

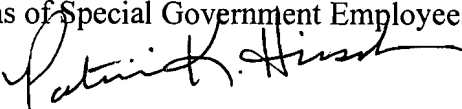


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 21 2008

OFFICE OF  
GENERAL COUNSEL

EPA ETHICS ADVISORY 2008-02

SUBJECT: Ethical Obligations of Special Government Employees  
FROM: Patricia K. Hirsch   
Designated Agency Ethics Official  
and Acting General Counsel  
TO: Deputy Ethics Officials

This ethics advisory describes the ethical obligations for all individuals employed by EPA as Special Government Employees (SGE). SGEs serve EPA as federal employees on advisory committees or as intermittent consultants or experts. All SGEs are subject to the applicable Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, as well as the criminal conflict of interest statutes. See 18 U.S.C. §§ 203, 205, 207, 208 and 209. SGEs who serve EPA in any capacity -- including as advisory committee members on committees organized under the Federal Advisory Committee Act (FACA) or as experts or consultants -- are required to file financial disclosure reports and to take annual ethics training.

This Advisory also announces the revision of the Confidential Financial Disclosure Report for Special Government Employees (EPA Form 3110-48) and includes an appendix that provides summary information about conflicts and ethics issues facing Special Government Employees. This Ethics Advisory replaces Ethics Advisory 97-15, "Effect of Special Government Employee Status on Applicability of Criminal Conflict of Interest Statutes and Other Ethics Related Provisions."

Definition of Special Government Employee

The term "Special Government Employee" (SGE) refers to an employee who is retained, designated, appointed, or employed to perform duties on a temporary, full-time or intermittent basis, with or without compensation, for not more than 130 days during any period of 365 consecutive days. See 18 U.S.C. § 202(a).

## Financial Disclosure

SGEs must file either a confidential financial disclosure report (EPA Form 3110-48) or a public financial disclosure report (SF-278). Effective immediately, SGEs who file confidential reports must use the revised 3110-48 (7/08), which is available on the EPA's intranet ethics page at <http://intranet.epa.gov/ogc/ethics/EPA3110-48ver808.pdf> or at the Science Advisory Board's internet page at <http://www.epa.gov/sab>. The revised form is shorter than the original version, but still captures the information necessary to perform a conflicts review. In addition, the new form incorporates specific questions for use by advisory committees only. The revised form allows for electronic filling, saving and printing, which the earlier version lacked. However, this form still cannot be electronically submitted. SGEs must print the form, sign it, and then mail it with the original signature to the appropriate EPA ethics official.

SGEs must file a "new entrant" report when asked by the Agency but never later than 30 days after their enter-on-duty date. SGEs must also file a new financial disclosure report each year upon their reappointment or redesignation as an SGE for a new 365-day period. See 5 C.F.R. § 2634.903(b)(1). SGEs are not permitted to file the OGE-450 in lieu of EPA Form 3110-48 or SF-278.

If an SGE is appointed for a term exceeding one year (e.g., an advisory committee member), then s/he must be "redesignated" as an SGE annually by estimating the number of days s/he is expected to serve in the next 365-day period. An EPA organization with relatively few SGEs should ask its SGEs multi-year terms to file a new report each year within 30 days of the anniversary of their appointment date. Offices with many SGEs can adopt an alternative process approved by the Office of Government Ethics. To reduce the administrative burden, these offices can specify one date each year on which it will collect all follow-on reports from all SGEs or discrete groups of SGEs (such as all members of a given advisory committee) who serve for terms of more than one year.

It is possible that, although an SGE is appointed for a multi-year term, s/he participates in an advisory activity or as a consultant or expert on a very limited and intermittent basis (e.g., five days in three years). In these cases, the SGE must file an initial financial disclosure report upon appointment before participating in any advisory activity. Thereafter, in order to participate in future advisory activity during the time of her/his appointment, the SGE must file or have filed a financial disclosure report within one year of the anticipated date of the advisory activity. A Deputy Ethics Official (DEO) or Assistant Deputy Ethics Official (ADEO) may also require that the SGE update her/his financial disclosure report with additional information for any new activity as needed. Please note that any financial disclosure report filed by an SGE with EPA is valid throughout the entire Agency. An SGE serving on more than one FACA committee or employed as a consultant or expert in more than one part of the Agency does not need to file multiple financial disclosure forms. Rather, the DEO may request the already-filed form from the other EPA office. However, a DEO or ADEO may require additional financial disclosure information from a particular SGE as needed for a new activity.

