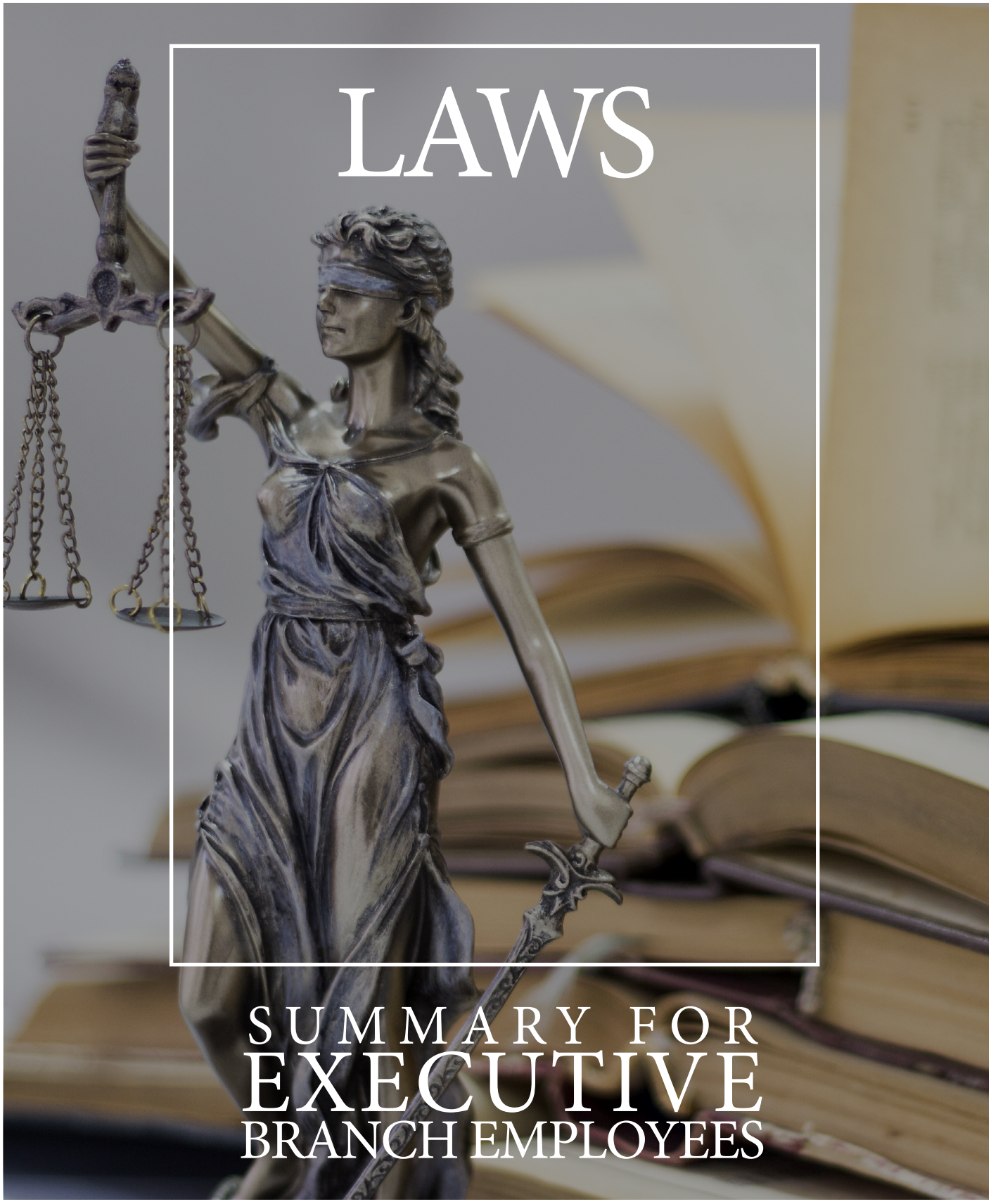
CRIMINAL CONFLICT OF INTEREST



LAWS

SUMMARY FOR EXECUTIVE BRANCH EMPLOYEES

This booklet contains summaries of the Criminal Conflict of Interest Laws, 18 U.S.C. sections 201-209. These summaries are not a substitute for legal advice. You should consult your agency ethics official for specific guidance about the application of these laws to your situation.

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18 U.S.C. 208

You are prohibited from working on Government matters in which you, your spouse or minor child, or certain others have a financial interest.

1

CONFLICTING FINANCIAL INTEREST

1

CONFLICTING FINANCIAL INTEREST
18 U.S.C. 208

18 U.S.C. section 208 prohibits you from working on Government matters that will affect your own personal financial interest, or the financial interests of certain other people, including:

