

**PRESIDENTIAL COMMISSION ON  
ELECTION INTEGRITY**

**ETHICS TRAINING**  
**(for SGEs)**

*GSA-OGC Ethics Law Staff*



# WHO IS A **SGE** (SPECIAL GOVERNMENT EMPLOYEE)?

1. **SGEs are retained, designated, appointed, or employed to perform, with or without compensation; to perform temporary duties, on a full-time or intermittent bases; for less than 130 days during any period of 365 consecutive days.**
  2. **SGEs ARE federal employees.**
  3. **SGEs are subject to less restrictive conflict of interest requirements and ethics rules.**
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# DAY COUNTING

Certain Ethics Requirements are implicated based on the number of days worked as an SGE.

- **Counted:** Any day compensated work is performed by the Government. A part of a day is counted as an entire day; work to be performed on weekends or holidays is counted.
- **Not Counted:** Uncompensated administrative activities.

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**Note:** The Federal Ethics rules/restrictions apply equally on days when SGEs serve the Government and on days when they do not. This differs from the Hatch Act regulations.



# THE ROADMAP:

- Introduction
- **14 Principles of Ethical Conduct**
- Conflicts of Interest Statutes and Key Ethics Rules
- **Post-Government Employment**
- Gifts (From Outside Source and Between Employee)
- **Misuse of Position**
- Hatch Act



## **OBJECTIVES:**

- **To recognize ethics issues when they arise;**
- **To highlight common ethics issues you may encounter.**



# 14 PRINCIPALS OF ETHICAL CONDUCT

1. **Public Service is a Public Trust** - Place public service above private gain;
2. Financial interests cannot conflict with official duties;
3. Do not use non-public information for private gain;
4. No gifts from prohibited sources;
5. Employees must put forth honest effort in performance of duties;
6. No unauthorized promises purporting to bind the government;
7. **Do not use public office for private gain;**
8. Act impartially and no preferential treatment
9. Protect and conserve government property and only use it for authorized purposes
10. No outside employment or job hunting that conflicts with Federal job
11. Obligated to disclose waste, fraud, and abuse
12. Satisfy financial obligations in good faith
13. Uphold EEO laws and regulations
14. **Avoid appearance of unethical conduct/violating the law or ethics regulations**

Helps ensure that every citizen can have complete confidence in the integrity of the Federal Government.



# CONFLICTS OF INTEREST STATUTES

Conflicts of Interest Statutes are apart of the criminal statutes. These statutes are 5 year felonies that can include fines up to \$50,000 per count.

- 18 U.S.C. § 208, Conflicting Financial Interest Statute
  - 18 U.S.C. § 203, 205, Representational Statutes
  - 18 U.S.C. § 207, Post-Employment Statues
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# CONFLICTS OF INTEREST STATUTES

## 18 U.S.C. § 208, Conflicting Financial Interest Statute

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 or those that are imputed to you.

**Particular Matter** is a matter that involves deliberation, decision or action that is focused on the interests of specific persons or a discrete and identifiable class of persons.

Financial interests of others that impute to a Government employee :

- 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.



## **Impartiality** in Performing Official Duties

5 C.F.R. § 2635.501

**Broader application and reach than the criminal conflict of interest statute (18 U.S.C. § 208)**

**An employee is disqualified from participating in a particular matter where the employee:**

**Knows that a matter is likely to have a direct and predictable effect on the financial interests of a member of his household**

**or**

**Knows that a person with whom he has a covered relationship is or represents a party to such matter and the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality. 5 CFR § 2635.502**



## Impartiality and the **Covered Relationship**

5 C.F.R. § 2635.502(b)

- **A person, other than prospective employer, with whom the employee has or seeks a business, contractual or other financial relationship (other than routine consumer transaction);**
- **Members of the household and relatives with whom the employee has a close personal relationship;**
- **A person for whom the employee's spouse, parent or dependent child serves as an officer, director, trustee, general partner agent, attorney, consultant, contractor or employee;**
- **Former business partners, clients, and employers (within last year or last two years if received extraordinary severance payment or for two years if still covered by the Ethics Pledge);**
- **Organizations in which the employee is an active member.**



## Impartiality and the **Catch-All Provision**

5 C.F.R. § 2635.502(a)(2).

**Catch-all Provision:** An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.



# REMEDIES

## Conflict of Interest Remedies

### Recusal

- Reassignment (default remedy)

### Divestiture (for conflicting assets)

- Certificate of Divestiture

### Resignation (For conflicting outside positions)

### Waivers & Exemptions

- regulatory exemptions
- individual waivers

## Impartiality Remedies

### Recusal

- Reassignment (default remedy)

### Divestiture (for conflicting assets)

- Certificate of Divestiture

### Resignation (For conflicting outside positions)

### Authorization

- Agency's interest outweighs a reasonable persons concern re the loss of impartiality/bias



# CONFLICTS OF INTEREST STATUTES

18 U.S.C. § 203 and 205, Representational Statutes

SGEs are **prohibited from receiving compensation for the representation of anyone**, before any agency or court of the federal Government on a **particular matter involving specific parties**, that the SGE personally and substantially participated in as an employee.

