

Ethics Laws Applicable to Special Government Employees

The U.S. Office of Government Ethics has created this resource for ethics officials who counsel Special Government Employees (SGEs) or otherwise deal with the unique ethical issues posed by SGEs. This tool summarizes the ethics provisions that apply to two categories of SGEs (non-FACA and FACA¹) in comparison to the provisions that apply to other executive branch employees (non-SGEs). [[Financial Disclosure](#) | [Ethics Training Requirements](#) | [Financial Conflicts of Interest](#) | [Limits on Representational Activities of Current Employees](#) | [Misuse of Position](#) | [Outside Payments, Income, and Gifts](#) | [Limits on Representational Activities of Former Employees](#)]

Although SGEs are subject to somewhat less restrictive conflict of interest requirements than other employees, they are employees subject to many more requirements than non-employees. Non-employees such as independent contractors and “representative” members of federal advisory committees are not generally covered by the conflict of interest laws at all.

Many agencies use SGEs, either as advisory committee members or as individual experts or consultants, to provide expertise or perspectives that might be unavailable among an agency’s regular employees. Often because of their expertise, these SGEs have substantial outside activities and financial interests that may raise difficult ethics questions.

Special Government Employee (SGE): SGE is defined at 18 U.S.C. § 202(a). SGE means an officer or employee who is retained, designated, appointed, or employed, to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not more than 130 days during any period of 365 consecutive days. The term “SGE” does not include enlisted members, of the Armed Forces. It does, however, include these categories of officers or employees:

- Part-time United States commissioners;
- Reserve officers of the Armed Forces and officers of the National Guard of the United States (unless otherwise officers or employees of the United States) while on active duty solely for training or serving involuntarily.

NOTE: The question of whether an employee meets the definition of an SGE under 18 U.S.C. § 202(a) is determined by the employing agency, based exclusively on the expected frequency and duration of the employee’s periods of duty. OGE’s guidance to agencies on SGE designations is generally limited to (1) what counts as a day for the 130-day limit, and (2) the ethics rules that apply once an agency has determined that its employee is expected to serve less than 130 days in any one year. For further information about the ethical requirements applicable to SGEs, please consult with your OGE desk officer and [OGE’s Informal Advisory Opinion 00 x 1](#) (Feb. 15, 2000).

Ethics Provisions for Executive Branch Employees

Executive Branch Employees (Non-SGEs)	Special Government Employees (Non-FACA)	Special Government Employees (FACA)
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Financial Disclosure

Public²: Generally, employees above GS-15 (or equivalent) are required to file a public disclosure form.³ Employees are required to file within 30 days of assuming their position, annually, and by 30 days after termination of their employment.⁴

Employees may not be required to file a new entrant, annual, or termination report when the employee is not expected to perform services for more than 60 days during the relevant period, unless the employee goes on to actually perform services for more than 60 days during the relevant period.⁵

Public: Same rules apply.⁶

Public: Same rules apply.

Confidential⁷: Generally, employees at the GS-15 level or below (or equivalent) do not file a confidential disclosure form unless their duties involve the exercise of discretion (e.g., contracting, administration of grants).⁸ Employees are required to file within 30 days of assuming their position and annually.⁹

Employees may not be required to file a new entrant and annual report when the employee is not expected to perform services for more than 60 days during the relevant period, unless the employee goes on to actually perform services for more than 60 days during the relevant period.¹⁰

Confidential: Unless required to file a public disclosure form, SGEs who have a substantial role in the formulation of policy or whose duties involve the exercise of discretion (e.g., administration of grants) must file a confidential form without regard to their length of service, unless the agency determines that the duties of the position make the possibility of a real or apparent conflict of interest remote. This includes SGEs who were excluded from filing a public disclosure form due to the short period of expected service.¹¹

SGEs do not file annual reports; rather, due to the temporary nature of their appointments, SGEs must file new entrant reports (covering the preceding 12 months) within 30 days of each appointment or reappointment.¹²

Confidential: All SGEs serving on a FACA Committee who are not required to file a public disclosure form are required to file a confidential form without regard to their length of service.¹³ The required report must be filed within 30 days of appointment or before the FACA SGE renders any advice to the agency and before the first committee meeting, whichever is sooner.¹⁴

