

From: Khan, Lina
Sent: Wed, 11 Jul 2018 14:57:20 -0400
To: Pankey, Lorielle
Subject: RE: Special Government Employee Discussion

Hi Lorielle – Thanks for this. I can meet tomorrow morning; did you say 10:30am was the best time?

From: Pankey, Lorielle
Sent: Wednesday, July 11, 2018 12:02 PM
To: Khan, Lina
Subject: Special Government Employee Discussion

Hi Lina,

Welcome to the FTC! Please let me know if you end up having time to meet tomorrow morning (if yes, I'll try to move my meetings; my office is H-590). If not, let me know what works for you Friday and I'll give you a call. Since you are only serving the FTC for about 12 weeks and do not have arrangements with another federal agency, I've determined that you are a special government employee (SGE) for federal ethics purposes. To be clear, most of the federal ethics requirements will apply (there are some caveats for SGEs as discussed below). I know you went to our standard ethics presentation. I'd like to chat just to ensure that you don't have any questions about the rules that apply while you are here or when you leave (in the past, we've gotten questions from our technology employees in particular).

The below is a comprehensive (but not complete) overview of federal ethics restrictions from the perspective of an SGE. I'm sharing in advance of our meeting in case it helps you know what questions you may have. I intend to focus on conflicts (what you can work on while you are here) and post-government employment (what you can work on after you leave) but I'm happy to address other areas.

Thanks,

Lorielle

As background, SGEs are Government employees for federal ethics purposes but in some cases SGEs have more allowances than regular federal employees. An SGE is defined, in 18 U.S.C. § 202(a), as "an officer or employee . . . who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. You must take into account any service to a federal agency (not just your service to the FTC). As far as counting, you must count any portion of a day worked (working for a single hour within a 24 hour day would count as one day) but you do not count the days where no work is performed. You also count any day worked (you treat weekends, weekdays, holidays, etc. the same). It's my understanding you are only serving the FTC for about 12 weeks and will not serve (and have not recently served) another federal agency. Accordingly, you are an SGE.

Federal Ethics Overview for SGE Employees at the FTC (this is not an exhaustive list; new/prospective hires are encouraged to contact an FTC ethics official if they have specific questions):

- **Representations before the United States on Behalf of Others:**

18 U.S.C. § 203 prohibits an employee from receiving, agreeing to receive, or soliciting compensation for representational services, rendered either personally or by another, before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. It should be noted that section 203 applies not only to representational services provided by the employee personally, but also to services provided by another person with whom the employee is associated, provided that the employee shares in the compensation for such services, for example, through partnership income or profit-sharing arrangements.

18 U.S.C. § 205 prohibits an employee from personally representing anyone before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Section 205 applies regardless of whether the employee receives compensation.

SGE Caveats for Section 203 and 205: One of the most significant limitations is that SGEs are restricted by sections 203 and 205 only in connection with “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 would include contracts, grants, applications, requests for rulings, litigation, or investigations. Unlike regular employees, 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.

Further, all SGEs are only subject to the prohibitions of sections 203 and 205 with respect to those specific party matters in which the SGE “at any time participated personally and substantially as a Government employee or special Government employee.” 18 U.S.C. §§ 203(c)(1), 205(c)(1). SGEs who have served the Government for more than 60 days during the immediately preceding period of 365 consecutive days are subject to an additional restriction. Such SGEs are subject to the prohibitions of sections 203 and 205 in connection with any covered matter that “is pending in the department or agency of the Government in which [the SGE] is serving.” 18 U.S.C. §§ 203(c)(2), 205(c)(2).

- **Post-Employment Restrictions:**

18 U.S.C. § 207(a)(1), the lifetime prohibition on representing others in connection with the same particular matter involving specific parties in which the former employee participated personally and substantially, applies the same way to SGEs and regular employees. Accordingly, an SGE must not communicate to any federal employee (not just an FTC employee) about a specific party matter (e.g., an investigation, litigation, or a contract) on behalf of a third party if they participated in that “same” specific party matter for the United States. The restriction lasts for the “lifetime” of the matter (some of our litigation matters in particular go on for many years and have multiple phases). Further, any substantive role (including doing research, making recommendations, signing off of a document) in direct connection with a specific party matter amounts to personal participation in that matter.

16 C.F.R. §§ 4.1(b)-(c): Former FTC employees, including SGEs, must obtain formal approval to participate (even “behind-the-scenes”) in most FTC matters/proceedings that were pending (or directly resulted from a matter that was pending) during the employee’s tenure at the FTC. Approval will be denied if participation would raise a concern under Section 207 or if the former employee was exposed to nonpublic information that would confer a present advantage. This FTC regulation (known as the FTC’s Clearance Rule) also disqualifies the colleagues of former FTC employees from working on FTC matters/proceedings involving specific parties if the former employee worked on those same matters unless an appropriate firewall/screening procedure is put in place.

- **Financial Conflicts of Interest**

18 U.S.C. § 208 prohibits all employees, including SGEs, from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or the financial interests of others with whom they have certain relationships. In addition to an employee’s own personal financial interests, the financial interests of the following persons or organizations are also disqualifying: 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 any arrangement concerning prospective employment. Because SGEs typically have substantial outside employment and other interests, which are often related to the subject areas for which the Government desires their services, issues under section 208 must be carefully considered.

Note: Divestiture of a disqualifying interest is one of the remedies for a potential violation of section 208, it is important to note that SGEs are not eligible for a Certificate of Divestiture (CD). A CD is a tax benefit that allows the deferral of capital gain where an employee divests a financial interest in order to comply with conflict of interest requirements. However, Congress specifically excluded SGEs from the definition of “eligible person,” and consequently SGEs may not take advantage of this benefit. 26 U.S.C. § 1043(b)(1)(A).