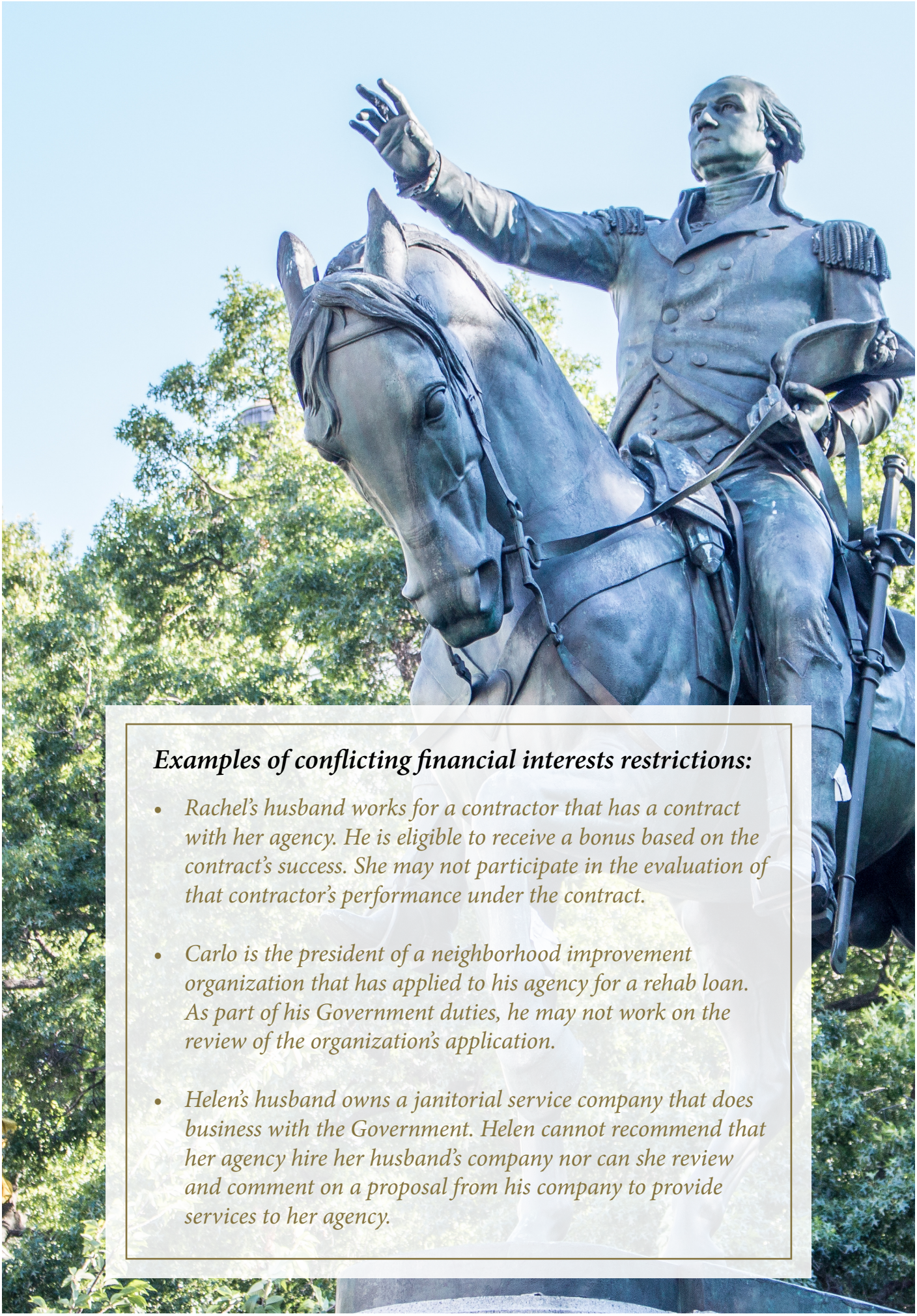
- **your spouse or minor child;**
- **your general partner;**
- **any organization in which you are serving as an officer, director, trustee, general partner or employee; and**
- **any person or organization with whom you are negotiating or have an arrangement for future employment.**

There are various ways you could experience a conflict of interest between the work you perform and a financial interest you or others hold. Stock ownership is one example. If you or your spouse or minor child owned $30,000 of stock in a company that would be affected by your job duties, you would not be able to perform those duties until certain measures are taken to resolve the conflict. This would be true even if the extent of the gain or loss is small or isn't known.

Keep in mind, however, that conflicts can arise from interests other than stock. For example, if you are on the board of directors of an organization, you could not act on a grant or contract that would benefit that organization.

In some cases, the law recognizes that your financial interest may be so remote or inconsequential that the interest should not prevent you from being involved in a particular assignment. However, your agency may also have additional restrictions that prohibit you from holding certain interests or outside positions.

If you think you might have a conflicting financial interest, you should discuss it with your supervisor or your ethics official. They can provide you with guidance to address the conflict. This might include not working on the Government matter, selling stocks, or resigning from an outside position. Your ethics official will be able to assist you with your particular circumstances.



Examples of conflicting financial interests restrictions:

- *Rachel's husband works for a contractor that has a contract with her agency. He is eligible to receive a bonus based on the contract's success. She may not participate in the evaluation of that contractor's performance under the contract.*

- *Carlo is the president of a neighborhood improvement organization that has applied to his agency for a rehab loan. As part of his Government duties, he may not work on the review of the organization's application.*

- *Helen's husband owns a janitorial service company that does business with the Government. Helen cannot recommend that her agency hire her husband's company nor can she review and comment on a proposal from his company to provide services to her agency.*

18 U.S.C. 209

You may not be paid by someone other than the United States for doing your Government duties.

