



USDA Office of Ethics
Science Ethics Branch

Special Government Employee Guide for Collaborators, Experts, and Panel Managers

(Updated 2/2008)

FOREWORD

Routinely, the Agricultural Research Service uses the Special Government Employee (SGE) appointment to hire Collaborators for specific projects. Additionally, the Cooperative State Research, Education, and Extension Service uses the SGE appointment to hire Experts and Panel Managers for specific projects.

Although there is some supervision, these SGEs generally work in an unstructured environment. They are appointed to perform temporary duties, with or without compensation, for no more than 130 days during any period of 365 consecutive days. SGEs confer or engage in discussions and special projects and are involved in other issues of mutual interest to the agencies of REE.

While serving in this capacity, SGEs must comply with the same Ethics rules as other Government employees. Ethics rules are often complex and require some analysis in applying them to specific situations. However, given the length of the SGEs employment, these rules are not as restrictive as those governing other employees. This guide offers SGEs a brief synopsis of those rules. Additionally, Ethics Advisors are available throughout REE to discuss application of Ethics rules.

Generally, any employee who provides all the facts to an Ethics Advisor and follows the advice given will not be disciplined for violating Ethics rules. Moreover, each Agency Administrator, in consultation with the Office of General Counsel, has authority to grant waivers in some instances where a potential for conflict of interest is evident.

The Science Ethics Branch's goal in providing this guide is to increase awareness of Ethics rules. Each SGE's commitment to upholding these rules is essential to ensure the propriety of the SGE (Collaborator, Expert, and Panel Manager) program.

This guide is broken into four separate parts as listed in the Table of Contents. Each part contains separate, rights and obligations all SGEs should be aware of during their Federal employment.

Individuals with questions regarding the content of this guide are invited to contact your ethics advisor or the Science Ethics Branch at:

<http://www.afm.ars.usda.gov/hrd/ethics/agency.htm>

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SPECIAL GOVERNMENT EMPLOYEE

DEFINITION:

Special Government Employee (Collaborator, Expert, Panel Manager) is:

- an officer or employee of an agency who performs temporary duties, with or without compensation, for not more than 130 days in a period of 365 days, either on a full-time or intermittent basis.

SPECIAL NOTE: *Special Government Employees (SGEs) who work in excess of 130 days within a period of 365 days should NOT refer to this guide for Ethics matters.*

These individuals may be subject to full Ethics compliance requirements rather than the abbreviated requirements communicated in this guide.

SGEs are required to complete a financial disclosure report before their entrance on duty, and upon renewal of each appointment.

TITLE 18 OF THE UNITED STATES CODE, SECTIONS 201 - 209

All employees of the Executive Branch of the Federal Government, including SGEs, are required to comply with the mandates of Title 18 of the United States Code. Violations of Title 18 carry heavy penalties including fines and/or incarceration.

Although SGEs must comply with Title 18 mandates, application of the law is not as restrictive as for other employees. Below is a synopsis of Title 18 pertinent to the SGE appointment.

Section 201 - Bribery of Public Officials and Witnesses

Prohibited Activity:

- Giving/receiving/requesting/offering anything of value to influence an official act of a Government employee.

Penalty or Remedy:

- Fine up to 3 times the bribe and/or imprisonment for not more than 15 years, and possible disqualification from holding any official office.

Section 203 - Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government

Prohibited Activity:

Except in the discharge of official duty, SGEs are prohibited from seeking or receiving compensation for representational services rendered personally or by another party before the Federal Government in matters of interest to the Federal Government,

- in which the SGE participated personally and substantially as a Government employee, or
- which are pending in the department or agency where the SGE is serving. (SGEs serving less than 60 days are not prohibited from seeking or receiving compensation for representational services in matters of interest to the Federal Government which are pending in the department or agency where the SGE is serving. They remain, however, prohibited in instances where they participated personally and substantially as Government employees.)