- **Outside Teaching, Speaking, and Writing Activities:**

5 C.F.R. § 2635.807(a) generally prohibits an employee from receiving outside compensation for speaking, teaching or writing activities that relate to the employee’s official duties. Such activities may relate to an employee’s official duties in several different ways: if the activity is performed as part of the employee’s official duties; if the invitation to engage in the activity was extended primarily because of the employee’s official position rather than expertise in the subject matter; if the invitation or offer of compensation was extended by someone with interests that may be affected substantially by the employee’s duties; or if the information conveyed through the activity draws substantially on nonpublic information obtained through the employee’s Government service. 5 C.F.R. § 2635.807(a)(2)(i)(A)-(D). SGEs, like all employees, are prohibited from receiving compensation for activities that are related to their official duties in any of these ways.

For regular employees, an outside teaching/speaking/writing activity will also relate to his official duties if it deals, in significant part, with any matter to which the employee is currently assigned or has been assigned during the previous year. 5 C.F.R. § 2635.807(a)(2)(i)(E)(1).

However, an SGE is not prohibited from accepting compensation for speaking, teaching, or writing simply because the activity relates to the programs or the general subject area of the SGE's agency. Further, this restriction for SGEs is limited to the matters to which the SGE is currently assigned or had been assigned during his or her current SGE appointment. Moreover, for SGEs who have not served (or are not expected to serve) more than 60 days during the first year of appointment or any subsequent one-year period of appointment, the restriction is even narrower: it applies only to specific party matters (e.g., contracts, litigation, investigations, public contests) the SGE has or is currently handling.

- **Other Constraints on Receiving Outside Compensation:**

18 U.S.C. § 209 prohibits Federal employees from receiving "any salary, or any contribution to or supplementation of salary" from an outside source as compensation for their Government services. SGEs, however, are completely exempt from this prohibition. 18 U.S.C. § 209(c). This means, for example, that SGEs may continue to collect their regular salary from an outside employer for days on which they are providing services to the Government (whether their Government service is paid or unpaid).

18 U.S.C. § 201(b), (c): SGEs also are 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.

18 U.S.C. § 219 prohibits employees, including SGEs, from acting as an agent of a foreign principal under certain circumstances. Unlike regular employees, however, SGEs may be eligible for a special exemption from the prohibitions of section 219, where the agency head certifies that employment of the SGE "is required in the national interest." 18 U.S.C. § 219(b).

Emoluments Clause: The Department of Justice also has held that SGEs may be subject to the Emoluments Clause of the United States Constitution, U.S. Const., art. I, § 9, cl. 8, which prohibits persons who "hold offices of profit or trust" in the Federal Government from having any position in or receiving any payment from a foreign government. See 15 Op. O.L.C. 65 (1991); 17 Op. O.L.C. 114 (1993).

- **Gifts from Outside Sources:**

SGEs, like all employees, are subject to 5 C.F.R. § 2635.202(a), which prohibits the acceptance of gifts from a "prohibited source" and gifts given because of an employee's official position. The definition of "prohibited source" includes any person seeking official action from the employee's agency, doing or seeking to do business with the employee's agency, conducting activities regulated by the employee's agency, or having interests that may be substantially affected by the employee's official duties; the definition also includes organizations the majority of whose members fall within any of the aforementioned categories. 5 C.F.R. § 2635.203(d). From this definition, it should be immediately apparent that SGEs pose unique issues, because many SGEs are employed by, or have substantial professional and business relationships with, such prohibited sources. However, there are multiple exceptions to the prohibition. A notable one (applicable to all employees) that may be particularly useful to SGEs permits employees to accept various benefits resulting from outside business or employment

activities, where it is clear that such benefits are not offered or enhanced because of the employee's official position. 5 C.F.R. § 2635.204(e)(2).

- **Limits on Expert Witness Activities:**

Employees generally may not participate as an expert witness, 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. 5 C.F.R. § 2635.805(a). This prohibition applies whether or not the employee receives compensation for the activity. The Designated Agency Ethics Official may authorize an employee to serve as an expert witness where such service is determined to be in the interest of the Government or where the subject matter of the testimony is determined to be unrelated to the employee's official duties. 5 C.F.R. § 2635.805(c).

For SGEs, the restrictions of section 2635.805 are substantially narrowed. With respect to most SGEs, section 2635.805 applies only where the SGE actually participated officially in the same proceeding or in the particular matter that is the subject of the proceeding. 5 C.F.R. § 2635.805(a). A somewhat more restrictive standard applies to a smaller class of SGEs who are deemed to have particularly significant Federal positions, i.e., those either appointed by the President, serving on a commission established by statute, or serving (or expected to serve) for more than 60 days in a period of 365 days. 5 C.F.R. § 2635.805(b). For this class of SGEs, the restriction on expert service also applies to any proceeding in which the SGE's own agency is a party or has a direct and substantial interest.

- **Charitable Fundraising:**

All employees, including SGEs, are equally subject to certain restrictions on personal fundraising for nonprofit organizations. These include restrictions on the use of official title, position and authority, and the solicitation of subordinates. 5 C.F.R. § 2635.808(c). Additionally, employees may not personally solicit funds or other support from a person known by the employee to be a "prohibited source." (The definition of prohibited source is discussed in more detail above, under "Gifts from Outside Sources.") Due to the FTC's supplemental regulation, our employees are focused on a somewhat more narrow group—FTC employees must not solicit from persons who are currently seeking official action from the FTC or doing business with the FTC, or from anyone who has interests that may be substantially affected by the performance or nonperformance of your official duties. Generally, this will include any person or entity that currently is an interested party in a Commission matter, proceeding, contract, or decision. 5 C.F.R. § 5701.102. With respect to SGEs, however, this restriction is limited to an even more narrow subset: SGEs are prohibited only from personally soliciting persons whose interests may be affected substantially by the performance or nonperformance of the SGE's official duties. 5 C.F.R. § 2635.808(c)(1)(ii).