As with Non-FACA SGEs, FACA SGEs do not file annual reports. Rather, due to the temporary nature of their appointments, FACA SGEs must file new entrant reports (covering the preceding 12 months) upon each appointment or reappointment.¹⁵

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Ethics Training Requirements

<p>Generally, all new employees are required to receive initial ethics training within 3 months of appointment.¹⁶ Certain high level employees must additionally receive an initial ethics briefing 15 days after appointment.¹⁷ Thereafter, public filers, confidential filers, and other employees must get annual ethics training before the end of the calendar year.¹⁸</p> <p>These training requirements, as well as the content requirements for each training, are summarized in a chart appended to OGE Legal Advisory LA-16-09 (Nov. 10, 2016).</p>	<p>For SGEs who are reasonably expected to serve for no more than 60 days in a calendar year on a board, commission, or committee, the initial ethics briefing and the initial ethics training can be at any time before (or, in the case of initial ethics training, at) the beginning of the employee's first meeting of the board, commission, or committee.¹⁹</p> <p>SGEs who are expected to work no more than 60 days in a calendar year may be authorized to receive the required written materials only, if the DAEO determines that providing interactive training is impracticable.²⁰</p>	<p>Same rule applies to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>
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Financial Conflicts of Interest (continues on next page)

<p>Employees are prohibited under the criminal statute, 18 U.S.C. § 208, from personally and substantially participating in any particular matter that would have a direct and predictable effect on the employee's financial interests or those imputed to the employee (e.g., financial interests of spouse, minor child, an outside organization with whom employed or negotiating for employment).²¹</p>	<p>Same rule applies.²²</p>	<p>Same rule applies.</p>
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Executive Branch Employees (Non-SGEs)	Special Government Employees (Non-FACA)	Special Government Employees (FACA)
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Financial Conflicts of Interest		
<p>While Section 208 generally prohibits participation in those matters referenced above, it authorizes waivers of the prohibition, either by regulation under subsection (b)(2) (when the financial interest is too remote or inconsequential to affect the integrity of an employee’s service) or by individual agency determinations under subsection (b)(1) (when the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee’s service).²³</p>	<p>Same rule applies.²⁴</p>	<p>The general prohibition under Section 208 described for non-SGEs and SGEs applies equally to FACA SGEs, as does the provision in subsection (b)(2) of Section 208 for waiver by regulation (when the financial interest is too remote or inconsequential to affect the integrity of an employee’s service).</p> <p>Waiver by individual agency determination for a FACA SGE is generally authorized under subsection (b)(3) rather than (b)(1).</p> <p>The standard under subsection (b)(3) (when the need for the FACA SGE’s services outweighs the potential for a conflict of interest posed by the financial interest involved) is more liberal than the (b)(1) standard for other employees.²⁵</p> <p>Certain regulatory exemptions to Section 208 promulgated by OGE pursuant to subsection (b)(2) apply only to FACA SGEs – i.e., the exemptions found at 5 C.F.R. § 2640.203(g), (i), and (j).</p>
<p>In addition to waivers and regulatory exemptions under Section 208(b), divestiture of a disqualifying financial interest would allow an employee to participate in the matters referenced in Section 208(a).²⁶</p>	<p>Same rule applies.²⁷</p>	<p>Same rule applies.</p>
<p>An employee may be eligible to obtain a Certificate of Divestiture allowing more favorable tax treatment when the employee agrees to divest all disqualifying financial interests.²⁸</p>	<p>SGEs are not eligible to receive a Certificate of Divestiture if required to sell property to resolve a conflict of interest.²⁹</p>	<p>Same rule applies to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>

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Executive Branch Employees (Non-SGEs)	Special Government Employees (Non-FACA)	Special Government Employees (FACA)
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Limits on Representational Activities of Current Employees (continues on next page)