Exceptions: An SGE may:

- Represent himself/herself
- Represent parents, spouse, child, or person/estate for whom serving as personal fiduciary (with appointing official's approval) except in matters in which he/she participated personally and substantially as a Government employee, or matters which are the subject of his/her official responsibility.
- Represent others on work done under grant or contract with the U.S. or one that benefits the U.S. if the Agency Administrator certifies in the Federal Register that it is in the national interest.
- Give testimony under oath.

Penalty or Remedy:

- Fine up to \$50,000 or amount of compensation received or offered for prohibited conduct, whichever amount is greater, and/or imprisonment for no more than 5 years.
- Injunction prohibiting the SGE from engaging in misconduct.

Section 205 - Activities by SGEs in Claims Against and Other Matters Affecting the Government

Prohibited Activity:

Except in the discharge of official duties, SGEs are prohibited from acting as agent or attorney, with or without compensation,

- in prosecuting any claim against the U.S., or receiving consideration for assisting in prosecution of such a claim, or
- in representing anyone before the Federal Government, on a particular matter involving a specific party or parties, in which the U.S. is a party or has a direct and substantial interest; and
- in which the SGE participated personally and substantially as a Government employee, or
- which is pending in the department or agency where the SGE is serving.

Exceptions: See Section 203, above.

Penalty or Remedy:

- Fine up to \$10,000 or imprisonment for not more than two years, or both.

Section 207 - Restrictions on Former Officers, Employees and Elected Officials of the Executive and Legislative Branches

Prohibited Activity:

Restrictions on ALL SGEs:

- Permanent Restriction:

May not knowingly communicate with, or appear before, a current employee of the U.S., on behalf of any other person (except the U.S.), with the intent to influence the current employee's actions in a specific matter in which the SGE participated for the Government.

- Two-Year Restriction

May not knowingly communicate with, or appear before, a current employee of the U.S. on behalf of any other person (except the U.S.), with the intent to influence the current employee in a particular matter involving one or more specific parties which the SGE knew or should have known was under their official responsibility within a period of 1 year before the date of the termination of the SGE's Federal employment. (For a violation to occur, the U.S. must be a party or have a direct and substantial interest in the matter.)

- One-Year Restriction on Certain Senior Personnel

Definition:

Senior Personnel - also called "Senior Employees," include employees formerly paid at or above Executive Schedule Level V.

Within 1 year after service as a “Senior Employee,” an SGE may not knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of the Department on behalf of a non-Federal entity in connection with any matter in which the SGE seeks official action by any officer or employee of the Department.

One-Year Restriction Relating to Foreign Entities

SGEs who were formerly Senior Employees or Very Senior Employees as defined above, may not, within the 1 year of leaving their senior position, knowingly represent the interests of the government of a foreign country or of a foreign political party before any officer or employee of any department or agency of the U.S. with the intent to influence a decision of the officer or employee in carrying out his or her official duties.

Also, SGEs may not aid or advise a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the U.S., in carrying out his or her official duties.

Exceptions:

Certain limited exceptions permit activities which otherwise would be restricted. If the SGE believes an exception may apply, contact the Ethics Office. Briefly, exceptions include:

- Activities as an officer or employee of the U.S. or as an elected official of a State or local Government.
- Appearing or communicating for international organizations of which the U.S. is a member.
- Communicating to furnish scientific or technological information, under procedures acceptable to the Department, in consultation with OGE.
- Giving factual testimony under oath or making statements required to be made under penalty of perjury. (Expert testimony is not included with the exception.)

For former Senior Employees:

- Carrying out official duties for State and Local Governments; accredited, degree-granting institutions of higher education; or nonprofit hospitals or medical research institutions.
- Appearing or communicating on matters of a personal and individual nature (such as income taxes or pension benefits); or providing a statement which is based on the former officer's or employee's own special knowledge if no compensation is received other than witness fees provided by law.

Penalty or Remedy:

See Section 205, Penalty or Remedy, above.

Section 208 - Acts Affecting a Personal Financial Interest

Prohibited Activity:

Prohibits SGEs from personally and substantially engaging in official matters in which they, their spouse, minor child, partner, organization in which they serve as officer, director, trustee, partner or employee, or any person or organization with whom they are negotiating or have an arrangement concerning prospective employment.