- **Political Activities:**

The Hatch Act (5 U.S.C. 7321-7326) restricts the partisan political activities of federal employees. SGEs are bound by the same rules as regular employees. However, Hatch Act restrictions only apply to SGEs on the days they serve as SGEs on behalf of their agencies:

Prohibited Activities include—

- 1) Engaging in political activity while:
 - on duty;
 - on government-paid travel;
 - in any room or building occupied in the conduct of government business;
 - wearing a uniform or official insignia identifying the office or position of the employee; or
 - using any vehicle owned or leased by the government.
- 2) Using official authority or influence to interfere with or affect the result of an election.
- 3) Knowingly soliciting, accepting, or receiving political campaign contributions from ANY person.
- 4) Running for a partisan political office (w/ limited exceptions).

From: Pankey, Lorielle
Sent: Wed, 11 Jul 2018 16:14:27 +0000
To: White, Christian S.;Hipsley, Heather;Abbott, Alden;Koslov, Tara Isa
Subject: FW: Special Government Employee Discussion

FYI. Lina and I had a brief chat (she's tied up today and will let me know when we can further discuss tomorrow or Friday). In the meantime I sent her background on ethics concerns. She is what we call a special government employee for federal ethics purposes but this doesn't make a much of a difference for standard conflicts or post-government employment concerns.

Lorielle L. Pankey

lpankey@ftc.gov

Assistant General Counsel | Alternate Designated Agency Ethics Official
202.326.3108 office | 202.326.2477 fax
Federal Trade Commission
Office of the General Counsel
600 Penn. Ave, NW, H-594
Washington, DC 20580

From: Pankey, Lorielle
Sent: Wednesday, July 11, 2018 12:02 PM
To: Khan, Lina <lkh@ftc.gov>
Subject: Special Government Employee Discussion

Hi Lina,

Welcome to the FTC! Please let me know if you end up having time to meet tomorrow morning (if yes, I'll try to move my meetings; my office is H-590). If not, let me know what works for you Friday and I'll give you a call. Since you are only serving the FTC for about 12 weeks and do not have arrangements with another federal agency, I've determined that you are a special government employee (SGE) for federal ethics purposes. To be clear, most of the federal ethics requirements will apply (there are some caveats for SGEs as discussed below). I know you went to our standard ethics presentation. I'd like to chat just to ensure that you don't have any questions about the rules that apply while you are here or when you leave (in the past, we've gotten questions from our technologist employees in particular).

The below is a comprehensive (but not complete) overview of federal ethics restrictions from the perspective of an SGE. I'm sharing in advance of our meeting in case it helps you know what questions you may have. I intend to focus on conflicts (what you can work on while you are here) and post-government employment (what you can work on after you leave) but I'm happy to address other areas.

Thanks,

Lorielle

As background, SGEs are Government employees for federal ethics purposes but in some cases SGEs have more allowances than regular federal employees. An SGE is defined, in 18 U.S.C. § 202(a), as "an

officer or employee . . . who is retained, designated, appointed, or employed” by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. You must take into account any service to a federal agency (not just your service to the FTC). As far as counting, you must count any portion of a day worked (working for a single hour within a 24 hour day would count as one day) but you do not count the days where no work is performed. You also count any day worked (you treat weekends, weekdays, holidays, etc. the same). It’s my understanding you are only serving the FTC for about 12 weeks and will not serve (and have not recently served) another federal agency. Accordingly, you are an SGE.

Federal Ethics Overview for SGE Employees at the FTC (this is not an exhaustive list; new/prospective hires are encouraged to contact an FTC ethics official if they have specific questions):

- **Representations before the United States on Behalf of Others:**

18 U.S.C. § 203 prohibits an employee from receiving, agreeing to receive, or soliciting compensation for representational services, rendered either personally or by another, before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. It should be noted that section 203 applies not only to representational services provided by the employee personally, but also to services provided by another person with whom the employee is associated, provided that the employee shares in the compensation for such services, for example, through partnership income or profit-sharing arrangements.

18 U.S.C. § 205 prohibits an employee from personally representing anyone before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Section 205 applies regardless of whether the employee receives compensation.

SGE Caveats for Section 203 and 205: One of the most significant limitations is that SGEs are restricted by sections 203 and 205 only in connection with “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 would include contracts, grants, applications, requests for rulings, litigation, or investigations. Unlike regular employees, 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.

Further, all SGEs are only subject to the prohibitions of sections 203 and 205 with respect to those specific party matters in which the SGE “at any time participated personally and substantially as a Government employee or special Government employee.” 18 U.S.C. §§ 203(c)(1), 205(c)(1). SGEs who have served the Government for more than 60 days during the immediately preceding period of 365 consecutive days are subject to an additional restriction. Such SGEs are subject to the prohibitions of sections 203 and 205 in connection with any covered matter that “is pending in the department or agency of the Government in which [the SGE] is serving.” 18 U.S.C. §§ 203(c)(2), 205(c)(2).

- **Post-Employment Restrictions:**

18 U.S.C. § 207(a)(1), the lifetime prohibition on representing others in connection with the same particular matter involving specific parties in which the former employee participated personally and substantially, applies the same way to SGEs and regular employees. Accordingly, an SGE must not communicate to any federal employee (not just an FTC employee) about a specific party matter (e.g., an investigation, litigation, or a contract) on behalf of a third party if they participated in that “same” specific party matter for the United States. The restriction lasts for the “lifetime” of the matter (some of our litigation matters in particular go on for many years and have multiple phases). Further, any substantive role (including doing research, making recommendations, signing off of a document) in direct connection with a specific party matter amounts to personal participation in that matter.

16 C.F.R. §§ 4.1(b)-(c): Former FTC employees, including SGEs, must obtain formal approval to participate (even “behind-the-scenes”) in most FTC matters/proceedings that were pending (or directly resulted from a matter that was pending) during the employee’s tenure at the FTC. Approval will be denied if participation would raise a concern under Section 207 or if the former employee was exposed to nonpublic information that would confer a present advantage. This FTC regulation (known as the FTC’s Clearance Rule) also disqualifies the colleagues of former FTC employees from working on FTC matters/proceedings involving specific parties if the former employee worked on those same matters unless an appropriate firewall/screening procedure is put in place.