### Confidential Financial Disclosure Reports (EPA 3110-48)

It is expected that in most cases an SGE will complete the confidential (rather than the public) financial disclosure report. See 5 C.F.R. §2634.904(b). To meet this requirement, an SGE must submit EPA Form 3110-48 to the appropriate Agency ethics official (in most cases, the DEO or ADEO), not to the Office of General Counsel (OGC). To access the form, go to EPA's intranet ethics page at <http://intranet.epa.gov/ogc/ethics.htm> or at the Science Advisory Board's internet page at [www.epa.gov/sab](http://www.epa.gov/sab).

Under limited circumstances, it may be possible for a DEO (but not the ADEO) to request OGC exclude a particular SGE from a confidential reporting requirement. In such a case, the DEO should submit a written request to OGC explaining why the duties of the SGE's position make remote the possibility that she/he will be involved in a real or apparent conflict of interest and therefore requesting that OGC exclude the SGE from all or a portion of the confidential reporting requirements. See 5 C.F.R. § 2634.904(b). DEOs and ADEOs are not delegated with the authority to waive confidential financial reporting requirements.

### Public Financial Reports (SF-278)

Less often, an SGE may be required to file a public financial disclosure report (SF-278) instead of the confidential report. This situation will occur if the SGE is expected to perform, or has performed, the duties of the EPA assignment for more than 60 days in a calendar year (see 5 C.F.R. § 2634.204) AND if the SGE is paid at a rate that is least equivalent to 120% of the minimum rate of basic pay (not including locality pay) for a GS-15/step 1 of the General Schedule. See 5 C.F.R. § 2634.202(c). If an SGE is required, or is expected to be required, to file a public financial disclosure report, the DEO/ADEO must inform OGC for advice. OGC is responsible for the Agency's public financial disclosure reporting system.

SGEs who meet these two criteria are subject to criminal and civil penalties for failure to file a timely or accurate SF-278. They must abide by the same new entrant, incumbent, and termination report filing requirements and deadlines as all other public filers, and their forms must be reviewed by OGC, though a copy may be made for an appropriate DEO/ADEO for review purposes with OGC approval. Any Regular Government Employees (RGEs serving on FACAs who file a SF-278 in their home agencies may provide a copy of that SF-278 to the appropriate DEO/ADEO, who may maintain it with other program ethics files. There is no requirement to submit any RGE's SF-278 directly to OGC. The SF-278 can be found at [www.usoge.gov](http://www.usoge.gov) in the Forms Library.

In unusual circumstances, the SGE may request a waiver of the public reporting requirements for an SGE who submits an SF-278. See 5 C.F.R. § 2634.205. In such a case, the DEO should submit a written request to OGC explaining why the duties of the SGE's position make remote the possibility that she/he will be not be involved in a real or

requirements. Please note that the SGE will still be required to file the public financial disclosure form, but that, if granted, the waiver will limit disclosure to the public. DEOs and ADEOs are not authorized to waive any public financial reporting requirements.

#### Ethics Standards for RGEs Serving on FACAs

Regular Government Employees (RGEs) serving on EPA advisory committees also must file financial disclosure reports and take annual ethics training. If an RGE has already filed either the SF-278 Form or the OGE Form 450 with her/his home office, then a copy must be provided to the appropriate EPA ethics official. If the RGE filed an OGE Form 450A form (Confidential Certificate of No New Financial Interests), then s/he must also provide EPA with the most recent OGE Form 450. If an RGE is not required to file a financial disclosure form with her/his home Agency, then s/he must file either an SF-278 Form or OGE Form 450 as applicable with EPA. An RGE cannot file EPA Form 3110-48 in lieu of either an SF-278 Form or OGE Form 450. Additionally, an RGE is assumed to have taken ethics training in her/his home agency and is not required to take EPA's SGE ethics training.