2

SUPPLEMENTATION OF SALARY

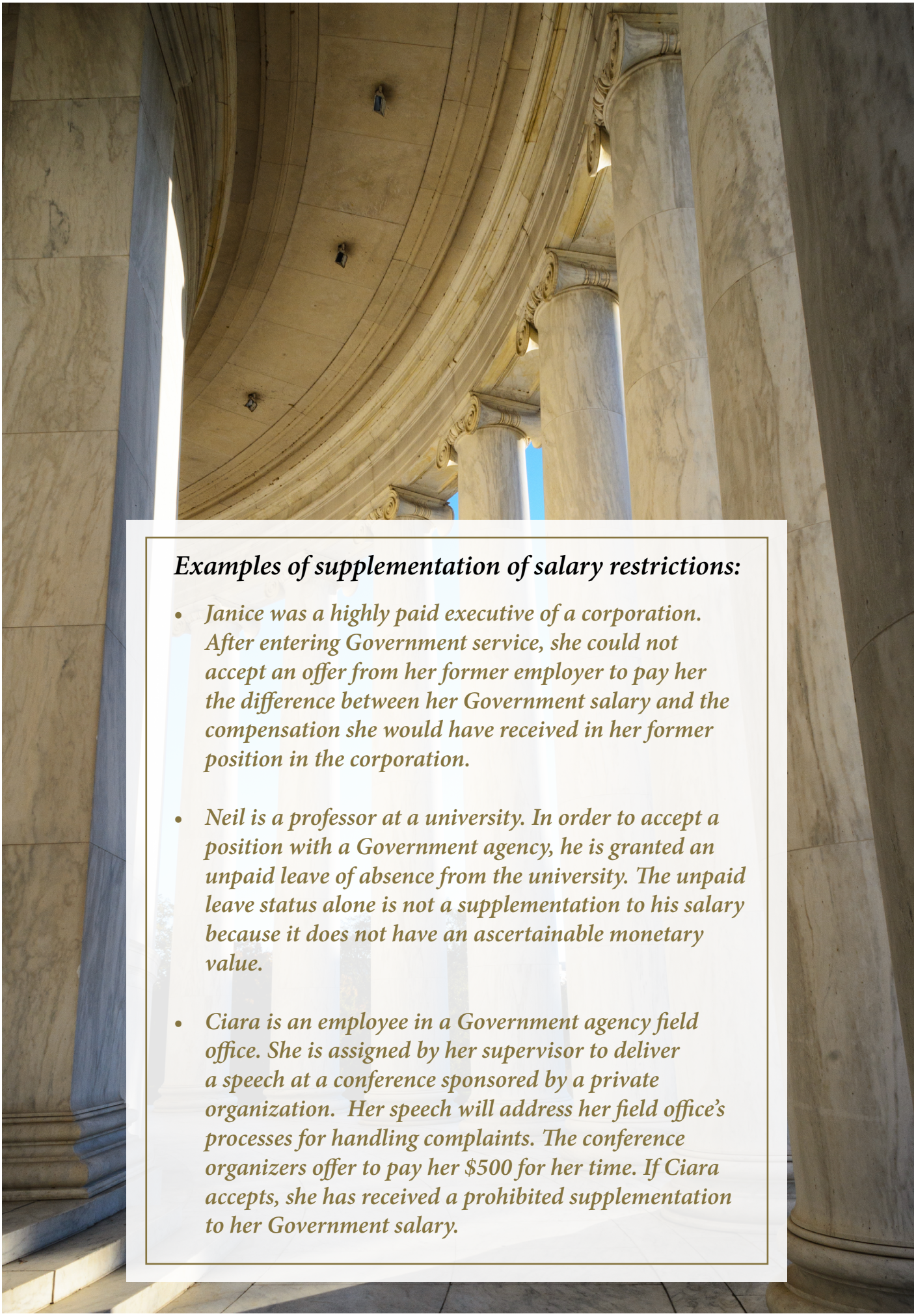
SUPPLEMENTATION OF SALARY
18 U.S.C. 209

With some limitations, 18 U.S.C. section 209 prohibits you from receiving any salary or contribution to or supplementation of your federal salary from anyone but the Government as compensation for your services as a Government employee. In other words, no one other than the United States can pay you for doing your official Government duties.

Section 209 is intended to prevent divided loyalty and even the appearance of wrongdoing. Consequently, the prohibition applies even if the person paying you has no dealings or relations with your agency, and even if the Government experiences no injury as a result of the supplementation.

The prohibition does not apply to:

- **special Government employees and employees serving without compensation;**
- **payments made by the treasury of any State, county, or municipality;**
- **continued participation in a former employer's bona fide employee welfare or benefit plan (such as a pension, retirement, group life, health or accident insurance, profit-sharing, or stock bonus plan);**
- **payments from a tax-exempt nonprofit organization for travel, subsistence and other expenses incurred in connection with training; and**
- **payments for moving expenses incurred in connection with participation in an executive exchange or fellowship program in an executive agency.**



Examples of supplementation of salary restrictions:

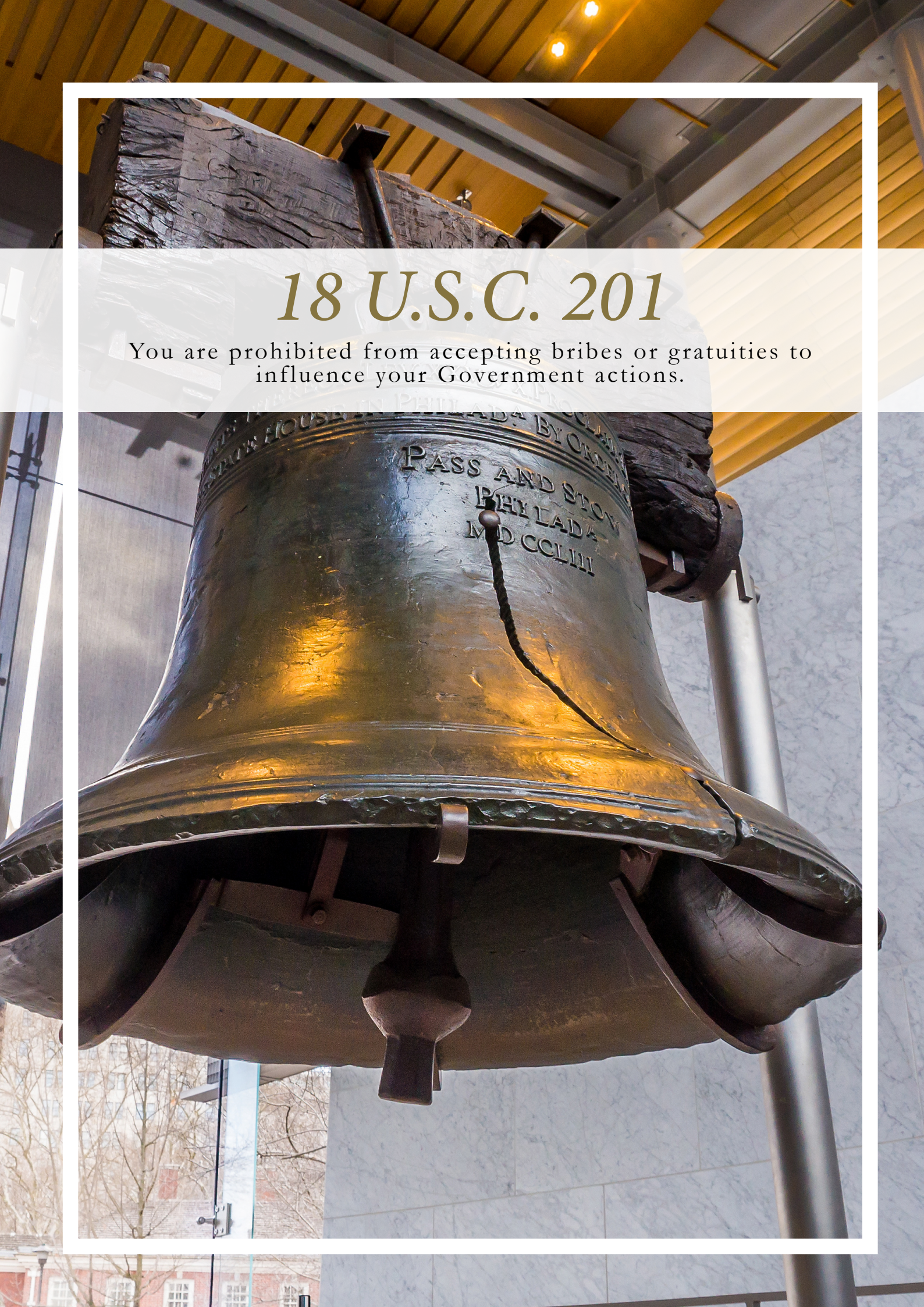
- *Janice was a highly paid executive of a corporation. After entering Government service, she could not accept an offer from her former employer to pay her the difference between her Government salary and the compensation she would have received in her former position in the corporation.*