- **Financial Conflicts of Interest**

18 U.S.C. § 208 prohibits all employees, including SGEs, from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or the financial interests of others with whom they have certain relationships. In addition to an employee’s own personal financial interests, the financial interests of the following persons or organizations are also disqualifying: 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 any arrangement concerning prospective employment. Because SGEs typically have substantial outside employment and other interests, which are often related to the subject areas for which the Government desires their services, issues under section 208 must be carefully considered.

Note: Divestiture of a disqualifying interest is one of the remedies for a potential violation of section 208, it is important to note that SGEs are not eligible for a Certificate of Divestiture (CD). A CD is a tax benefit that allows the deferral of capital gain where an employee divests a financial interest in order to comply with conflict of interest requirements. However, Congress specifically excluded SGEs from the definition of “eligible person,” and consequently SGEs may not take advantage of this benefit. 26 U.S.C. § 1043(b)(1)(A).

- **Outside Teaching, Speaking, and Writing Activities:**

5 C.F.R. § 2635.807(a) generally prohibits an employee from receiving outside compensation for speaking, teaching or writing activities that relate to the employee’s official duties. Such activities may relate to an employee’s official duties in several different ways: if the activity is

performed as part of the employee's official duties; if the invitation to engage in the activity was extended primarily because of the employee's official position rather than expertise in the subject matter; if the invitation or offer of compensation was extended by someone with interests that may be affected substantially by the employee's duties; or if the information conveyed through the activity draws substantially on nonpublic information obtained through the employee's Government service. 5 C.F.R. § 2635.807(a)(2)(i)(A)-(D). SGEs, like all employees, are prohibited from receiving compensation for activities that are related to their official duties in any of these ways.

For regular employees, an outside teaching/speaking/writing activity will also relate to his official duties if it deals, in significant part, with any matter to which the employee is currently assigned or has been assigned during the previous year. 5 C.F.R. § 2635.807(a)(2)(i)(E)(1). However, an SGE is not prohibited from accepting compensation for speaking, teaching, or writing simply because the activity relates to the programs or the general subject area of the SGE's agency. Further, this restriction for SGEs is limited to the matters to which the SGE is currently assigned or had been assigned during his or her current SGE appointment. Moreover, for SGEs who have not served (or are not expected to serve) more than 60 days during the first year of appointment or any subsequent one-year period of appointment, the restriction is even narrower: it applies only to specific party matters (e.g., contracts, litigation, investigations, public contests) the SGE has or is currently handling.

- **Other Constraints on Receiving Outside Compensation:**

18 U.S.C. § 209 prohibits Federal employees from receiving "any salary, or any contribution to or supplementation of salary" from an outside source as compensation for their Government services. SGEs, however, are completely exempt from this prohibition. 18 U.S.C. § 209(c). This means, for example, that SGEs may continue to collect their regular salary from an outside employer for days on which they are providing services to the Government (whether their Government service is paid or unpaid).

18 U.S.C. § 201(b), (c): SGEs also are 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.

18 U.S.C. § 219 prohibits employees, including SGEs, from acting as an agent of a foreign principal under certain circumstances. Unlike regular employees, however, SGEs may be eligible for a special exemption from the prohibitions of section 219, where the agency head certifies that employment of the SGE "is required in the national interest." 18 U.S.C. § 219(b).

Emoluments Clause: The Department of Justice also has held that SGEs may be subject to the Emoluments Clause of the United States Constitution, U.S. Const., art. I, § 9, cl. 8, which prohibits persons who "hold offices of profit or trust" in the Federal Government from having any position in or receiving any payment from a foreign government. See 15 Op. O.L.C. 65 (1991); 17 Op. O.L.C. 114 (1993).

- **Gifts from Outside Sources:**

SGEs, like all employees, are subject to 5 C.F.R. § 2635.202(a), which prohibits the acceptance of gifts from a “prohibited source” and gifts given because of an employee’s official position. The definition of “prohibited source” includes any person seeking official action from the employee’s agency, doing or seeking to do business with the employee’s agency, conducting activities regulated by the employee’s agency, or having interests that may be substantially affected by the employee’s official duties; the definition also includes organizations the majority of whose members fall within any of the aforementioned categories. 5 C.F.R. § 2635.203(d). From this definition, it should be immediately apparent that SGEs pose unique issues, because many SGEs are employed by, or have substantial professional and business relationships with, such prohibited sources. However, there are multiple exceptions to the prohibition. A notable one (applicable to all employees) that may be particularly useful to SGEs permits employees to accept various benefits resulting from outside business or employment activities, where it is clear that such benefits are not offered or enhanced because of the employee’s official position. 5 C.F.R. § 2635.204(e)(2).

- **Limits on Expert Witness Activities:**

Employees generally may not participate as an expert witness, 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. 5 C.F.R. § 2635.805(a). This prohibition applies whether or not the employee receives compensation for the activity. The Designated Agency Ethics Official may authorize an employee to serve as an expert witness where such service is determined to be in the interest of the Government or where the subject matter of the testimony is determined to be unrelated to the employee’s official duties. 5 C.F.R. § 2635.805(c).

For SGEs, the restrictions of section 2635.805 are substantially narrowed. With respect to most SGEs, section 2635.805 applies only where the SGE actually participated officially in the same proceeding or in the particular matter that is the subject of the proceeding. 5 C.F.R. § 2635.805(a). A somewhat more restrictive standard applies to a smaller class of SGEs who are deemed to have particularly significant Federal positions, i.e., those either appointed by the President, serving on a commission established by statute, or serving (or expected to serve) for more than 60 days in a period of 365 days. 5 C.F.R. § 2635.805(b). For this class of SGEs, the restriction on expert service also applies to any proceeding in which the SGE’s own agency is a party or has a direct and substantial interest.