#### Annual Ethics Training

Each calendar year, all SGEs who file either public or confidential financial disclosure reports must receive ethics training. 5 C.F.R. § 2638.705. For SGEs, this annual requirement may be fulfilled in two ways:

1. Through completion of online training or distribution of appropriate written materials. Examples of online training that meet the training requirement include the OGE's course entitled, "Ethics Training for Special Government Employees" at [www.usoge.gov](http://www.usoge.gov) under "Computer and Web Based Training," EPA SGE Training hosted at <http://epa.gov/osp/bosc>, and the Human Studies Review Board ethics training at [www.epa.gov/osa/hsrb](http://www.epa.gov/osa/hsrb). All training must meet OGE regulatory requirements. 5 C.F.R. § 2638.704(b); or
2. Through verbal training where the content meets OGE regulatory requirements. 5 C.F.R. § 2638.704(b).

Other useful resources are:

- Conflict of Interest and the Special Government Employee: A Summary of Ethical Requirements Applicable to SGEs  
[http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2000/do00003a.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2000/do00003a.pdf),
- Counting Days of Service for Special Government Employees  
[http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2007/do07002.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2007/do07002.pdf)
- New OLC Opinion on the Emoluments Clause and Service on Advisory Boards  
[http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2007/do07024.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2007/do07024.pdf)

### Conclusion

All SGEs are subject to the applicable Standards of Ethical Conduct for Employees of the Executive Branch as well as the criminal-conflict of interest statutes. SGEs who serve EPA as advisory committee members on FACA committees, as experts or as consultants are required to file financial disclosure reports and to take annual ethics training. At EPA, all SGEs who file confidential financial disclosure reports are required to file the 3110-48 (revised 7/08). Any SGE who is required to file the public financial disclosure report (SF-278) must do so with the Office of General Counsel.

If you have any questions regarding this Ethics Advisory, please contact Daniel Fort, Ethics Officer, at (202) 564-2200.

**APPENDIX**  
**CRIMINAL CONFLICT OF INTEREST STATUTES**  
**AND OTHER ETHICS RELATED PROVISIONS**  
**For Special Government Employees**

As a Special Government Employee (SGE), you are a federal employee and therefore subject to the federal criminal conflict of interest statutes, Executive Order 12674 (as amended by E.O. 12731), and the executive branch standards of ethical conduct (5 C.F.R. Part 2635). This appendix explains how these laws and regulations apply to you as an SGE. As you review this material, it is important for you to know whether you are serving or are expected to serve for more than 60 days in the calendar year. If so, then additional restrictions apply to you.

Criminal Conflict of Interest Statutes

1) 18 U.S.C. §203 -- Prohibition of Compensated Representational Activities by Federal Employees Directed Towards the United States

**RULE:** Federal employees cannot seek, accept, or agree to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. One of most significant limitations of this prohibition for SGEs is that it applies only concerning "particular matters involving specific parties." Such matters typically involve a specific proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties. Examples include contracts, grants, applications or litigation. 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.

**SGE under 60 days:** This prohibition applies to you only in relation to a particular matter involving a specific party or parties that you have, at any time, participated personally and substantially as a Government employee.

**SGE over 60 days:** This prohibition applies to you with respect to any particular matter involving a specific party or parties if the matter is pending in the department or agency in which you are serving.

2) 18 U.S.C. §205 -- Prohibition of Uncompensated or Gratuitous Representational Activities by Federal Employees Directed Towards the United States

**RULE:** Section 205 prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from

acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. One of most significant limitations of this prohibition for SGEs is that it applies only concerning "particular matters involving specific parties." Such matters typically involve a specific proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties. Examples include contracts, grants, applications or litigation. 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.

SGE under 60 days: This bar applies to you only in relation to a particular matter involving a specific party or parties that you have, at any time, participated personally and substantially as a Government employee.

SGE over 60 days: This bar applies to you with respect to any particular matter involving a specific party or parties if the matter is pending in the department or agency in which you are serving.

Note also that EPA Order 5700.5A1 (revised on 4/9/07) sets forth the Agency's policy and requirements for the competition of assistance agreements, which include grants, cooperative agreements and fellowships. EPA policy requires, among other things, that the Agency's competitive process be fair and impartial, and that no applicant receive an unfair advantage. Therefore, EPA employees (including SGEs) may not: (1) provide pre-proposal/application assistance that will give particular or potential applicants a competitive advantage; nor (2) provide advice or information during any discussion or communication with applicants or potential applicants that will give them a competitive advantage. Therefore, if you have served, or are expected to serve for more than 60 days in the calendar year, you cannot represent another entity (including your University employer) back to the Agency on any grant, contract or cooperative research & development agreement on any matter pending before the Agency, whether you worked on it or not.