<p>Employees are prohibited under the criminal provision, 18 U.S.C. § 205(a)(2), from personally representing another (with or without compensation) before any court, federal agency (or other federal entity) in connection with any particular matter in which the United States is a party or has a direct and substantial interest.</p>	<p>SGEs are prohibited from these representational activities only when they concern matters involving specific parties (1) which are pending in the SGE’s agency or (2) in which the SGE participated (as a government employee or SGE).³⁰</p> <p>For those SGEs who have served no more than 60 days (during the immediately preceding 365-day period), the prohibition on matters involving specific parties pending in the SGEs’ agency does not apply.³¹</p> <p>SGEs are not prohibited when the particular matter is of general applicability, such as broad policies, rulemaking proceedings, and legislation, which do not involve specific parties.</p> <p>Per section 205(f), SGEs may be eligible for a special waiver that permits certain representational activity in connection with work under Federal grants and contracts.</p>	<p>Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>
<p>Employees are prohibited under the criminal provision, 18 U.S.C. § 203(a), from receiving, agreeing to receive, or soliciting compensation related to representational services provided in connection with any particular matter in which the United States is a party or has a direct and substantial interest, including when those services are provided either personally or by another.</p>	<p>Same differences in application as noted above (for section 205(a)(2)).³²</p> <p>Per section 203(e), SGEs may be eligible for a special waiver that permits certain representational activity in connection with work under Federal grants and contracts. Section 203(e) is identical to the waiver provision in 205(f), discussed above.</p>	<p>Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>

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Executive Branch Employees (Non-SGEs)	Special Government Employees (Non-FACA)	Special Government Employees (FACA)
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Limits on Representational Activities of Current Employees

<p>Employees are generally prohibited from serving as an expert witness, with or without compensation, other than on behalf of the United States, in any proceeding before a Federal court or agency in which the United States is a party or has a direct and substantial interest.³³</p> <p>The Designated Agency Ethics Official (DAEO) may authorize an employee to serve as an expert witness when such service is determined to be in the interest of the Government or when the subject matter of the testimony is determined to be unrelated to the employee’s official duties.³⁴</p>	<p>The prohibition generally applies to SGEs only if they participated officially in the same proceeding or in the particular matter that is the subject of the proceeding.³⁵</p> <p>However, per 5 C.F.R. § 2635.805(b), SGEs whose Federal positions give them particular stature such as Presidential appointees or commissioners on commissions established by statute, or who have served or are expected to serve for more than 60 days in a period of 365 consecutive days, may not serve as an expert witness in a proceeding before a Federal court or agency if the SGEs’ employing agency is a party or has a direct and substantial interest in the proceeding, even if the SGEs did not participate officially in the proceeding or in the particular matter that is the subject of the proceeding.</p> <p>The DAEO may authorize an SGE to serve as an expert witness, per 5 C.F.R. § 2635.805(c).</p>	<p>Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>
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Misuse of Position

<p>Employees are prohibited under the Standards of Ethical Conduct for Employees of the Executive Branch (“the Standards”) (5 C.F.R. part 2635, subpart G) from</p> <ul style="list-style-type: none"> • using their public office for their own private gain, including the private gain of friends, relatives, or those with whom they are affiliated in a nongovernmental capacity, • using nonpublic information to further their own private interest or that of another, and • using government property for unauthorized purposes. 	<p>Same rules apply.³⁶</p> <p>For further information regarding specific misuse concerns about representational activities of SGEs, see OGE Informal Advisory Opinion 00 x 1 (Feb. 15, 2000), at 10-11.</p>	<p>Same rules apply.</p> <p>For further information regarding specific misuse concerns about representational activities of SGEs, see OGE Informal Advisory Opinion 00 x 1 (Feb. 15, 2000), at 10-11.</p>
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Outside Payments, Income, and Gifts (continues on next page)

<p>Employees are subject to the criminal bribery and illegal gratuity Statute, which prohibits employees, under specified circumstances, from receiving anything of value in connection with official acts.³⁷</p>	<p>Same rules apply.³⁸</p>	<p>Same rules apply.</p>
<p>Employees are prohibited under the criminal provision, 18 U.S.C. § 205(a)(1), from receiving compensation for assistance in the prosecution of a claim against the United States, including when the assistance provided is not representational in nature.</p>	<p>The prohibition applies to those claims (1) which are pending in the SGE’s agency or (2) in which the SGE participated (as a government employee or SGE).³⁹</p> <p>For those SGEs who have served no more than 60 days (during the immediately preceding 365-day period), the prohibition on compensation involving claims pending in the SGE’s agency does not apply.⁴⁰</p>	<p>Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>

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Outside Payments, Income, and Gifts (continues on next page)