- **Charitable Fundraising:**

All employees, including SGEs, are equally subject to certain restrictions on personal fundraising for nonprofit organizations. These include restrictions on the use of official title, position and authority, and the solicitation of subordinates. 5 C.F.R. § 2635.808(c). Additionally, employees may not personally solicit funds or other support from a person known by the employee to be a “prohibited source.” (The definition of prohibited source is discussed in more detail above, under “Gifts from Outside Sources.”) Due to the FTC’s supplemental regulation, our employees are focused on a somewhat more narrow group—FTC employees must not solicit from persons who are currently seeking official action from the FTC or doing business with the FTC, or from anyone who has interests that may be substantially affected by the performance or nonperformance of your official duties. Generally, this will include any person or entity that

currently is an interested party in a Commission matter, proceeding, contract, or decision. 5 C.F.R. § 5701.102. With respect to SGEs, however, this restriction is limited to an even more narrow subset: SGEs are prohibited only from personally soliciting persons whose interests may be affected substantially by the performance or nonperformance of the SGE's official duties. 5 C.F.R. § 2635.808(c)(1)(ii).

- **Political Activities:**

The Hatch Act (5 U.S.C. 7321-7326) restricts the partisan political activities of federal employees. SGEs are bound by the same rules as regular employees. However, Hatch Act restrictions only apply to SGEs on the days they serve as SGEs on behalf of their agencies:

Prohibited Activities include—

- 1) Engaging in political activity while:
 - on duty;
 - on government-paid travel;
 - in any room or building occupied in the conduct of government business;
 - wearing a uniform or official insignia identifying the office or position of the employee; or
 - using any vehicle owned or leased by the government.
- 2) Using official authority or influence to interfere with or affect the result of an election.
- 3) Knowingly soliciting, accepting, or receiving political campaign contributions from ANY person.
- 4) Running for a partisan political office (w/ limited exceptions).

From: Koslov, Tara Isa
Sent: Wed, 11 Jul 2018 08:54:59 -0400
To: Pankey, Lorielle;Hipsley, Heather;Abbott, Alden;White, Christian S.
Subject: Re: New arrival in C. Chopra's office

Sounds great. It's an usual situation because she's not your typical "law clerk" - I think she'll appreciate knowing the implications for future work. Thanks.

On: 11 July 2018 07:08,
"Pankey, Lorielle" <LPANKEY@ftc.gov> wrote:

I am fine with reaching out to her to ensure she understands post-government employment restrictions. Tara, let me know if you have a preference.
Thanks,
Lorielle

On: 10 July 2018 18:51,
"Hipsley, Heather" <HHIPPSLEY@ftc.gov> wrote:

I think the issue may be as with some of our CTOs that we should offer her counseling now if she may misunderstand how participating in investigative briefings, etc. could affect her future career choices. She may want to understand the post-employment better to opt in or out of work while she is here as we warned Soltani and others. Why doesn't either Lorielle or Tara suggest that she might want to understand post-employment ethics so she doesn't cut off opportunities for the future given her interest in tech/competition issues and writing on such things as a possible career path. H.

From: Pankey, Lorielle
Sent: Tuesday, July 10, 2018 6:03 PM
To: Koslov, Tara Isa; Abbott, Alden; White, Christian S.
Cc: Hipsley, Heather
Subject: Re: New arrival in C. Chopra's office

FYI: HCMO advised she will only be here for 10-12 weeks. She will have a post-employment ethics briefing when she departs (as do all our our employees, even our unpaid summer interns). This is part of the CICOM departure check-out process.

We normally wait for the departing employee to set an appointment with an Ethics official (they receive a form which instructs them to visit Ethics and certain other FTC offices before they depart). I can set a tickler to remind her of this requirement 10 weeks from now if you prefer.

On: 10 July 2018 16:03,
"Koslov, Tara Isa" <TKOSLOV@ftc.gov> wrote:

Thanks for this info – much appreciated. I don't think you need to do anything else at this time. I'll let you know if the Chairman thinks otherwise.

From: Pankey, Lorielle
Sent: Tuesday, July 10, 2018 2:29 PM
To: Koslov, Tara Isa <TKOSLOV@ftc.gov>; Abbott, Alden <aabbott@ftc.gov>; White, Christian S. <CWHITE2@ftc.gov>
Cc: Hipsley, Heather <HHIPPSLEY@ftc.gov>
Subject: RE: New arrival in C. Chopra's office

Hi,

(b)(5)



Lorielle L. Pankey
lpiskey@ftc.gov
Assistant General Counsel | Alternate Designated Agency Ethics Official
202.326.3108 office | 202.326.2477 fax
Federal Trade Commission

Office of the General Counsel
600 Penn. Ave, NW, H-594
Washington, DC 20580

From: Pankey, Lorielle
Sent: Tuesday, July 10, 2018 1:21 PM
To: Koslov, Tara Isa <TKOSLOV@ftc.gov>; Abbott, Alden <aabbott@ftc.gov>; White, Christian S. <CWHITE2@ftc.gov>
Cc: Hipsley, Heather <HHIPPSLEY@ftc.gov>
Subject: RE: New arrival in C. Chopra's office

(b)(5)



Lorielle L. Pankey
lpiskey@ftc.gov
Assistant General Counsel | Alternate Designated Agency Ethics Official
202.326.3108 office | 202.326.2477 fax
Federal Trade Commission
Office of the General Counsel
600 Penn. Ave, NW, H-594
Washington, DC 20580

From: Koslov, Tara Isa
Sent: Tuesday, July 10, 2018 1:17 PM
To: Abbott, Alden <aabbott@ftc.gov>; White, Christian S. <CWHITE2@ftc.gov>; Pankey, Lorielle <LPANKEY@ftc.gov>
Cc: Hipsley, Heather <HHIPPSLEY@ftc.gov>
Subject: New arrival in C. Chopra's office

(b)(5)



Happy to discuss further, but I wanted to send this as a marker, in case you're not already thinking about it.

