

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires the employee to participate personally in a particular matter before the Board or RTC. In this situation, assuming that such representation is not prohibited by 18 U.S.C. 203 or 205, the special government employee should participate in the matter for his or her regular employer only with the knowledge and approval of the President, after consultation with the DAEO. However, an independent member of the Oversight Board or a member of a National or Regional Advisory Board may not represent his or her regular employer in, and must be fully recused from agency deliberations or actions concerning any contract or other particular matter such employer has before or involving the Oversight Board or RTC, and must also be prohibited from sharing in any fees or profits directly attributable to such contract or other particular matter. Employers of those who serve as independent members of the Oversight Board or members of a National or Regional Advisory Board are not barred from contracting with the Oversight Board.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in §1505.34(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the Board or RTC.

§ 1505.33 Applicability of 18 U.S.C. 207.

Section 207 of title 18, U.S.C., applies to individuals who have left Govern-

ment service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in §1505.34(b). In addition, section 207 of title 18, U.S.C. prevents a former employee for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

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§ 1505.34 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18, U.S.C., bears on the activities of Government personnel, including special government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted by the President, after consultation with the DAEO and the Office of Government Ethics. Until a waiver is granted, special government employees are disqualified from participating in