SGEs are **prohibited from representing another** before an agency or court of the Federal Government, with or without compensation, on **particular matters involving specific parties**, that the SGE personally and substantially participated in as an employee, in which the U.S. is a party or has a direct and substantial interest.

SGEs who serve more than 60 days are also restricted in receiving compensation or representing another in connection to party matters pending at the agency they are serving, regardless of participation.



# CONFLICTS OF INTEREST STATUTES

18 U.S.C. § 203 and 205, Representational Statutes, cont'd.

**Particular matters involving specific parties** are matters that 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.



## EXCEPTIONS TO

18 U.S.C. §§ 203 and 205, Representational Statutes

**SGEs may always represent:**

- **Self;**
- **Spouse;**
- **Children;**
- **Parents; or**
- **Any person or estate you service as guardian, executor, administrator trustee or other personal fiduciary.**

**SGEs may represent others or receive compensation for representational services in connection with particular matters of general applicability, such as broadly applicable policies, rulemaking proceedings, and legislation--which do not involve specific parties.**

**Note:** Representational activity by SGEs can raise the appearance that they are using their official position to gain special access or attention of Government decisionmakers that is unavailable to the general public. Always consult with your Ethics Counselor before engaging in outside activities.



# CONFLICTS OF INTEREST STATUTES

18 U.S.C. § 207, Post Government Employment

## General Rule:

Prohibits you from communicating to or appearing before the Federal government, if done on behalf of another, in connection with a specific party matter on which you worked.

- **The post government employment rules do not limit where a person can work.**
- **If an organization, entity or person, would like you to communicate to or appear before a Federal department, agency or court on a matter you worked on as an SGE, please contact your Ethics Counselor.**



# CONFLICTS OF INTEREST STATUTES

## 18 U.S.C. § 207, Post Government Employment

**Lifetime Ban:** Bars all former employees from representing another before any Federal agency or court regarding **particular matters involving specific parties** in which they participated personally and substantially at anytime during Federal service. . ["Lifetime" means lifetime of the particular matter (e.g., contract)].

**2-Year Ban:** Bars all former employees from representing before any Federal agency or court regarding **particular matters involving specific parties** that were under their official responsibility during their last year of Federal employment.

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# CONFLICTS OF INTEREST STATUTES

18 U.S.C. § 207, Post Government Employment

**1-year ban:** Bars employees for one year after leaving federal service, from representing, aiding, or advising others about certain ongoing trade and treaty negotiations on the basis of certain nonpublic information.

**1-year Cooling Off:** Bars "Senior employees," for one year after leaving a senior position, from representing another before their former agency to seek official action. Applies to SGEs who served 60 days or more during the 1 year period before their services ends as a SGE.

If an SGE serves more than 60 day, the SGE is also subject to the post employment statute prohibiting work with foreign entities.

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# **GIFTS** (FROM OUTSIDE SOURCES/BETWEEN EMPLOYEES)

## **Evaluating the Appropriateness of Accepting an Offered Gift.**

**5 C.F.R. 2635.201(b) – Considerations for Declining Otherwise Permissible Gifts**

**Employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift. Relevant factors the employee may consider are whether:**

- (i) **The gift has a high market value;**
- (ii) **The timing of the gift creates the appearance that the donor is seeking to influence an official action**
- (iii) **The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and**
- (iv) **Acceptance of the gift would provide the donor with significantly disproportionate access.**

**Note:** This section asked the employee to incorporate the ethical values embodied in the <sup>14</sup> General Principles of Ethical Conduct, in their decision-making, but will not subject them to disciplinary action.



# **GIFTS FROM OUTSIDE SOURCES**

5 C.F.R. § 2635.201

## **The General Rule:**

**Employees are prohibited from:**

**1. Soliciting and Accepting gifts given from **prohibited sources**;**

**and**

**2. Soliciting and Accepting gifts given to the employee because of his/her **official position**.**

**Unless an exclusion or an exception to the rule applies.**

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# EXCLUSIONS/EXCEPTIONS TO

5 C.F.R. §§ 2635.203 and 204

**A gift is defined as any item having monetary value.**

## **Exclusions to this definition include, but not limited to:**

1. **Items such as coffee or donuts that part of a meal;**
2. **Greeting cards or items of little intrinsic value;**
3. **Things publicly available;**
4. **Opportunities and benefits, including favorable rates and commercial discounts available to the public or all Government employees [e.g., *Cell Phone Rates reduction by Cell Phone Company*]**
5. **Things for which you pay market value**

## **Exceptions to the rule include, but are not limited to:**

1. **Gifts of \$20 or less;**
2. **Gifts based on a personal relationship;**
3. **Widely Attended Gatherings (Speaking Events)**
4. **Informational Materials**



# **GIFTS BETWEEN EMPLOYEES**

5 C.F.R. § 2635.301

## **The General Rule:**

**Employees may not give a gift to an official superior or solicit contributions from co-workers for a gift to a superior; and**