Many thanks,
Tara

Tara Isa Koslov
Chief of Staff to Chairman Simons
Federal Trade Commission

From: Butler, Keyonna
Sent: Tue, 10 Jul 2018 13:42:28 -0400
To: Pankey, Lorielle;Mangelsdorf, Dianna Golding
Subject: RE: Lina Khan
Importance: High

Good Afternoon,

She started on 07/09/18 with the FTC. She will be staying for a period of 10-12 weeks as GS-904-11, Law Clerk. She was appointed via Schedule A and not Schedule C (Political).

Thanks,
Keyonna Butler
Lead Human Resources Specialist
Office of Human Capital Management
Federal Trade Commission
kbutler1@ftc.gov
Phone – (202) 326-2089
Fax – (202) 326-2328

From: Pankey, Lorielle
Sent: Tuesday, July 10, 2018 1:19 PM
To: Mangelsdorf, Dianna Golding <dmangelsdorf@ftc.gov>
Cc: Butler, Keyonna <kbutler1@ftc.gov>
Subject: RE: Lina Khan

(b)(5)

A large rectangular area of the document is redacted with a solid black background. The text "(b)(5)" is visible in the top-left corner of this redacted area.

Lorielle L. Pankey
lpnkey@ftc.gov
Assistant General Counsel | Alternate Designated Agency Ethics Official
202.326.3108 office | 202.326.2477 fax
Federal Trade Commission
Office of the General Counsel
600 Penn. Ave, NW, H-594
Washington, DC 20580

From: Mangelsdorf, Dianna Golding
Sent: Monday, July 09, 2018 3:58 PM

To: Pankey, Lorielle <LPANKEY@ftc.gov>

Subject: Re: Lina Khan

(b)(5)



On: 09 July 2018 15:44,
"Pankey, Lorielle" <LPANKEY@ftc.gov> wrote:

Dianna,

(b)(5)



Thanks,

Lorielle

Lorielle L. Pankey

lpiskey@ftc.gov

Assistant General Counsel | Alternate Designated Agency Ethics Official

202.326.3108 office | 202.326.2477 fax

Federal Trade Commission

Office of the General Counsel

600 Penn. Ave, NW, H-594

Washington, DC 20580

From: White, Christian S.

Sent: Monday, July 09, 2018 2:34 PM

To: Pankey, Lorielle <LPANKEY@ftc.gov>

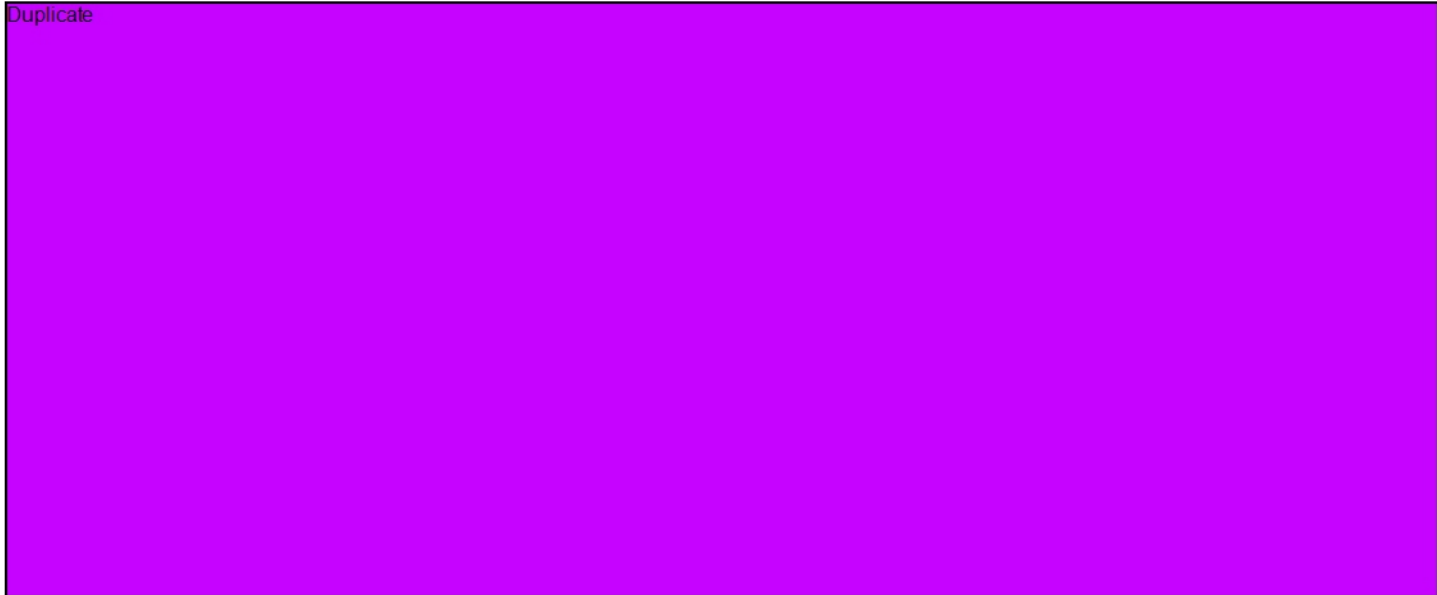
Subject: Lina Khan

I take it RC hasn't asked us to talk to Kahn about ethics or confidentiality issues.

See <https://www.bloomberg.com/news/articles/2018-07-09/amazon-antitrust-critic-joins-ftc-as-agency-sets-sights-on-tech>.

I saw somewhere else that he intended to make her a "fellow" for some months.