- *Neil is a professor at a university. In order to accept a position with a Government agency, he is granted an unpaid leave of absence from the university. The unpaid leave status alone is not a supplementation to his salary because it does not have an ascertainable monetary value.*

- *Ciara is an employee in a Government agency field office. She is assigned by her supervisor to deliver a speech at a conference sponsored by a private organization. Her speech will address her field office's processes for handling complaints. The conference organizers offer to pay her $500 for her time. If Ciara accepts, she has received a prohibited supplementation to her Government salary.*

18 U.S.C. 201

You are prohibited from accepting bribes or gratuities to influence your Government actions.



3

BRIBERY AND ILLEGAL GRATUITIES

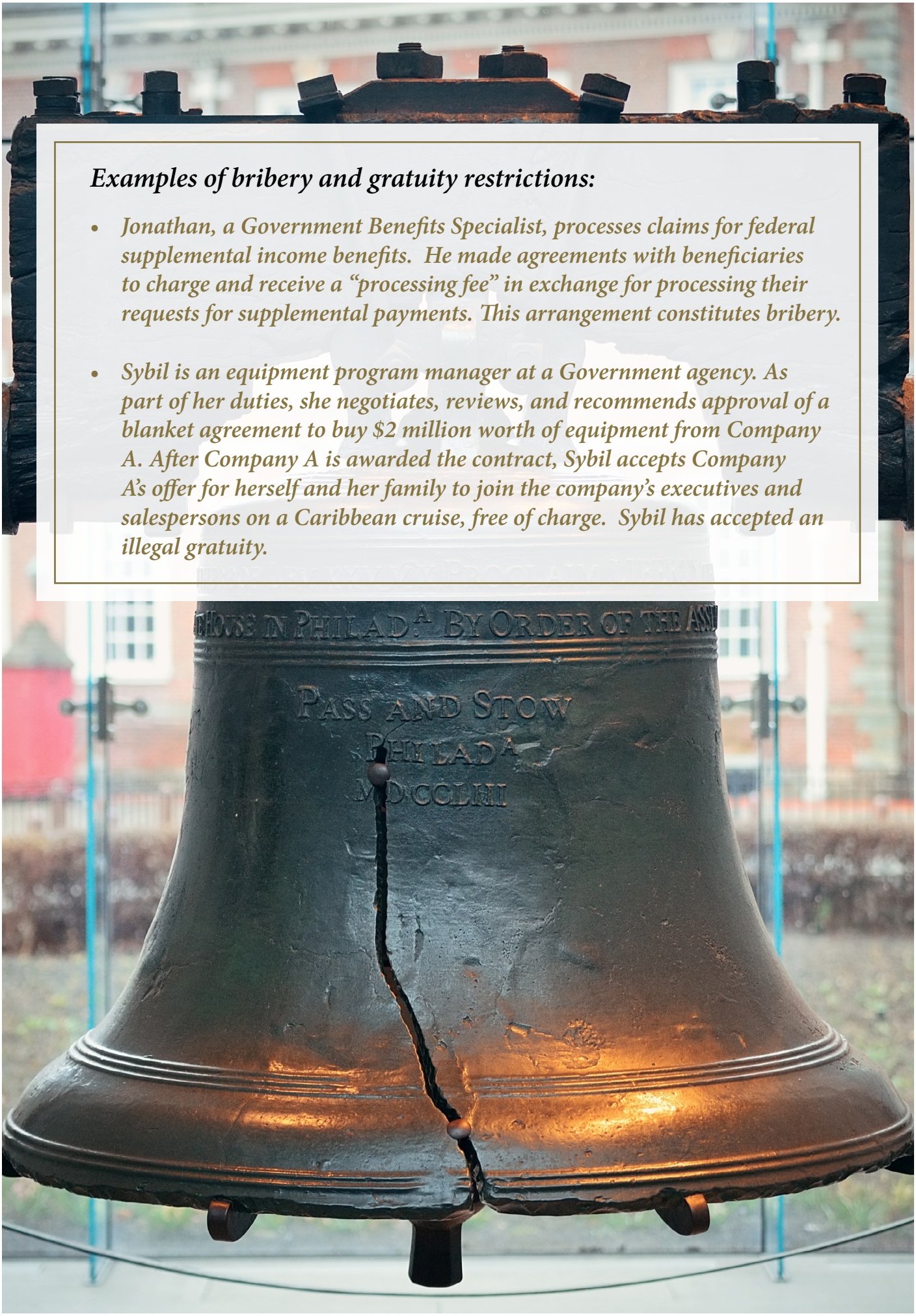
BRIBERY & ILLEGAL GRATUITIES
18 U.S.C. 201

You are prohibited from demanding, seeking, receiving, accepting or agreeing to receive or accept anything of value as a bribe to influence your Government actions or as a gratuity for or because of your Government actions.

