those close to you. This concept is covered by three separate provisions:

First, by the criminal financial conflict of interest statute, 18 U.S.C. 208; **second**, by the administrative rules against loss of impartiality, 5 CFR 2635.502, which expand upon the criminal statute; and **third**, the administrative rules against misusing your official position for the specific benefit of you or anyone else, 5 CFR 2635.702(d). While the administrative rules are not criminal in nature, violation can result in discipline, even dismissal.

18 U.S.C. 208 - Acts Affecting a Personal Financial Interest. During your appointment, you may not **participate personally and substantially** (i.e., recommend, influence, or decide) in any **particular matter** in which:

- you
- your spouse;
- **minor** child;
- general partner;

² Reference to a particular governmental agency is for instructional purposes only and would include all Executive Branch agencies or departments.

- organization in which you serve as officer, director, trustee, general partner or employee; or
- any person or organization with whom you are negotiating or have an arrangement concerning prospective employment, has a financial interest if that official action will have a **direct and predictable impact** upon the financial interest.

5 CFR 2635.502 - Impartiality in Performing Official Duties. Even if not prohibited by the statute, unless a waiver is granted, you also may not **participate personally and substantially** in any **particular matter involving specific parties** which you know:

- Is likely to have a **direct and predictable impact** on the financial interests of a member of your household; or
- A person with whom you have a **covered relationship** is or represents a party to that matter, IF a reasonable person would question your impartiality.

5 CFR 2635.702(d) - Performance of Official Duties Affecting a Private Interest. If performance of your official duties would affect the financial interests of a friend, relative or person with whom you are affiliated in a nongovernmental capacity and who would not be covered either under the statute or rules concerning impartiality, you still should follow the impartiality rules.

Definitions:

Covered relationships include the following:

- Anyone, other than a prospective employer, whom you have or seek to have a business, contractual or other financial relationship involving other than a routine consumer transaction;
 - Members of your household and relatives with whom you have a close personal relationship;
 - Individuals with whom your spouse, **dependent** child or parent serves or seeks to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
 - Any person for whom you have within the last year served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
 - Any organization, other than a political party, in which you are an active participant (e.g. committee chair, fundraiser, adviser, manager, etc.).
- **Participating personally and substantially** means participating directly (or through a subordinate at your direction) and in a manner of significance to the outcome. One can meet this requirement through participation in the decision-making or deliberative process, not just through participation in or making the ultimate decision.
 - **Particular matter** is a matter that involves deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. It includes not only **particular matters that involve specific parties** (see below), but also matters such as legislation or policy-making that are narrowly focused on the interests of such a discrete and identifiable class of persons.
 - **Particular matter involving specific parties** means a subset of **particular matters** in which there are formal parties identified to the matter – persons or entities with legal rights and obligations at issue. This would include judicial proceedings and litigation, applications, requests for rulings and determinations, contracts and grants, claims, charges and accusations, and investigations. However, the term would not include legislation or policymaking unless the legislation or policymaking is related to one or a few specified parties. The following are examples that show the difference between **particular matters** and **particular matters involving specific parties**.
 - **Direct and predictable impact.** If a particular matter is involved, for the prohibition to apply, the official action also must have a direct and predictable impact upon the financial interest at issue – this means a real, rather than speculative impact.

Application: The application of the statute and regulations to CFLRP must be considered in light of the fact that Congress, by statute, has deemed it necessary to place upon the Board persons who otherwise would have a natural conflict of interest in so serving.

- Recusal from participation in a matter in which you have a financial interest effectively resolves the conflict; however, recusal must be from all significant involvement in the decision-making process concerning the matter, NOT just the final decision.

Exceptions: You may still participate if the conflict is subject to one of the following waivers:

If a conflict of interest:

- **Individual Waiver.** 18 U.S.C. 208(b)(1). You may request a waiver if you advise the person who appointed you of the official matter at issue and your conflicting interest and receive in advance a written determination by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from you;
- **Regulatory Waiver.** 18 U.S.C. 208(b)(2) & 5 CFR Part 2640, Covers situations where the conflicting financial interest is comprised of assets in diversified where the conflicting financial interest is comprised of assets in diversified mutual funds, unit investment trusts, some Sector mutual funds, Government pension plans; diversified employee benefit plans and publicly-traded securities.
- **Tribal Interest Waiver.** 18 U.S.C. 208(b)(4). Covers situations where the conflicting financial interest results solely from interests in birthrights in an Federally-recognized Indian tribe [or Alaska Native village corporation], Indian allotment, or Indian claims fund.