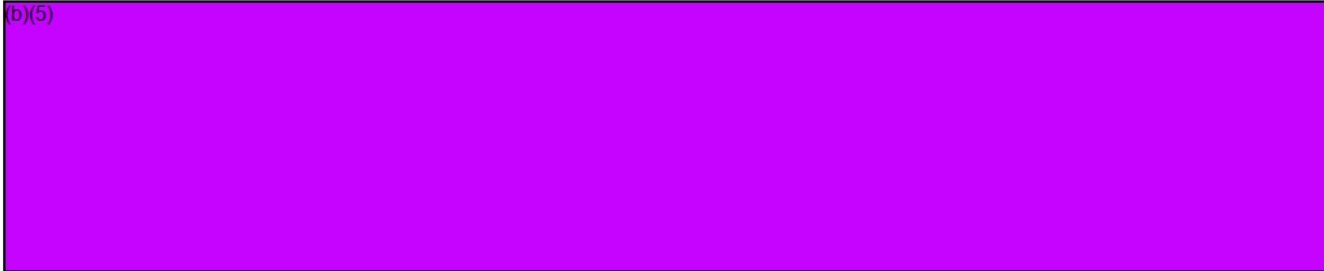
Duplicate



Washington, DC 20580

From: White, Christian S.
Sent: Monday, July 09, 2018 2:34 PM
To: Pankey, Loriele <LPANKEY@ftc.gov>
Subject: Lina Khan

(b)(5)



From: [Smith, Stephanie E.](#)
To: [Butler, Keyonna](#)
Subject: FW: Interim Suitability Determination - Lina Khan
Date: Thursday, July 5, 2018 11:23:00 AM
Importance: High

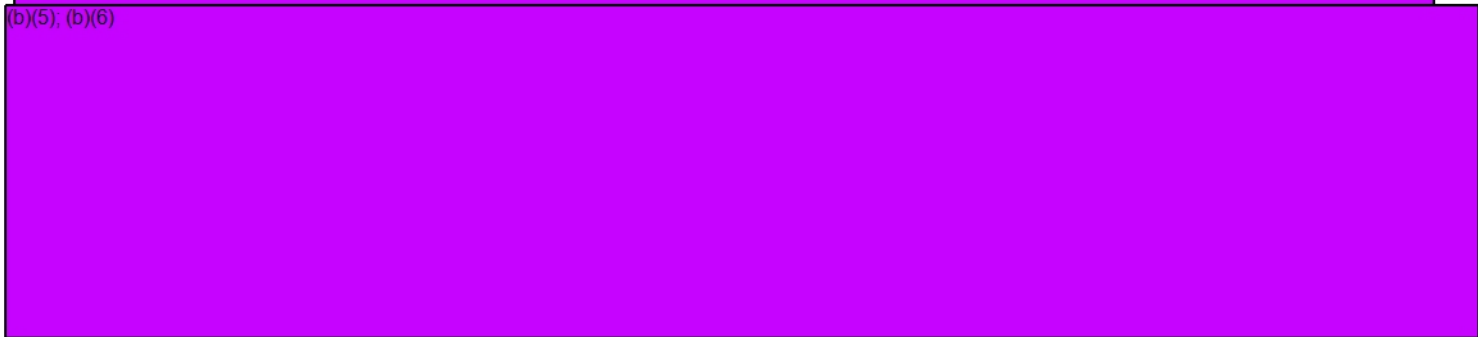
Now that she has cleared security, please confirm that she will start on Monday. Also need to know her greeter. I would like to send out the notice by noon.

Stephanie

(b)(5)



(b)(5), (b)(6)



Kevin Wadach
Personnel Security Specialist
Federal Trade Commission
Human Capital Management Office
Personnel Security Division
(202) 326-3566 (Office)
(202) 326-3227 (Fax)

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) KHAN, LINA				2. Social Security Number (b)(6)		3. Date of Birth (b)(6)		4. Effective Date ████████			
FIRST ACTION					SECOND ACTION						
5-A. Code 171		5-B. Nature of Action EXC APPT NTE 09-08-19			6-A. Code		6-B. Nature of Action				
5-C. Code WEM		5-D. Legal Authority SCH A, 213.3102(E)			6-C. Code		6-D. Legal Authority				
5-E. Code		5-F. Legal Authority			6-E. Code		6-F. Legal Authority				
7. FROM: Position Title and Number					15. TO: Position Title and Number LAW CLERK 0103000 1030005						
8. Pay Plan	9. Occ. Code	10. Grade or Level	11. Step or Rate	12. Total Salary	13. Pay Basis	16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Total Salary/Award	21. Pay Basis
						GS	0904	11	01	68036	PA
12A. Basic Pay		12B. Locality Adj.	12C. Adj. Basic Pay		12D. Other Pay	20A. Basic Pay		20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay	
						53062		14974	68036	0	
14. Name and Location of Position's Organization					22. Name and Location of Position's Organization FEDERAL TRADE COMMISSION COMMISSIONER'S OFFICE OFFICE OF COMM CHOPRA WASHINGTON,DC						
EMPLOYEE DATA											
23. Veterans Preference					24. Tenure			25. Agency Use		26. Veterans Preference for RIF	
1	1 - None	3 - 10-Point/Disability		5 - 10-Point/Other	3	0 - None	2 - Conditional			<input type="checkbox"/>	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	2 - 5-Point	4 - 10-Point/Compensable		6 - 10-Point/Compensable/30%		1 - Permanent	3 - Indefinite				
27. FEGLI					28. Annuitant Indicator			29. Pay Rate Determinant			
C0	BASIC ONLY				9	NOT APPLICABLE		0			
30. Retirement Plan				31. Service Comp. Date (Leave)		32. Work Schedule		33. Part-Time Hours Per Biweekly Pay Period			
KF	FERS-FRAE & FICA			07/09/2018		F	FULL-TIME				
POSITION DATA											
34. Position Occupied				35. FLSA Category		36. Appropriation Code			37. Bargaining Unit Status		
2	1 - Competitive Service	3 - SES General		E	E - Exempt				7777		
	2 - Excepted Service	4 - SES Career Reserved			N - Nonexempt						
38. Duty Station Code				39. Duty Station (City - County - State or Overseas Location)							
11-0010-001				WASHINGTON, DISTRICT OF COLUMBIA							
40. Agency Data		41.		42.		43.		44.			
FUNC CLS 00		VET STAT X		EDUC LVL 15		SUPV STAT 8		POSITION SENSITIVITY NONSENSITIVE/LOW RI			
45. Remarks											
APPOINTMENT AFFIDAVIT EXECUTED 07-09-18.											
CREDITABLE MILITARY SERVICE: NONE											
PREVIOUS RETIREMENT COVERAGE: NEVER COVERED											
REASON FOR TEMPORARY APPOINTMENT TO COVER NEEDS OF COMMISSIONER'S OFFICE											
POSITION IS AT THE FULL PERFORMANCE LEVEL OR BAND.											
EMPLOYEE IS AUTOMATICALLY COVERED UNDER FERS, FERS-RAE OR FERS-FRAE.											
46. Employing Department or Agency						50. Signature/Authentication and Title of Approving Official					
FT - FED TRADE COMMISSION						181260089 / ELECTRONICALLY SIGNED BY:					
47. Agency Code		48. Personnel Office ID		49. Approval Date		STEPHANIE F. SMITH					
FT00		1471		07/06/2018		AUTHORIZING OFFICIAL					