18 U.S.C. section 201 contains two separate prohibitions: the first deals with bribery, the second with illegal gratuities. What is the distinction? An aphorism the Department of Justice has used to sum up the distinction between a bribe and a gratuity is this-- a bribe says "please" and a gratuity says "thank you."

Bribery requires an intent "to be influenced" in an official act. In other words, for bribery to occur there must be a quid pro quo— an agreement that you will be influenced in the performance of any official act and will seek or accept something of value in exchange.

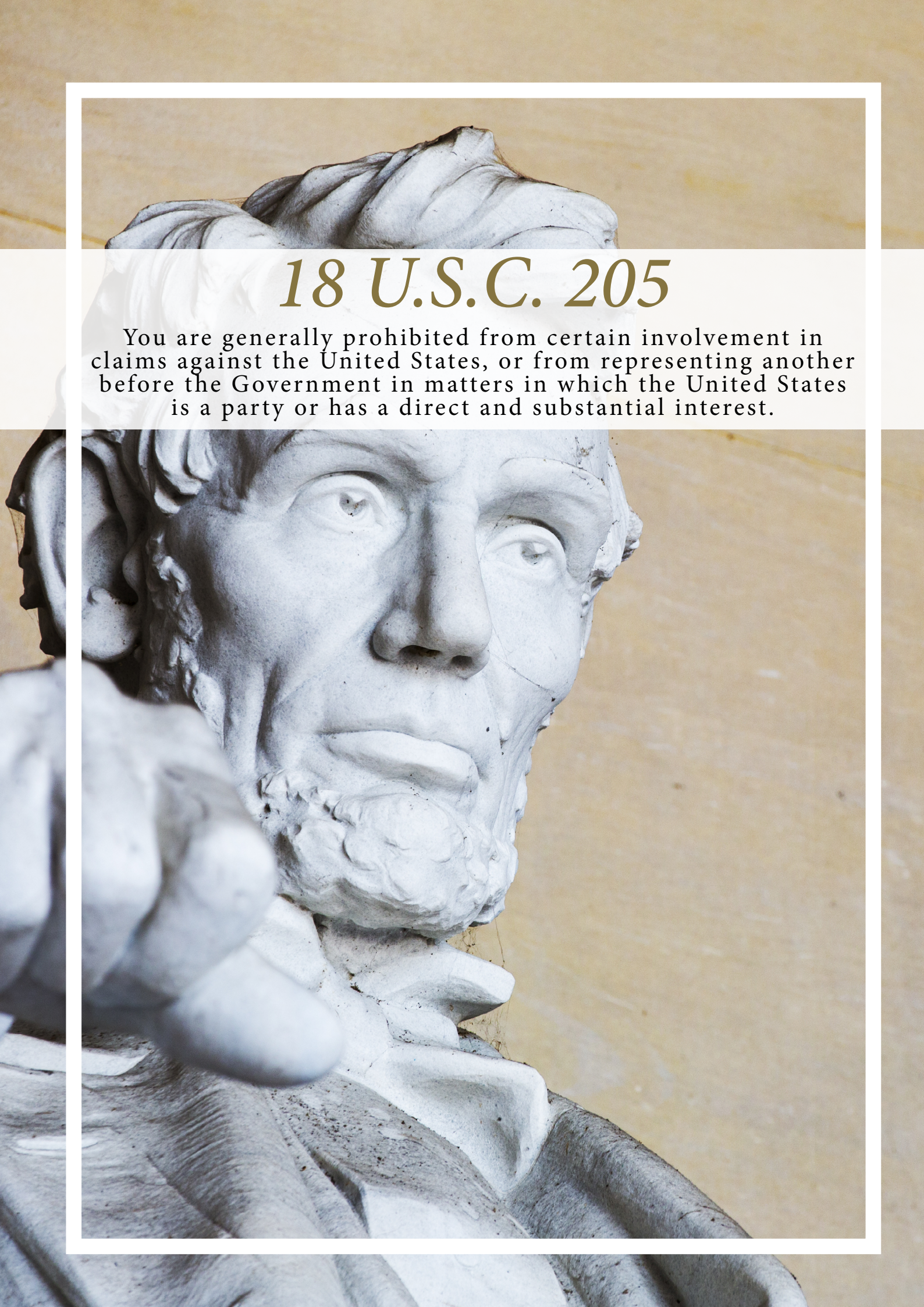
An illegal gratuity is more like a tip. You accept, or agree to accept, something of value for an official act that has already taken place or may take place sometime in the future.



Examples of bribery and gratuity restrictions:

- *Jonathan, a Government Benefits Specialist, processes claims for federal supplemental income benefits. He made agreements with beneficiaries to charge and receive a "processing fee" in exchange for processing their requests for supplemental payments. This arrangement constitutes bribery.*

- *Sybil is an equipment program manager at a Government agency. As part of her duties, she negotiates, reviews, and recommends approval of a blanket agreement to buy $2 million worth of equipment from Company A. After Company A is awarded the contract, Sybil accepts Company A's offer for herself and her family to join the company's executives and salespersons on a Caribbean cruise, free of charge. Sybil has accepted an illegal gratuity.*



18 U.S.C. 205

You are generally prohibited from certain involvement in claims against the United States, or from representing another before the Government in matters in which the United States is a party or has a direct and substantial interest.