Penalty or Remedy:

(See Section 205, Penalty or Remedy, above.)

STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

The Standards of Ethics Conduct for Employees of the Executive Branch (Standards) contain a codification of Ethics rules and regulations for Federal employees, including SGEs. However, as with Title 18 of the United States Code, certain prohibitions within the Standards are less structured for SGEs. A synopsis of those prohibitions by Subpart traceable to the Standards follow. For full text, refer to the Standards.

Subpart B

Gifts From Outside Sources

Prohibits SGEs from soliciting or accepting gifts given directly or indirectly from licensees, applicants, contractors, anyone seeking business with the agency, anyone with interests that the SGE could affect, or an organization with a majority of members who meet the above description. They cannot accept gifts that are given because of their agency position.

Exceptions to this prohibition include gifts given because of the SGE's non-Federal business or employment, coffee or refreshments provided at meetings, non-cash gifts valued at \$20 or less from any one source (with a \$50 limit during a year), gifts from friends or family members, and attendance at widely attended gatherings.

Subpart C

Gifts Between Employees

Prohibits SGEs from giving a gift to any employee who directs or evaluates their performance, including superiors of their immediate supervisors. Exceptions include non-cash items of \$10 or less on an occasional basis, refreshments shared in the office, and hospitality offered at home.

Subpart D

Conflicting Financial Interests - Directly Traceable to Title 18 USC, Section 208

Prohibits SGEs from personally and substantially engaging in official matters in which they, their spouse, minor child, partner, organization in which they serve as officer, director, trustee, partner or employee, or any person or organization with whom they are negotiating or have an arrangement concerning prospective employment.

Subpart E

Impartiality

Unless a waiver is granted, SGEs are prohibited from participating in any “particular agency matter involving specific parties” which the SGE knows is likely to have a direct and predictable effect on the financial interests of a member of his or her household if a reasonable person would question the SGE’s impartiality. This ban also includes anyone with whom the SGE has a “covered relationship” if that person is or represents a party.

Subpart F

Job Seeking

Requires SGEs to disqualify themselves from participating in any particular agency matter, including rulemaking and other general matters, that will have a direct and predictable effect on the financial interest of a person with whom the SGE is seeking, negotiating, or has any arrangement for future employment, unless the SGE receives a waiver.

Subpart G

Agency Title or Position

Prohibits SGEs from using their agency title or position for their personal gain or the gain of anyone else. It also prohibits them in their official capacity from appearing to show preferential treatment to or endorsing anyone.

Nonpublic Information

Prohibits SGEs from engaging in a financial transaction using nonpublic information, allowing the improper use of nonpublic information to further their interest or anyone else’s interest, or making 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 policy also prohibits SGEs from taking nonpublic agency documents upon termination of agency service or using nonpublic information in grant applications or contract bids (including agency records the SGE wrote or reviewed that have not been released to the public). The agency requests that SGEs neither communicate nonpublic information to others after termination of service nor use nonpublic information in grant applications or contract bids submitted to the agency.

Agency Time and Property

Prohibits SGEs from using duty time or any agency property, such as telephones, photocopiers, fax machines, mail, or computers, for any purpose not in connection with agency duties. It also prohibits SGEs from asking a subordinate to carry out a nonofficial task.

Subpart H

Outside Teaching, Speaking, or Writing

Prohibits SGEs, who serve or are expected to serve more than 60 days during a 365-day period, from receiving compensation (including travel expenses) for outside teaching, speaking, or writing that relates to their agency duties. This includes an activity where the subject matter of the outside activity deals in a significant part with any matter that the agency assigned the SGE or was assigned during the previous year.

If the SGE is not expected to serve the agency for more than 60 days during a one-year period, the prohibition is only on “particular agency matters involving specific parties” in which the SGE participated personally and substantially.

This restriction does not apply to teaching a regularly established course at an institution of higher learning, an elementary or secondary school, or a program sponsored and funded by the Federal, State, or local Government.