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) KHAN, LINA				2. Social Security Number (b)(6)		3. Date of Birth (b)(6)		4. Effective Date 09/07/2018					
FIRST ACTION					SECOND ACTION								
5-A. Code 317		5-B. Nature of Action RESIGNATION			6-A. Code		6-B. Nature of Action						
5-C. Code RPM		5-D. Legal Authority REG 715.202			6-C. Code		6-D. Legal Authority						
5-E. Code		5-F. Legal Authority			6-E. Code		6-F. Legal Authority						
7. FROM: Position Title and Number LAW CLERK 0103000 1030005					15. TO: Position Title and Number								
8. Pay Plan GS		9. Occ. Code 0904	10. Grade or Level 11	11. Step or Rate 01	12. Total Salary 68036	13. Pay Basis PA		16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Total Salary/Award	21. Pay Basis
12A. Basic Pay 53062		12B. Locality Adj. 14974	12C. Adj. Basic Pay 68036		12D. Other Pay 0			20A. Basic Pay		20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay	
14. Name and Location of Position's Organization FEDERAL TRADE COMMISSION COMMISSIONER'S OFFICE OFFICE OF COMM CHOPRA WASHINGTON,DC					22. Name and Location of Position's Organization								
EMPLOYEE DATA													
23. Veterans Preference 1 1 - None 2 - 5-Point 3 - 10-Point/Disability 4 - 10-Point/Compensable 5 - 10-Point/Other 6 - 10-Point/Compensable/30%					24. Tenure 3 0 - None 1 - Permanent 2 - Conditional 3 - Indefinite			25. Agency Use		26. Veterans Preference for RIF <input type="checkbox"/> YES <input checked="" type="checkbox"/> X NO			
27. FEGLI C0 BASIC ONLY					28. Annuitant Indicator 9 NOT APPLICABLE			29. Pay Rate Determinant 0					
30. Retirement Plan KF FERS-FRAE & FICA				31. Service Comp. Date (Leave) 07/09/2018		32. Work Schedule F FULL-TIME		33. Part-Time Hours Per Biweekly Pay Period					
POSITION DATA													
34. Position Occupied 2 1 - Competitive Service 2 - Excepted Service 3 - SES General 4 - SES Career Reserved				35. FLSA Category E E - Exempt N - Nonexempt		36. Appropriation Code		37. Bargaining Unit Status 7777					
38. Duty Station Code 11-0010-001				39. Duty Station (City - County - State or Overseas Location) WASHINGTON, DISTRICT OF COLUMBIA									
40. Agency Data FUNC CLS 00		41. VET STAT X		42. EDUC LVL 15		43. SUPV STAT 8		44. POSITION SENSITIVITY NONSENSITIVE/LOW RI					
45. Remarks FORWARDING ADDRESS: (b)(6) EMPLOYEE GAVE NO REASON FOR RESIGNATION. SF 2819 WAS PROVIDED. LIFE INSURANCE COVERAGE IS EXTENDED FOR 31 DAYS DURING WHICH YOU ARE ELIGIBLE TO CONVERT TO AN INDIVIDUAL POLICY (NONGROUP CONTRACT). LUMP-SUM PAYMENT TO BE MADE FOR ANY UNUSED ANNUAL LEAVE.													
46. Employing Department or Agency FT - FED TRADE COMMISSION					50. Signature/Authentication and Title of Approving Official 181745849 / ELECTRONICALLY SIGNED BY: STEPHANIE F. SMITH AUTHORIZING OFFICIAL								
47. Agency Code FT00		48. Personnel Office ID 1471		49. Approval Date 09/06/2018									

Withheld pursuant to exemption

Duplicate

of the Freedom of Information and Privacy Act

From: [Butler, Keyonna](#)
To: [CICOM](#)
Cc: [Smith, Stephanie E.](#); [Pickeral, Corey B.](#); [Crawford, Rosemarie L.](#); [Obaigbena, Alarsim M.](#); [Haizlip, Rokeisha](#); [Acajabon, Edwin](#); [Warren, Robert](#); [Bundy, Ashton J.](#); [Davis, Cheryl CTR](#); [Park, Kevin CTR](#); [FTCSecurity-DL](#); [Baker, Cortez L.](#); [Lewis, Tina M.](#)
Subject: New Hire: Lina Khan (EOD: 07/09/2018)
Date: Thursday, July 5, 2018 11:24:38 AM

EOD: 07/09/2018

First Name: **Khan**

Last Name: **Lina**

Title/Pay Plan/Series/Grade: **Law Clerk, GS-904-11**

Bureau/ Division: **Office of the Commissioner**

Organization Code: **0103**

Supervisor: **Rohit Chopra**

Administrative Officer/ POC: **Tina Lewis**

Thanks,

Keyonna Butler

Lead Human Resources Specialist

Office of Human Capital Management

Federal Trade Commission

kbutler1@ftc.gov

Phone – (202) 326-2089

Fax – (202) 326-2328

Withheld pursuant to exemption

Duplicate

of the Freedom of Information and Privacy Act