In cases of a loss of impartiality and misuse of position:

- **Consideration of appearances by the employee.** 5 CFR 2635.502(a) and (c). If you see that there is the potential for your participation in an CFLRAC matter to raise reasonable concerns as to your impartiality and objectivity, you should inform the CFLRAC Manager or Executive Secretary of the appearance and not participate in the matter until you receive authorization from that official based on a determination made in writing, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

B. Dual Compensation. 18 U.S.C. 209.

General: During your tenure as a Federal employee, you should not receive or agree to receive any salary or compensation from a non-Federal source for performing your official duties.³

Examples:

- A Non-Federal-Entity could reimburse the Agency, under 31 U.S.C. 1353, for the cost of sending a CFLRAC Member to address its members on various issues concerning CFLRAC; however, committee member could not accept an honorarium from the association because the speech is part of the committee member's official duties.
- A local civic association wants to present an CFLRAC member with an award honoring her public service in that role. So long as the award is an established award program for

³ The statute does not apply to SGEs, or other officers or employees, who serve without compensation.

public service, the Officer can accept (after clearing it through the Office of Ethics); not so, if the award is ad hoc, or given based on a decision made by the Officer that specifically benefited the awarding group or association.

IV. POST-EMPLOYMENT CONFLICTS

General: Upon completion of your Federal service, you will be required to comply with certain post-employment prohibitions that primarily deal with representation of others back before the Federal government. There are five criminal provisions under 18 U.S.C. 207 and one civil restriction under 41 U.S.C. 423:

- A. **18 U.S.C. 207(a)(1).-- Permanent Restriction.** You may not knowingly *represent any other person* (other than the U.S.) before the Executive or Judicial Branches of the Federal government with the intent to influence the government's actions in a *particular matter involving specific parties* (i.e., a contract, grant, application or claim) in which you *participated personally and substantially* for the government *at any time in your Federal career*. (As with other ethics violations, for a violation to occur, the U.S. must be a party or have a direct and substantial interest in the matter.)

Definitions:

- *Representing.* See definition on page 4, above.
- *Particular matter involving specific parties.* See definition on page 8, above.
- *Participating personally and substantially.* See definition on page 7, above.

Application:

- This statute does not prohibit you from representing yourself.
- The statute also does not prohibit you from working behind-the-scenes in assisting another in the actual representation (compare this with the rules on representation while you are an employee).
- You may avoid being covered under this provision by recusing yourself from all participation in a covered matter.
- Usually this provision applies to "hands-on" participation, but may include brief but significant involvement such as approving a matter. Participation in this manner occurs not merely at the decision level, but anywhere within the deliberative, or decision-making process.
- While the provision applies to matters that you participated in at any time in your Federal career, the application may be limited where a significant period of time has elapsed between your current representation of a party before the government and your official participation in it as a Federal employee. The issue is whether the matter has changed significantly enough that it is still the same matter.

- B. **18 U.S.C. 207(a)(2) --Two-Year Restriction.** You may not knowingly represent any other person (except the U.S.) before the Executive or Judicial Branches of the Federal government, with the intent to influence the government in a particular matter involving specific parties which you knew or should have known was *actually pending under your official responsibility* within a period of *one year before the date of the termination* of your Federal employment.

Definitions:

- *Representation and Particular matter involving specific parties.* See above.
- *Actually pending under your official responsibilities* means that the matter actually was received by the USDA/FS, was a matter over which you had responsibility, and was available for action during your last year of Federal service.

Application:

- See first three application notes under 207(a)(1), above.

- Unlike section 207(a)(1), above, if the matter is under your official responsibility, a recusal does not preclude application of this provision.
- This often is the “supervisory” bar. The provision contemplates managers and superiors whose offices and organizations have the matter for action, even if they do nothing on the matter during the former employee’s last year of Federal service.