4

REPRESENTING OTHERS IN CLAIMS & OTHER MATTERS AFFECTING THE GOVERNMENT

REPRESENTING OTHERS IN CLAIMS & OTHER MATTERS AFFECTING THE GOVERNMENT
18 U.S.C. 205

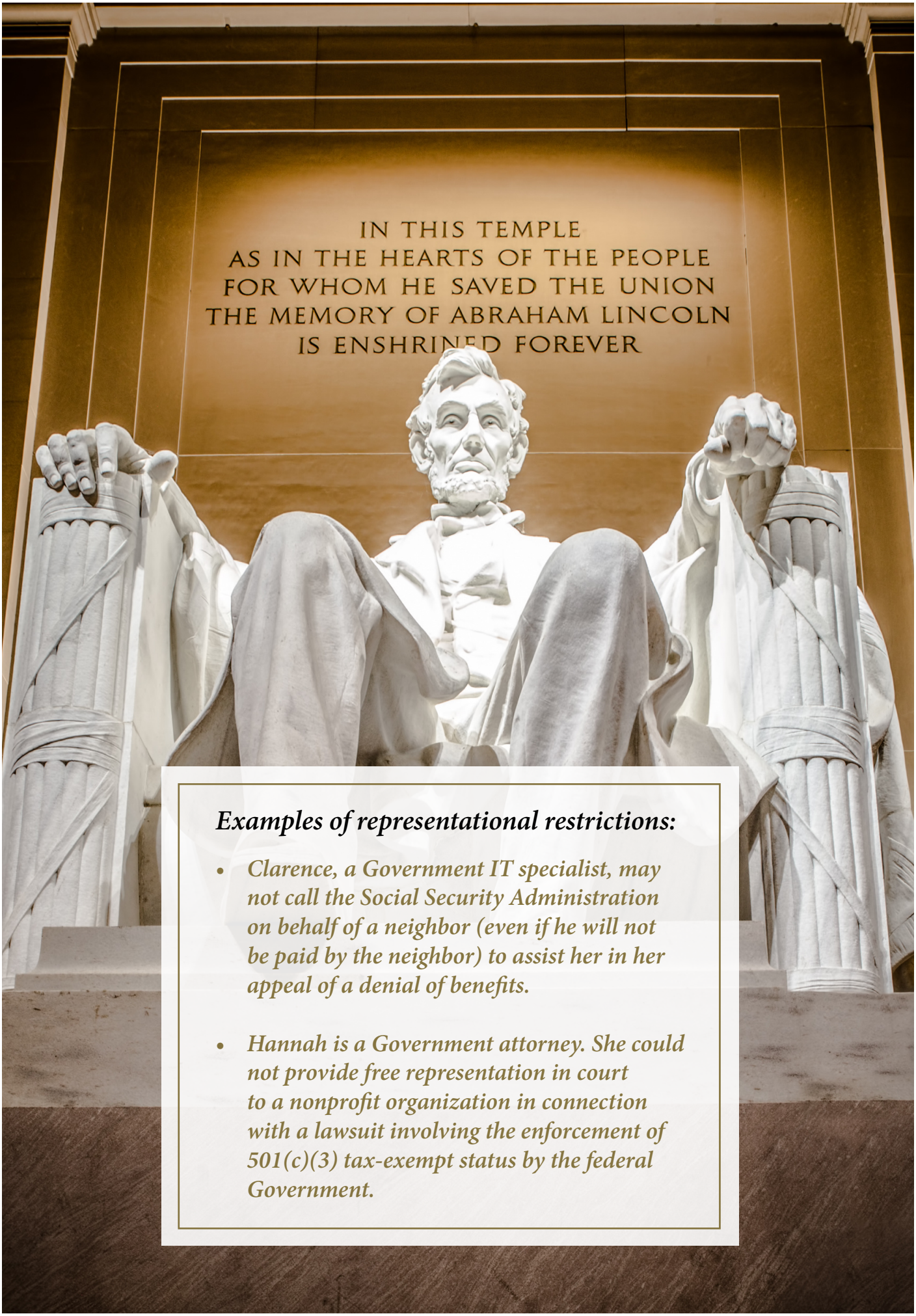
With some exceptions, 18 U.S.C. section 205 prohibits you from representing anyone other than yourself in claims and other matters before any department, agency, or court (and certain other Government entities) if the United States is a party or has an interest. This representation is prohibited even if it is uncompensated, and regardless of whether it relates to your agency or the work you perform for the Government.

In addition, 18 U.S.C. section 205 prohibits you from:

- **acting as an agent or attorney for anyone else in bringing a claim against the United States: or**
- **receiving compensation for assisting someone else in bringing a claim against the United States.**

It's important to note that you can always represent yourself. Additionally, there are some exceptions that may apply to your situation. For example, one notable exception would allow you, under certain circumstances and with agency approval, to represent your parents, spouse, children, and certain others with whom you have a fiduciary relationship (such as serving as a guardian, trustee or executor).