**Employees may not accept a gift from an employee receiving less pay.**



# EXCEPTIONS TO

5 C.F.R. § 2635.304

Exceptions to the rule include gifts given on:

**Occasional basis** (including when gifts are traditionally exchanged)

1. a gift valued at \$10 or less
2. group food & refreshments may be accepted

**Special, infrequent occasions** (birth, marriage) *or* those that terminate the superior-subordinate relationship (transfer or retirement),

1. you may accept a gift from an individual or a donating *group* of employees



# MISUSE OF POSITION

5 C.F.R. § 2635.701 et. seq.

## As a general rule:

**You may not use your public office for private gain.**

**You may not use (or permit use of) your SGE title, position, or authority of office to:**

- *Fundraise;*
  - *endorse a product, service, or enterprise;*
  - *imply the Government sanctions or endorses your personal activities or those of another;*
  - *induce or coerce another to provide any benefit to self or others.*
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# MISUSE OF POSITION CONT'D

5 C.F.R. § 2635.701 et. seq.

## Exception to the general rule:

You may use (or permit use of) your SGE title or position as one of several biographical details in *teaching, speaking and writing* activities, where your SGE title or position is given no more prominence than the other biographical details.

## Social Media Rules:

You are allowed to have personal websites, Facebook accounts, blogs and the like outside of work.

- Remember that when you use your social media tools personally, it shouldn't appear to others as though you are speaking for the Commission.
- Remember, even in your personal capacity, your use of social media may still be subject to the Hatch Act.



# MISUSE OF POSITION CONT'D

## **Use of official time:**

- **Obligation to use government time to perform government work.**

## **Use of nonpublic information:**

- **Prohibited from financial transactions using nonpublic information;**
- **May not allow improper use of nonpublic information to further own private interest or that of another.**

## **Use of Government property:**

- **Affirmative duty to protect and conserve Government property; and**
  - **Prohibited from using such property, or allowing its use, for other than authorized purposes.**
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# MISUSE OF POSITION CONT'D

## Fundraising:

- **All employees, including SGEs, are subject to certain restrictions on personal fundraising for nonprofit organizations, including the use of their official title, position and authority.**
- **Prohibition on soliciting funds from subordinate employees;**
- **SGEs are prohibited from personally soliciting persons whose interests may be affected substantially by the performance or nonperformance of the SGEs official duties.**  
*See 5 C.F.R. 2635.808(c)(1)(ii).*



# THE HATCH ACT

5 U.S.C. § 7321 et. seq.

**The Hatch Act restricts partisan political activities of Federal Government Employees.**

**The Office of Special Counsel investigates complaints regarding potential Hatch Act violations. Violations of the Hatch Act are the employee's. Penalties range from a letter of reprimand to debarment from federal service for up to 5 years, or a civil penalty not to exceed \$1,000.**



# THE HATCH ACT

5 U.S.C. § 7321 et. seq.

The Hatch Act divides employees into two categories: “further restricted” and “less restricted.”

“Further restricted” employees includes:

- Career Senior Executive Service employees;
- Members of the Contract Appeals Board

“Less Restricted” are all other employees, including SGEs.



# THE HATCH ACT

5 U.S.C. § 7321 et. seq.

5 C.F.R. § 734.601

**For SGEs, the Hatch Act rules only apply when he or she is on duty. SGEs are considered on duty on the days they perform "counted" work as an SGE.**

**Example:** An employee appointed to a special commission who does not have a regular tour of duty may run as a partisan political candidate, but may actively campaign only when he or she is not on duty.



# THE HATCH ACT

5 U.S.C. § 7321 et. seq.

**Political Activity** is an activity directed toward the success or failure of:

- a political party;
- a candidate for partisan political office (beginning with fundraising or declaration of candidacy); **OR**
- a partisan political group.

**Non-Partisan.** Any activity not associated with the success or failure of a political party or candidate for partisan political office.



# THE HATCH ACT

5 U.S.C. § 7321 et. seq.

**Federal employees may not, at any time, do any of the following:**

- **Use official authority or influence to interfere with an election;**
- **Run for partisan office;**
- **Solicit or discourage political activity of anyone with business before their agency;**
- **Solicit, accept, or receive political contributions;**
- **Be candidates 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**



# THE HATCH ACT

5 U.S.C. § 7321 et. seq.

## All Federal employees may:

- Register to vote and vote;
- Make a financial contribution to a campaign;
- Be a candidate for non-partisan office;
- Join political clubs or parties;
- Express personal opinions about candidates and issues;
- Sign nominating petitions;
- Attend political rallies and conventions;
- Participate in nonpartisan activities



# OTHER ETHICS RULES

- **Please contact your Ethics Counselor for additional information on:**
  - **Receiving compensation from a non-federal source on teaching, speaking and writing when the activity relates to your official duties;**
  - **Providing Expert Testimony in a proceeding on matters you participated in as a Government employee;**



**CONTACT YOUR  
ETHICS COUNSELOR WITH  
QUESTIONS OR FOR ASSISTANCE.**

*GSA-OGC Ethics Office*