<p>Employees are prohibited under the criminal statute 18 U.S.C. § 209, from receiving any salary, contribution to, or supplementation of their government salary from any source other than the Government as compensation for their services as a Government employee.</p>	<p>SGEs are exempt from the prohibition in 18 U.S.C. § 209.⁴¹ SGEs, however, are subject to other restrictions in the Standards on receiving outside compensation, discussed below.</p>	<p>Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>
<p>Employees are prohibited from receiving outside compensation for teaching, speaking, or writing that relates to their official duties.⁴²</p>	<p>SGEs are subject to this prohibition, but the definition of what is related to official duties is narrower for SGEs.⁴³</p> <p>However, SGEs are still prohibited from receiving outside compensation when the activity is undertaken as part of the SGEs' official duties; when the invitation to engage in the activity was extended primarily because of the SGEs' official position rather than expertise on the subject matter; when the invitation or offer of compensation was extended by someone with interests that may be affected substantially by the SGEs' official duties; or when the information conveyed through the activity draws substantially on nonpublic information obtained through the SGEs' Government service.⁴⁴</p>	<p>Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>
<p>Employees above GS-15 (or equivalent), in covered noncareer positions, are prohibited from receiving outside earned income in any calendar year (attributable to that calendar year) in excess of 15 percent of the annual rate of basic pay for level II of the Executive Schedule under the non-criminal statute 5 U.S.C. app. § 501.⁴⁵</p>	<p>SGEs are not covered under this restriction.⁴⁶</p>	<p>Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.</p>

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Outside Payments, Income, and Gifts		
Employees who are appointed by the President to certain full-time noncareer positions are under a total ban on outside earned income during the individual’s presidential appointment, pursuant to section 102(a) of Executive Order No. 12674, Principles of Ethical Conduct for Government Officers and Employees, as amended by Executive Order No. 12731.	SGEs are not covered under this restriction. ⁴⁷	Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.
Employees are prohibited from soliciting or accepting gifts from certain prohibited sources or given because of their position pursuant to 5 U.S.C. § 7353, unless permitted under an exception set forth in the Standards. ⁴⁸	Same rule applies. ⁴⁹	Same rule applies.
Employees are prohibited from giving certain gifts to official superiors and accepting gifts from employees receiving less pay pursuant to 5 U.S.C. § 7351, unless permitted under an exception set forth in the Standards. ⁵⁰	Same rule applies. ⁵¹	Same rule applies.
Employees are subject to certain restrictions on personal fundraising for nonprofit organizations, including restrictions on the use of official title, position and authority, and the solicitation of subordinates. Employees also may not personally solicit funds or other support from a person known by the employee to be a “prohibited source” within the meaning of 5 C.F.R. § 2635.203(d). ⁵²	Same restrictions apply to SGEs, except that the prohibited source restriction is narrower. SGEs are prohibited only from personally soliciting persons whose interests may be affected substantially by the performance or nonperformance of the SGEs’ official duties. ⁵³	Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.

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Limits on Representational Activities of Former Employees

Former employees may not make contact with the intent to influence a federal employee on behalf of another concerning a particular matter involving specific parties in which the former employees participated personally and substantially for the lifetime of that particular matter, under criminal provision 18 U.S.C. § 207(a)(1).	Same rule applies. ⁵⁴	Same rule applies.
Former employees are under a 2-year ban on making contact with the intent to influence a federal employee on behalf of another concerning a particular matter (involving specific parties) that was pending under the former employees' official responsibility during their last year of service under criminal provision 18 U.S.C. § 207(a)(2).	Same rule applies. ⁵⁵	Same rule applies.
Former employees are under a 1-year ban on representing, aiding, or advising another on the basis of nonpublic information in connection with trade or treaty negotiations in which the former employees participated personally and substantially during the last year of the former employees' service under criminal provision 18 U.S.C. § 207(b).	Same rule applies. ⁵⁶	Same rule applies.
Former senior employees, as defined in 18 U.S.C. § 207(c)(2)(A), are under a 1-year ban on making contact with their former agency on any matter seeking official action on behalf of another under criminal provision 18 U.S.C. § 207(c).	Former senior SGEs who serve less than 60 days during the year before terminating service are not covered by this ban. ⁵⁷	Same rules apply to SGEs serving on a FACA Committee as to Non-FACA SGEs.

¹ Federal Advisory Committee Act (FACA)

² 5 U.S.C. app. § 101; 5 C.F.R. pt. 2634, subpt. B.

³ An individual who is not under the GS, but is in a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15, is required to file a public disclosure form. 5 U.S.C. app. § 101; 5 C.F.R. § 2634.202.