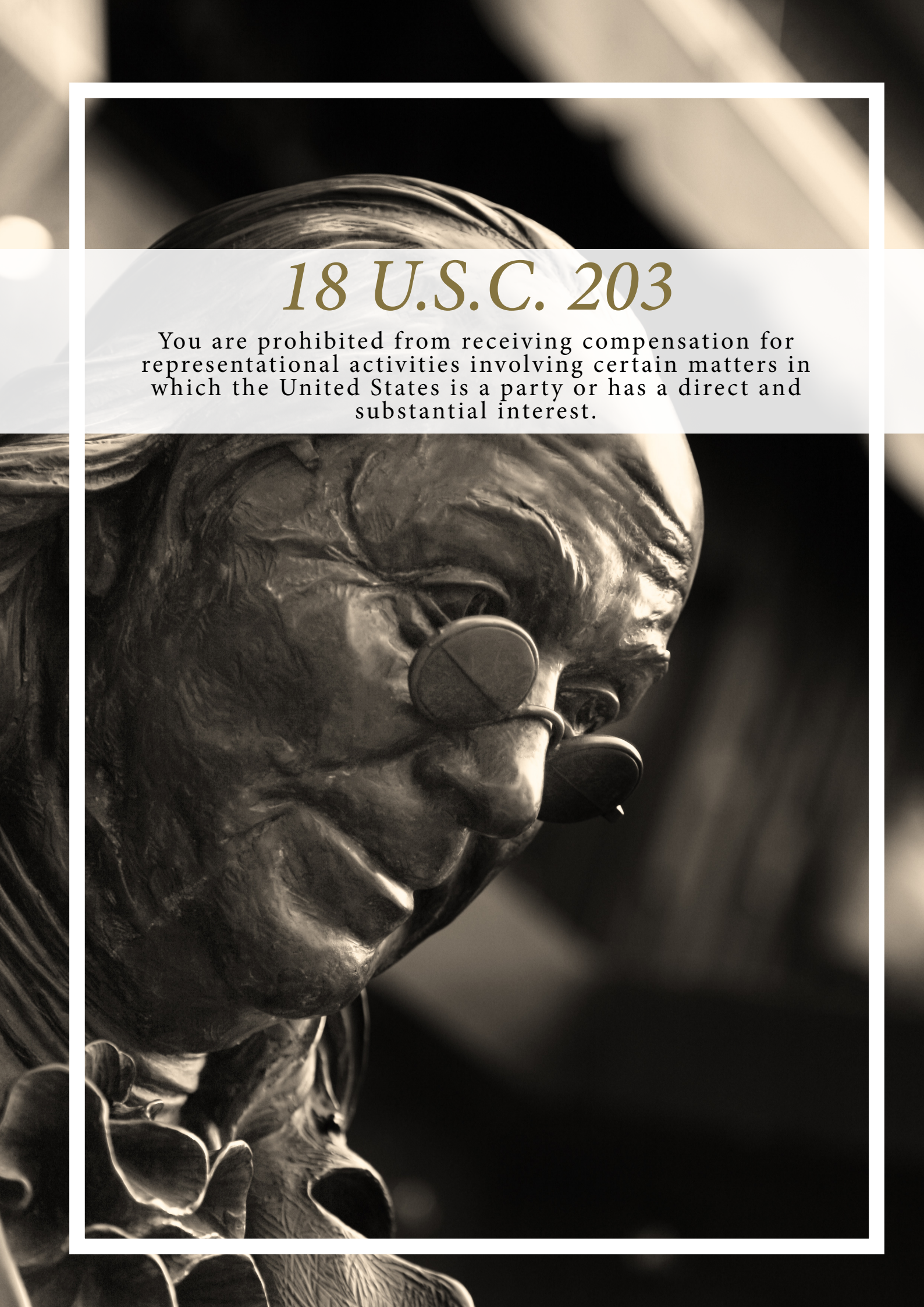
If you are thinking about engaging in any activity that may implicate 18 U.S.C. section 205, talk with an ethics official. He or she can advise you about the application of the law and any relevant exceptions.



Examples of representational restrictions:

- *Clarence, a Government IT specialist, may not call the Social Security Administration on behalf of a neighbor (even if he will not be paid by the neighbor) to assist her in her appeal of a denial of benefits.*

- *Hannah is a Government attorney. She could not provide free representation in court to a nonprofit organization in connection with a lawsuit involving the enforcement of 501(c)(3) tax-exempt status by the federal Government.*



18 U.S.C. 203

You are prohibited from receiving compensation for representational activities involving certain matters in which the United States is a party or has a direct and substantial interest.

5

RECEIVING COMPENSATION IN CONNECTION WITH MATTERS AFFECTING THE GOVERNMENT

RECEIVING COMPENSATION IN CONNECTION WITH MATTERS AFFECTING THE GOVERNMENT
18 U.S.C. 203

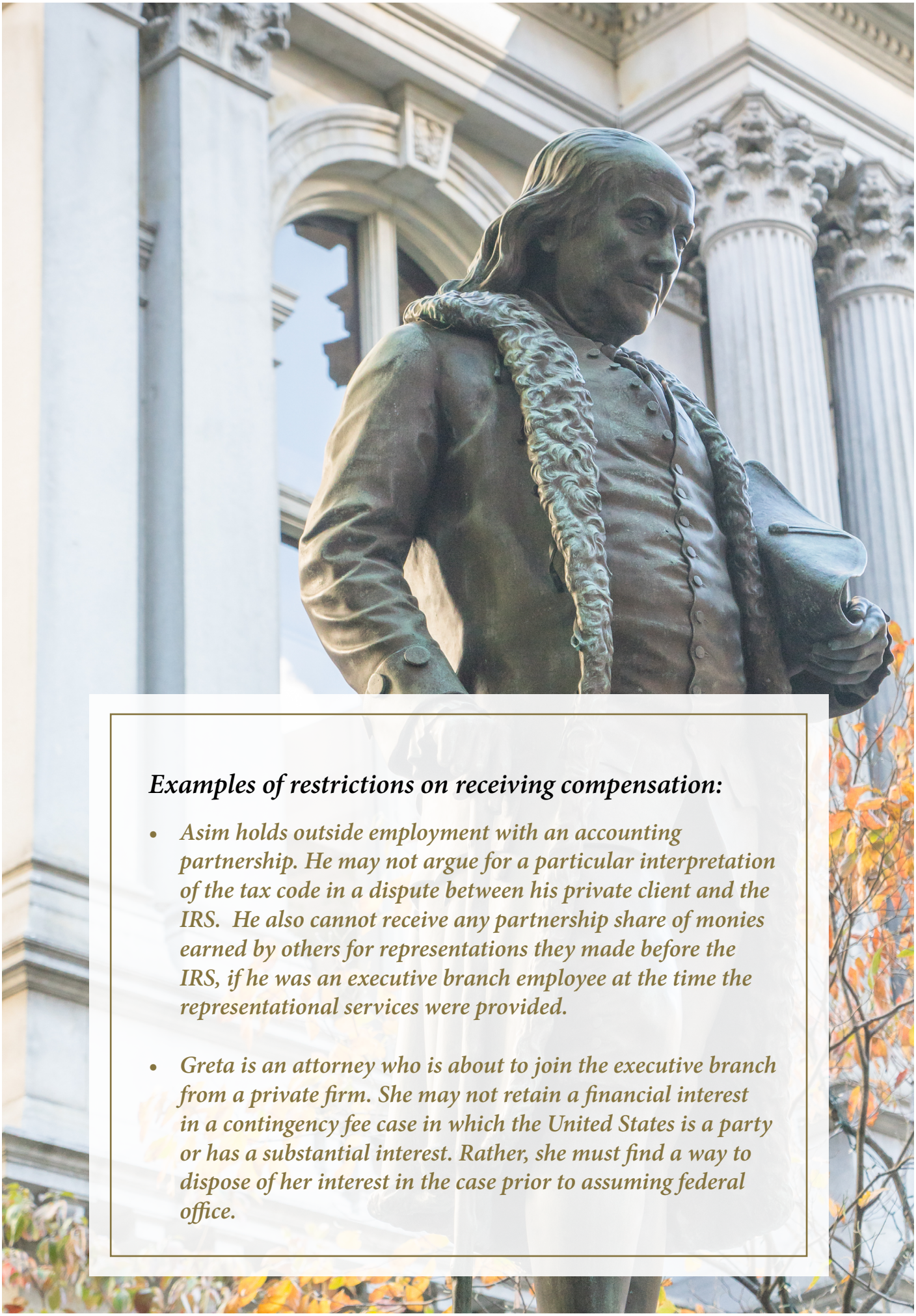
18 U.S.C. section 203 prohibits you from receiving or seeking to receive any compensation (including legal fees, partnership share, bonuses, or other payments) for representational services to others, before any department, agency, or court (and certain other Government entities), in matters where the United States is a party or has an interest.