V. OTHER ETHICAL CONCERNS

A. Gifts From Outside Sources. 5 CFR 2635.201-205.

1. **“Outside Sources”.** (5 C.F.R. 2635.202 (a)) Generally, an employee shall not solicit or accept, directly or indirectly, a gift from a prohibited source, or given because of the employee’s official position. The test for “official position” is whether the gift would have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his federal position.

a. **What is a “Gift”.** A “gift” includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodging and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. In essence, a gift is something you receive from someone for which you do not exchange something (e.g., money) of relatively equal value.

b. **What is a prohibited source.** Any entity or person who is seeking official action by the USDA/Forest Service/Government; does business or seeks to do business with the USDA/Forest Service/Government; conducts activities regulated by the USDA/Forest Service/Government; or has interests that may be substantially affected by the performance or nonperformance of official duties by the USDA/Forest Service/Government.

Exceptions:

- Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;
- Greeting cards and items of little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
- Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees, whether or not restricted on the basis of geographic considerations;
- The **20/50 Rule** - Gifts worth less than \$20.00 per occasion. No more than \$50.00 worth of gifts from any one source/calendar year;
- Gifts given because of a bona fide personal relationship.

CONTACT YOUR ETHICS COUNSELOR BEFORE ACCEPTING A GIFT FROM A PROHIBITED SOURCE

B. Gifts *Between* Employees. 5 CFR 2635.301-304.

2. Between Employees. (5 C.F.R. 2635.302 (a)): An employee shall not directly or indirectly, give a gift or make a donation toward a gift for an official superior or solicit a contribution from another employee for a gift to either his own official superior or that of another; or accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in an official superior-subordinate relationship.

Exceptions:

- Unsolicited gifts may be given on an occasional basis, including traditional gift-giving occasions, such as birthdays and holidays. Gifts must have a value of \$10 or less per occasion;
- A subordinate may give a gift appropriate to the occasion or donate toward a gift to an official superior and an official superior may accept a gift on **special infrequent occasions** such as: marriage, illness, birth of child; or upon an occasion that terminates the official superior/subordinate relationship such as transfer, resignation or retirement.; and,
- Group gifts on special infrequent occasions are limited to \$300 in value per donating group. There is no buy-down provision. Solicitations for gifts to an official superior may not exceed \$10 and must be completely voluntary without coercion.

C. Misuse of Title, Position & Endorsements. 5 CFR 2635.701-705.

General: You may not use your official position, title or authority on behalf of anyone other than the public.

- **Official Title:** Use of your official title when representing the USDA is obviously expected. This may be on written documents or in verbal introduction. However, you may not use your USDA title where unrelated to your official duties or for personal gain or the gain of anyone else.
- **Endorsements:** In your official capacity, unless authorized by statute or regulation, you may not endorse: the products or processes of manufacturers; or the services of commercial firms for advertising publicity or sales purposes.
- **Nonpublic Information:** You may not: engage in a financial transaction using nonpublic information; allow the improper use of nonpublic information to further your interest or anyone else's interest; or make any unauthorized disclosure of such information.
Nonpublic information means information gained through Federal employment which has not been made available to the general public. It includes agency plans, policies, reports, studies, financial plans, or internal data protected by the Privacy Act or the Freedom of Information Act.
- **Agency Time and Property:** You have a duty to protect and conserve government time and property, and use them economically and for official purposes. It is not unusual for individuals in both the public and private sector to monitor the activities of Federal employees. Public perception is important.

D. Teaching, Speaking & Writing. 5 CFR 2635.807

General: A SGE, during their term of appointment, committee members may continue to receive fees, honoraria, and other compensation for teaching, speaking and writing undertaken in their personal or non-Governmental capacities. However, there are some limitations:

(1) An SGE is prohibited from receiving compensation for teaching, speaking, and writing that "*relates to the employee's official duties.*" 5 C.F.R. § 2635.807. The "relatedness" test is met for an SGE if:

- (a) the activity is undertaken as an official Government duty;
- (b) the circumstances indicate that the invitation to engage in the activity was extended to the SGE primarily because of the employee's position in the Government rather than the employee's expertise in the particular subject matter;
- (c) the invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by the performance or nonperformance of the employee's official duties; or
- (d) the information conveyed through the activity draws substantially on ideas or official data that are confidential or not publicly-available.