### 3) 18 U.S.C. §207 -- Post-Employment Restrictions

**RULE:** Former employees are prohibited from making representations on behalf of another back to the federal government with the intent to influence a federal official with respect to any particular matter involving specific parties in which the United States is a party or has a direct and substantial interest. This section imposes bans of varying lengths to prevent communications by former employees depending on whether they participated personally and substantially. The lifetime ban covers particular matters involving specific parties in which the former

employee was personally and substantially involved. A similar two-year ban deals with such matters that were merely pending under the employee's official responsibility during the final year of government service. A one-year ban applies to employees involved in trade or treaty negotiations. Senior personnel (e.g., confirmed Presidential appointees, SES employees and, in some cases, SGEs) are subject to a one-year "cooling-off" period precluding any contacts with their former agency on any matter for which official action is sought.

SGEs: The lifetime post-employment restriction on any particular matter involving specific parties (where you participated personally and substantially) applies to you.

SGE over 60 days: In addition to the lifetime post-employment restriction, the one-year "cooling-off" period applies to you if you are a senior employee. This means that you cannot make representations on behalf of another back to EPA with the intent to influence any official action (regardless of whether you participated personally and substantially) for one year. You are a senior employee if your rate of basic pay is equal to or greater than 86.5% of the rate of basic pay for level II of the Executive Schedule. See 5 C.F.R. §2641.204(c).

#### 4) 18 U.S.C. §208 -- Conflict of Interest Provisions

RULE: Section 208 proscribes personal and substantial participation in any "particular matter" that will have a direct and predictable effect on an employee's own financial interests or on the financial interests of his or her spouse; dependent child; general partner; any organization in which he or she serves as officer, director, trustee, general partner, or employee; or any person or organization with whom he or she is negotiating for or has any arrangement regarding prospective employment. The term "particular matter" can include rulemaking or policy matters of general applicability as well as "specific party" matters such as contracts and permits.

A waiver under section 208(b)(1) permitting official action in such matters may be obtained from the Designated Agency Ethics Official (DAEO) if the financial interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect." Certain other interests, such as interests in diversified mutual funds, are exempted by general regulation as "too remote or too inconsequential to affect the integrity of the services."

SGEs: This prohibition applies to SGEs. However, if you are an SGEs who is a member of an advisory committee, then the standard for waiver focuses on whether the need for your services as an SGE outweighs the potential for conflict of interest rather than the value of the financial interest. In addition, the Environmental Education Act at 20 U.S.C. §5501 provides that members of the National Environmental Education Advisory Council are permitted to take part in matters



which affect their employers' financial interests, even without a waiver. However, 18 U.S.C. §208(a) continues to apply to your own financial interests.

Furthermore, SGEs serving on FACA committees are also covered by certain exemptions from section 208. The most significant of these pertains to certain financial interests arising from your outside employment. Specifically, this exemption permits SGEs serving on FACA committees to participate in particular matters of general applicability (e.g., development of general regulations, policies or standards) where the disqualifying interest arises from the SGE's non-Federal employment or prospective employment. However, the matter may not have a "special or distinct effect" on either you or your non-Federal employer, other than part of a class. The exemption does not cover interests arising from the ownership of stock in your employer and your non-Federal employment must involve an actual employee/employer relationship (as opposed to certain consulting positions). See 5 C.F.R. §2640.203(g).

#### 5) 18 U.S.C. §209 -- Ban on Supplementation of Salary

**RULE:** Section 209 generally prohibits an employee from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a government employee.

**SGEs:** This provision generally does not apply to you. This means that you may continue to collect your regular salary from an outside employer for days on which you are providing services to the Government (whether your Government service is paid or unpaid). However, in certain cases, you may be prohibited from receiving outside compensation for teaching, speaking, or writing when the activity is undertaken as part of your official duties. See the discussion on 5 C.F.R. §2635.807 below in the section on "Executive Branch Standards of Ethical Conduct." You are also subject to the criminal bribery and illegal gratuity statute, which prohibits, under certain circumstances, the receipt of anything of value in connection with official acts. See 18 U.S.C. §201(b),(c).