There are two important things to remember about this prohibition:

- It applies if the representational services are provided during the time that you are an executive branch employee, regardless of whether you receive the payment during or after Government service.
- It applies whether you provide the representational services yourself or someone else provides them.

Keep in mind that there are some exceptions that might apply, depending on your circumstances. One notable exception would generally allow you, with agency approval, to represent – with or without compensation – your parents, spouse, children, and certain others with whom you have a fiduciary relationship (such as serving as a guardian, trustee or executor).

If you foresee receiving compensation for representational services provided by you or someone else, talk with an ethics official. He or she can advise you about the application of the law and any relevant exceptions.



Examples of restrictions on receiving compensation:

- *Asim holds outside employment with an accounting partnership. He may not argue for a particular interpretation of the tax code in a dispute between his private client and the IRS. He also cannot receive any partnership share of monies earned by others for representations they made before the IRS, if he was an executive branch employee at the time the representational services were provided.*

- *Greta is an attorney who is about to join the executive branch from a private firm. She may not retain a financial interest in a contingency fee case in which the United States is a party or has a substantial interest. Rather, she must find a way to dispose of her interest in the case prior to assuming federal office.*

18 U.S.C. 207

After you leave Government service (or leave certain high-level positions), you may be subject to limitations on your post employment activities.

6

RESTRICTIONS ON FORMER EMPLOYEES

RESTRICTIONS ON FORMER EMPLOYEES
18 U.S.C. 207

18 U.S.C. section 207 is the primary source of post Government employment restrictions that may prohibit you from engaging in certain activities after you leave Government service. None of the statute's restrictions bar you from accepting employment with any private or public employer. Instead, they prohibit you from engaging in certain communications and appearances before the federal Government on behalf of other people or organizations.

Two of the post employment restrictions are essentially "switching sides" restrictions. These may apply to any former Government employee regardless of rate of pay. Several "cooling off" restrictions apply only to former high-level Government officials. The remaining restrictions apply to individuals who performed certain duties for the Government.

Examples of post Government employment restrictions:

- *Terence reviewed a license renewal for a telecommunications company during his Government service. After he left his Government job, he was hired by the same telecommunications company. For the "lifetime" of that license renewal, Terence may not contact his former agency, or any other agency or department, on behalf of his new employer to discuss the license renewal.*

- *In the prior example, if Terence had not participated in the license renewal but merely supervised others who worked on the renewal during his last year of Government service, he would still be prohibited from discussing the matter with his former agency, or any other agency or department, for two years from the date he terminated his Government service.*

- *Chandra was an SES-level employee with a federal agency. After leaving "senior service" she became an unpaid consultant with People for Change, an advocacy group. People for Change asks her to contact the head of her former agency and request a meeting to discuss the group's ideas on regulatory reform. For one year after she terminates her "senior service," Chandra may not contact her former agency on behalf of People for Change to seek any official action, including requesting a meeting with the head of the agency.*

"Switching sides" restrictions—These restrictions bar you from making a communication or appearance before a Federal department, agency, or court to seek Government action on behalf of anyone else. These restrictions apply only to certain types of matters you were involved in while serving the Government (e.g., specific party matters such as contracts, grants or similar matters).

- **If you participated in the Government matter directly (e.g. personally and substantially), the restriction lasts for the lifetime of the matter.**

- **If the matter was merely pending under your official responsibility during your last year of Government service, then you are restricted for two years after you leave Government service.**

"Cooling-off" restrictions—These restrictions apply to certain former high-level officials.

- **If you are a "senior" employee, for one year after you leave a "senior" position, you may not represent another person or entity by making a communication to or appearing before your former agency to seek official action on any matter.**

- **A "very senior" employee is subject to a similar prohibition, except that the bar lasts for two years and also extends to contacts with specified high-level officials at any department or agency.**

- **Separately, both former "senior" and "very senior" employees are prohibited for one year from representing, aiding, or advising a foreign government or foreign political party with the intent to influence Government officials in the executive and legislative branches.**

"Other" restrictions—Two remaining section 207 restrictions affect only those individuals who performed specified duties for the Government.

- **If you participated personally and substantially during your last year of Government service in an ongoing trade or treaty negotiation covered by the statute.**

- **If you were a former assignee under the Information Technology Exchange Program.**

If you engage in trade or treaty negotiations or if you are an assignee, you should consult with your ethics official for further details about the specific post employment restrictions that may apply to you.