⁴ 5 U.S.C. app. § 101.

⁵ 5 U.S.C. app. § 101(h).

⁶ See 5 U.S.C. app. §§ 101(f)(3), 101(h).

⁷ 5 U.S.C. app. § 107; Exec. Order No. 12674, as amended, Exec. Order No. 12731; 5 C.F.R. pt. 2634, subpt. I.

⁸ See 5 C.F.R. § 2634.904(a).

⁹ 5 C.F.R. § 2634.903.

¹⁰ See 5 C.F.R. § 2634.903.

¹¹ See 5 C.F.R. §§ 2634.904(a)(2), (b).

¹² See 5 C.F.R. § 2634.903.

¹³ See 5 C.F.R. § 2634.904(a)(2)(ii).

¹⁴ 5 C.F.R. § 2634.903(b)(3).

¹⁵ See 5 C.F.R. § 2634.903.

¹⁶ 5 C.F.R. § 2638.304.

¹⁷ 5 C.F.R. § 2638.305.

¹⁸ 5 C.F.R. §§ 2638.307, .308.

¹⁹ See 5 C.F.R. §§ 2638.304(b)(2), .305(b)(2)(ii).

²⁰ See 5 C.F.R. § 2638.307(d)(2).

²¹ 18 U.S.C. § 208(a).

²² See 18 U.S.C. § 208(a).

²³ See 18 U.S.C. § 208(b).

²⁴ See 18 U.S.C. §§ 208(a), (b).

²⁵ See 18 U.S.C. § 208(b)(3).

²⁶ See 5 C.F.R. § 2635.402(e).

²⁷ See 5 C.F.R. §§ 2635.102(h), 402(e).

²⁸ 5 C.F.R. § 2635.402(e)(3); 5 C.F.R. pt. 2634, subpt. J.

²⁹ See 26 U.S.C. § 1043(b)(1)(A); 5 C.F.R. § 2634.1003(a)(1).

³⁰ 18 U.S.C. § 205(c).

³¹ 18 U.S.C. § 205(c).

³² See 18 U.S.C. § 203(c).

³³ 5 C.F.R. § 2635.805(a).

³⁴ 5 C.F.R. § 2635.805(c).

³⁵ 5 C.F.R. § 2635.805(a).

³⁶ 5 C.F.R. pt. 2635, subpt. G; 5 C.F.R. § 2635.102(h).

³⁷ 18 U.S.C. §§ 201(b), (c).

³⁸ See 18 U.S.C. §§ 201(a)(1), (b), (c).

³⁹ 18 U.S.C. § 205(c).

⁴⁰ 18 U.S.C. § 205(c).

⁴¹ 18 U.S.C. § 209(c).

⁴² 5 C.F.R. § 2635.807(a).

⁴³ See 5 C.F.R. § 2635.807(a)(2)(i)(E)(4).

⁴⁴ 5 C.F.R. § 2635.807(a)(2).

⁴⁵ Covered noncareer employees include certain presidential appointees, noncareer members of the Senior Executive Service, and Schedule C appointees, among others. See 5 C.F.R. § 2636.303(a). Implementing regulations are contained in 5 C.F.R. part 2636, subpart C.

⁴⁶ 5 U.S.C. app. § 505(2).

⁴⁷ See Exec. Order No. 12674, § 102(a), as amended, Exec. Order No. 12731; OGE Inf. Adv. Op., 00 x 1 (Feb. 15, 2000), at 18, fn. 22.

⁴⁸ 5 C.F.R. pt. 2635, subpt. B.

⁴⁹ See 5 U.S.C. § 7353(d)(2).

⁵⁰ 5 C.F.R. pt. 2635, subpt. C.

⁵¹ OGE Inf. Adv. Op., 00 x 1 (Feb. 15, 2000), at 17.

⁵² See 5 C.F.R. § 2635.808(c).

⁵³ See 5 C.F.R. § 2635.808(c)(1)(ii).

⁵⁴ See 18 U.S.C. § 207(a)(1).

⁵⁵ See 18 U.S.C. §§ 207(a)(1), (a)(2).

⁵⁶ See 18 U.S.C. §§ 207(a)(1), (b).

⁵⁷ 18 U.S.C. §§ 207(c)(1), (c)(2)(B).