#### 6) 8 U.S.C. §219 and the "Emoluments Clause" of the Constitution-- Foreign Agents and Receiving Anything of Value from a Foreign Government

**RULE:** Section 219 bars any "public official" from being or acting as an agent of a foreign government who is required to register under the Foreign Agents Registration Act of 1938 at 22 U.S.C. §611 *et seq.* Furthermore, the "Emoluments Clause" of the Constitution provides that no person who holds an office of "profit or trust" under the United States may receive any money, award or other thing of value from a foreign government or hold a position in a foreign government, except where permitted by statute.

**SGEs:** The Department of Justice's Office of Legal Counsel (OLC) opined that SGEs who serve on purely advisory committees (i.e., committees that neither have

nor exercise Governmental authority) do not hold positions of profit or trust as contemplated in the Emoluments Clause of the Constitution. Therefore, EPA has determined that SGEs serving on FACA committees are not bound the Emoluments Clause. However, SGEs who do not serve on purely advisory committees are still bound by the Emoluments Clause. A good reference guide can be found in the Office of Government Ethics DAEOgram DO-07-024 at [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2007/do07024.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2007/do07024.pdf)

### The Hatch Act

#### 1) 5 U.S.C. §§7321 - 7328 -- Hatch Act Political Activity Restrictions

**RULE:** The Hatch Act permits most EPA employees to take an active part in political management and campaigns. This is a significant change from an earlier statute that generally prohibited such activity. It is important to note that the following activities remain prohibited: (1) running for partisan office, (2) soliciting political contributions from the general public, (3) engaging in political activity (including wearing buttons) while on duty, or in a government office, or while using a government vehicle, and (4) collecting political contributions unless both the donor and the collector are members of the same federal labor organization or employee organization and the person solicited is not a subordinate employee. Career employees in the Senior Executive Service and Administrative Law Judges remain subject to the earlier (and more restrictive) Hatch Act provisions.

**SGEs:** You are covered by the Act only during the time that you are actually performing government business.

### Executive Branch Standards of Ethical Conduct

The government-wide Standards of Ethical Conduct at 5 C.F.R. §2635, are fully applicable to both regular and special government employees. As an SGE, you are covered by the standards even though you do not perform official duties on a given day.

#### 1) 5 C.F.R. Part 2635, Subpart B, Gifts from Outside Sources

**RULE:** Generally, you may not accept gifts from "prohibited sources" (generally persons or organizations affected by EPA actions) or given because of official government position. Certain exceptions apply. See 5 CFR §2635.204.

**SGEs:** This provision applies to you.

#### 2) 5 C.F.R. Part 2635, Subpart C, Gifts Between Employees

**RULE:** Generally, you may not give or contribute toward a gift for an official superior or receive a gift from an employee who receives less pay. Certain exceptions apply. See 5 CFR §2635.304.

SGEs: This provision applies to you.

### 3) 5 C.F.R. Part 2635, Subpart E, Impartiality in Performing Official Duties

**RULE:** Employees may not participate in "specific party" matters where a "reasonable person with knowledge of the relevant facts" would question their impartiality.

SGEs: This provision applies to you.

Consultation with your Deputy Ethics Official is strongly advised if you suspect a problem or if the matter will involve any of the following "covered relationships":

- (1) persons or organizations with whom you have a business relationship other than a routine consumer transaction;
- (2) members of your household or relatives with whom you have a close personal relationship;
- (3) employers or prospective employers of spouses, parents, or dependent children,
- (4) recent (within one year) former employers or clients, and
- (5) organizations in which you are an "active participant."

Your Deputy Ethics Official may authorize participation if "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." See 5 C.F.R. §2635.502(d).

### 4) 5 C.F.R. Part 2635, Subpart F, Seeking Other Employment

**RULE:** You may not participate in any "particular matter" (including a rulemaking or policy matter of general applicability) which directly and predictably affects the financial interest of any person or organization with whom you have had any contact regarding future employment (or relationships equivalent to employment, such as contracts and consultancies,) unless your Deputy Ethics Official first authorizes such participation under the same standards as in the Impartiality provisions of Subpart E discussed above.