Fundraising

Prohibits SGEs from soliciting funds from subordinates and from anyone the SGE knows has interests that could be substantially affected by the performance or nonperformance of the SGE’s Government duties. Also prohibits SGEs from using their title or any authority associated with their Government position to further the fundraising effort.

Expert Witness

Prohibits SGEs who serve or are not expected to serve more than 60 days during a 365-consecutive-day period from serving as an expert witness, with or without compensation, before a U.S. court or agency for a non-Federal party in a proceeding in which the U.S. is a party or has a direct and substantial interest if the SGE participated in the proceeding or the particular subject matter of the proceeding while a Federal employee unless authorized by the Office of General Counsel (OGC).

An SGE who has served or is expected to serve more than 60 days during a 365-consecutive-day period cannot serve as an expert witness for a non-Federal party, with or without compensation, in any proceeding before a U.S. agency or court in which the agency is a party or has a direct and substantial interest unless authorized by OGC.

MISCELLANEOUS RESTRICTIONS

Occasionally, some employees are invited to work for foreign governments, corporations or other groups. Any employee considering foreign employment should be aware that regulations addressing foreign employment exist. Below is a synopsis of those regulations addressing restrictions for SGEs. Following the synopsis on foreign employment are guidelines for the Hatch Act.

Emoluments Clause of the Constitution of the United States

Prohibits SGEs from accepting 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. The ban does not apply to a foreign privately owned corporation or an international organization.

Foreign Gifts and Decorations Act (5 USC 7342)

Prohibits SGEs from accepting a gift exceeding \$335 in value from a foreign government or an international organization. A prohibited gift includes travel expenses exceeding \$335 in value unless the travel takes place entirely outside the United States. The restriction extends to the spouse and dependents of the SGE. The Agency can accept travel and related expenses from a foreign government as part of U.S. Government duties on behalf of the SGE.

Foreign Agents (18 USC 219)

Prohibits an SGE from acting as an agent of a foreign principal registered under the Foreign Agents Registration Act unless the Agency Administrator certifies that employment of the SGE is in the national interest.

Hatch Act (5 USC 7321-7326)

SGEs are bound by the same rules as regular Federal employees; however, the following rules only apply to SGEs while serving the Government:

Prohibited Activities

- Engaging in political activity:
 1. While on duty;
 2. While in any room or building occupied in the conduct of Government business;
 3. While wearing a uniform or official insignia identifying the office or position of the employee; or
 4. While using any vehicle owned or leased by the Government.
- Using official authority or influence to interfere with or affect the result of an election.
- Knowingly soliciting, accepting, or receiving political campaign contributions from ANY person, unless that person is a member of the same labor organization; not a subordinate employee; and the solicitation is for a contribution to the multi-candidate political committee of the labor organization.
- Running for a partisan political office.
- Soliciting or discouraging the political activity of any person who: (1) has any application pending before the Department; or (2) is a subject or participant in an ongoing audit, investigation, or enforcement action being carried out by the Department.

Permitted Activities

- Campaigning, on a partisan basis, for or against partisan candidates or issues by:
 - Distributing campaign literature.
 - Making campaign speeches.
 - Writing or signing letters for publication soliciting votes.
 - Registering voters.
 - Driving voters to the polls in “get-out-to vote” efforts.
 - Acting for a political party at a polling place.
 - Organizing, managing, or holding office in campaign organizations.
 - Attending or being active at political rallies and meetings.
 - Taking a prominent part in primary meetings or caucuses.
 - Serving as delegates to party conventions.
 - Initiating or signing nominating petitions.
 - Holding office in partisan political clubs or parties.

- Voting as individuals.
- Expressing opinion on political subjects and candidates.
- Serving as candidates for election in nonpartisan elections.
- Serving as nonpartisan candidates for election in partisan campaigns in political subdivisions designated by the Office of Personnel Management.
- Contributing money to political organizations.
- Attending (but not hosting) political fundraising functions.

Should you have any questions or need guidance, please do not hesitate to contact an Ethics Advisor. A listing of Ethics Advisors and Liaisons can be found at:

<http://www.afm.ars.usda.gov/hrd/ethics/agency.htm>