(2) Additionally, if a committee member serves for 60 days or less during a one-year period, the SGE **may not accept** compensation for teaching, speaking, and writing if the subject matter of the teaching, speaking or writing concerns a particular matter involving specific parties in which the SGE participated or is participating personally and substantially as a Government employee.

For example, an AIDS researcher has been appointed to a four-year term as a member of an advisory committee established for the purpose of surveying and recommending modification of procedures that deter the development of treatments for HIV infection and HIV-related diseases.

The committee member is not expected to serve more than 60 days each year during her four-year term of appointment.

The committee member may accept compensation for an article or speech about the deterrent effect of certain procedures required for clinical investigations and trial designs even though such issues are being discussed by the advisory committee. Clinical procedures in general are not a particular matter involving specific parties. The committee member could not accept compensation for an article or speech which recounts committee deliberations that took place in a closed meeting, or which relies upon other, non-public information. In addition, the committee member could not accept compensation for an article or speech about specific collaborations in the HIV drug development process which were discussed by the committee, since the collaborations are considered a particular matter involving specific parties.

(C) If a committee member serves for more than 60 days, the SGE is additionally prohibited from receiving compensation for teaching, speaking, and writing if the subject of the activity deals **in significant part** with any matter to which the SGE is presently assigned or was assigned during the previous one-year period.

EXCEPTIONS:

1. This rule does not preclude a committee member from receiving compensation for teaching, speaking, or writing on a subject within the committee member's discipline or inherent area of expertise based on the SGE's educational background or experience. The outside activity **must not be about or distinctly related to the work the SGE is providing to the Government.**

2. These restrictions also do not apply to teaching a course requiring multiple presentations that is part of the regularly established curriculum of an institution of higher education, an elementary or secondary school, or a program of education or training sponsored and funded by the Federal, State, or local government.

E. Fundraising. 5 CFR 2635.808.

General: You may engage in fundraising in a personal capacity (on your own time and not on government property) provided you do not solicit funds from subordinates and from anyone you know having interests that could be substantially affected by the performance or nonperformance of your government duties. You must also avoid using your official title or any authority associated with your government position to further the fundraising effort. Generally, the only authorized official participation in fundraising efforts is through the Combined Federal Campaign.

F. Expert Witness Testimony. 5 CFR 2635.805.

General: Unless officially authorized, you may not participate as an expert witness, with or without compensation, other than on behalf of the U.S., in any proceeding before a Federal court or agency in which the U.S. is a party or has a direct and substantial interest where you participated in the particular proceeding or in the particular matter that is the subject of the proceeding as a Federal employee or SGE [5 CFR § 2635.805(a)]. Also, if you were appointed by the President, serve on a statutory commission, or expect to serve more than 60 days in a period of 365 consecutive days, you shall not serve as an expert witness, with or without compensation in any proceeding in which USDA is a party or has a direct and substantial interest in the matter [5 CFR § 2635.805(b)].

G. Political Activities:

General: All Federal employees are subject to rules limiting their ability to participate in partisan political activity.

(1) Hatch Act 5 U.S.C. §§7321-7326:

The Hatch Act (5 U.S.C. §§ 7321-7326) prescribes the restrictions on certain political activities of Federal employees (see the explanatory chart on the following page). Unlike the criminal conflict of interest statutes and the ethics rules which are fully applicable to an SGE throughout the SGE's entire term of appointment, the Hatch Act restrictions apply only during the period of any day in which the SGE actually is performing government business. **For example**, if an SGE attends an advisory committee meeting from 8:00 a.m. - 1:00 p.m., the SGE could attend a political fund raiser at 3:00 p.m. and even solicit political contributions from the attendees.

A series of criminal political statutes (18 U.S.C. §§ 595, 600-603, 606-607, 610) applies to SGEs even on non-duty hours. These sections, which focus on patronage crimes and election offenses, prohibit coercive "political shakedowns," intimidation regarding political activities, campaign fundraising on Federal property, and the use of public office or authority for the purpose of affecting the outcome of an election.