**Note:** If the communications amount to "negotiating" for future "employment," the statutory restriction at 18 U.S.C. §208(a) applies, and you may not participate in such matters unless the DAEO (not the Deputy Ethics Official) has granted a waiver under 18 U.S.C. §208(b)(1).

SGEs: This provision applies to you.

## 5) 5 C.F.R. Part 2635, Subpart G, Misuse of Position

**RULE:** This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of the employee's Federal employment. The subpart sets for standards relating to:

1. Use of public office for private gain: You may not use your public office for private gain (including yourself, friends, relatives or any person with whom you are affiliated in a nongovernmental capacity) or for the endorsement of any product, service or enterprise;
2. Use of nonpublic information: You may not engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further your own private interest or that of another, whether through advise or recommendation, or by knowing unauthorized disclosure;
3. Use of Government Property: You have a duty to protect and preserve Government property and may not use such property, nor allow its use, for other than authorized purposes; and
4. Use of Official Time: Unless authorized in accordance with law or regulations to use such time for other purposes, you must use official time in an honest effort to perform official duties.

SGEs: These provisions apply to you.

## 6) 5 C.F.R. §2635.805 -- Service as an Expert Witness

**RULE:** An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless authorized by the DAEO.

SGE under 60 days: The bar against expert testimony applies only if you have participated as a federal employee in the particular proceeding or in the particular matter that is the subject of the proceeding.

Other SGEs, including over 60 days: If you were appointed by the President, serve on a commission established by statute, have served or are expected to serve for more than 60 days in a period of 365 consecutive days, then an additional restriction applies. You cannot serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which your employing agency is a party or has a direct and substantial interest, unless first authorized by the DAEO.

## 7) 5 C.F.R. §2635.807 -- Teaching, Speaking, and Writing

**RULE:** Except for certain teaching activities, an employee shall not receive compensation from any source other than the Government for teaching, speaking, and writing that relates to the employee's official duties.

The "relatedness" test is met 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 employee primarily because of the employee's official position rather than the employee's expertise on 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 performance or nonperformance of the employee's official duties; (d) the information conveyed through the activity draws substantially on ideas or official data that are nonpublic information; or (e) the subject of the activity deals in significant part with: (1) any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period; (2) any ongoing or announced policy, program or operation of the agency; or (3) in the case of certain noncareer employees, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the employee's agency.

**SGEs:** The restrictions in subparagraphs (a) through (d) apply to you. You are completely exempt from the restrictions given in subparagraph (e)(2) and (e)(3). Thus, for example, nothing would prohibit you from accepting compensation for teaching, speaking, or writing simply because the activity relates to the programs or general subject areas of EPA.

Second, even with respect to (e)(1), which covers matters in which you have been personally involved during the past year, the restriction is limited. For all SGEs, (e)(1) is limited to matters to which you have been assigned during your current appointment. Moreover, if you have not served (nor are expected to serve) more than 60 days during your first year of appointment or any subsequent one-year period of appointment, the restriction only applies to particular matters involving specific parties in which you have participated personally and substantially. Thus, for example, you are not prohibited from accepting compensation simply because the activity pertains to a policy matter that does not involve specific parties even though you are assigned to that matter.

#### 8) 5 C.F.R. §2635.808 -- Fundraising Activities

**RULE:** An employee may engage in fundraising in a personal capacity provided that the individual does not personally solicit funds or other support from a subordinate, or from any person known to the employee to be one of the five types of prohibited sources specified in section 2635.203(d) (generally, persons or entities affected by EPA actions.)

An employee may participate in fundraising activities in an official capacity if authorized to do so as part of official duties. Such authorization can come from statutes, Executive Orders, or regulations. See 5 C.F.R. §2635.808(b). One example of authorized official fundraising is the Combined Federal Campaign (CFC).

SGEs: You may engage in fundraising in a personal capacity provided that you do not personally solicit funds or other support from a subordinate or from any person known by you to be a prohibited source whose interests may be substantially affected by the performance or nonperformance of your official duties. You may also participate in authorized official fundraising such as the CFC. You may not, however, engage in any fundraising for any non-CFC entity while on federal property or while using government equipment.