Application:

- **CFLRAC members** are bound by the Amendments; however, the rules **only apply** to on the days (or portions of days) on which they perform official duties on behalf of the Agency:

Examples:

- *an CFLRAC member, however, could do both so long as she does not engage in such activities, in any way, on those days that she performs any amount of official duty on behalf of, or related to, CFLRAC.*

- An CFLRAC members who is in official travel status could not participate in partisan political activity at any time during the period of official travel, even if all CFLRAC business has been completed.
- A Committee Member could be appointed to fill a public office normally filled through a partisan election without violating the Hatch Reforms. Being appointed to a post is not the same as seeking nomination or election. However, the CFLRAC member would have to avoid conflicts and appearance (including representation) issues flowing from such appointment;

HATCH ACT POLITICAL ACTIVITY RESTRICTIONS

<i>Permissible Activities</i>	<i>Prohibited Activities (while on duty)</i>
<ul style="list-style-type: none"> * May be candidates for public office in nonpartisan elections * May register and vote as they choose. * May assist in voter registration drives. * May express opinions about candidates and issues. * May contribute money to political organizations. * May attend political fund raising functions. * May attend and be active at political rallies and meetings. * May join and be an active member of a political party or club. * May sign nominating petitions. * May campaign for or against referendum questions, constitutional amendments, municipal ordinances. * May campaign for or against candidates in partisan elections. * May distribute campaign literature in partisan elections. * May hold office in political clubs or parties (except Treasurer). 	<ul style="list-style-type: none"> * May not use their official authority to interfere with an election. * May not collect political contributions, unless both individuals are members of the same Federal labor organization and the one solicited is not a subordinate employee. * May not knowingly solicit or discourage the political activity of any person who has business before the agency. * May not engage in political activity while on duty. * May not engage in political activity in any Government office.. * May not engage in political activity while wearing an official uniform. * May not engage in political activity while using a Government vehicle. * May not solicit political contributions from the general public. * May not actively participate as a candidate for public office in a partisan election.

*****Hatch Act violations are Strict Liability and Prosecuted Vigorously by the Office of Special Counsel (OSC) Contact an Ethics Counselor before engaging in Political Activities*****

VI. MISCELLANEOUS RESTRICTIONS AND OBLIGATIONS

A. Augmentation of Appropriated Funds

General. Unless specifically authorized by statute, Federal employees may neither solicit, nor accept, donations from private entities either to Federal entities or for use in accomplishing Federal Agency programs [7 U.S.C. § 2269, as implemented by DR 5200-1].

B. Emoluments Clause of the Constitution of the United States

General. During your appointment you may not accept any employment with a foreign government or the political subdivision of a foreign government, including a public university or commercial enterprise owned or operated by a foreign government.

Exception. Foreign Gifts and Decorations Act (5 U.S.C. 7342). Under a statutory exception to the Emoluments Clause, you may accept a gift with a retail value of \$335 or less from a foreign government or an international organization. Gifts valued in excess of \$335 should be politely declined except in those instances where your refusal would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. In such instances these gifts may be accepted on behalf of the United States and, upon acceptance, become the property of the United States. This restriction extends to your spouse and dependents. *Exceptions to the \$335 threshold are gifts in the nature of educational scholarships or medical treatment. Also, gifts of travel and related expenses may be accepted when such travel takes place entirely outside the United States.*

C. 18 U.S.C. 219 – Foreign Agents

General. You may not act as an agent of a foreign principal registered under the Foreign Agents Registration Act unless USDA certifies that this employment is in the national interest.

D. 18 U.S.C. 1913 -- Lobbying with Appropriated Funds

General. No employee may use appropriated funds to lobby (contact) any member of Congress on matters of a personal interest. For example, do not use government resources to present matters of concern to any outside organization of which you are a member or officer. Lobbying on matters of official interest must be conducted through officially established channels. This does not preclude you, on your own time and at your own expense, from contacting your congressional representative or Senator as a private citizen.

ETHICS BEDROCK PRINCIPLES

5 C.F.R §2635.101

Basic Obligations Of Public Service.

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the law, and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4. An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligation as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards of conduct.

LINKS AND CONTACT INFORMATION

Office of Ethics

Web Site: (see training modules, self helps, rules of the road)

<http://www.usda.gov/ethics>

Special Government EE's: (link below especially for SGE's)

<http://www.usda-ethics.net/rules/rule21.htm>

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