

“Political Activity and Post Employment ”

Participant Guide

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Political Activities

The file “poliact.pdf” contains the PowerPoint slides for this part of the training in PDF format. The following pages have additional content for this topic.

POLITICAL ACTIVITY "HATCH ACT"

Hatch Act amendments went into effect on February 4, 1994. These amendments establish general provisions for all federal employees and three separate sets of more specific rules for:

1. **PAS Employees** which is Presidential appointees by and with the advice and consent of the Senate;
2. **Non-PAS employees** which is all employees not covered in categories 1 and 3. This set includes Schedule C, Non-career SES, full-time, part-time, temporary, and special government employees.
3. **Career SES members, Administrative Law Judges and members of the Board of Contract Appeals.** These employees are covered by the old Hatch Act rules.

GENERAL PROVISIONS ALL FEDERAL EMPLOYEES

MAY

- ! Run for public office in nonpartisan elections.
- ! Register and vote in any election.
- ! Express their **personal** opinions, privately or in public, on political subjects and/or candidates.
- ! Sign a political petition;
- ! Campaign for or against referendum questions, constitutional amendments, municipal ordinances, etc.
- ! Attend a political convention, fund raising function, or any other such gathering. Active participation in such events is governed by the three separate sets of specific rules.
- ! Make a financial contribution to a political party or organization.

MAY NOT

- ! Run for public office in partisan elections.
- ! Use Government funds to support political activity.
- ! Directly or indirectly solicit campaign contributions from the general public.
- ! Solicit or receive campaign contributions on federal property or in federal buildings.
- ! Solicit or accept a campaign contribution or campaign support in exchange for a promise to appoint someone to a federal job.
- ! Promise or withhold federal benefits (jobs, grants, contracts, etc.) based on political support or nonsupport.
- ! Penalize employees or withhold employment in order to induce someone to make a political contribution or otherwise participate in political activity.
- ! Require subordinate government employees to work on campaign activities.

Revised March 10, 1998
Last Revision June 4, 1996
Department Ethics Office

POLITICAL ACTIVITY

PAS EMPLOYEES	NON-PAS ¹ EMPLOYEES
<p>Ë May take an active part in or manage a political campaign while on official duty.</p> <p>Ë May take an active part in political activities in premises occupied in the discharge of official duties.</p> <p>Ë May participate in political activities while wearing a uniform or official insignia identifying the individual's office or position.</p> <p>Ë May attend and speak at political fundraisers but may not solicit contributions, funds, or services.</p> <p>Ë May publicly endorse candidates in their official capacity.</p> <p>Ë May travel to campaign and political events.</p> <p>Ë May use their Government office to hold occasional campaign meetings.</p> <p>Ë May not engage in political activities using a Government vehicle. (Secretary is excepted under certain circumstances.)</p> <p>Ë May not be employed by or be paid by a campaign or political committee.</p> <p>Ë May attend political events while on official time.</p> <p>Ë May write political speeches on official time.</p> <p>Ë May not use non-PAS assistants or other staff to make calls and set up appointments for a political campaign or committee activity during duty hours.</p> <p>Ë Must split costs and time for mixed travel between official and political. The costs will be allocated between the Government and the political sponsor.</p>	<p>Ë May take an active part in or manage a political campaign while on non-official (off duty) time.</p> <p>Ë May take an active part in political activities off government premises.</p> <p>Ë May not wear a uniform or official insignia identifying the individual's office or position when participating in political activities.</p> <p>Ë May not engage in political activities using a Government vehicle.</p> <p>Ë May attend and speak at political fundraisers on off duty time, but may not solicit contributions, funds, or services.</p> <p>Ë May publicly endorse candidates in their private capacity.</p> <p>Ë May travel to campaign and political events on personal time.</p> <p>Ë May work for (be employed by) or be paid by a campaign or political committee on their own time.</p> <p>Ë Non-career SES and Schedule C employees may not mix official travel and political activity without written justification and prior authorization.</p> <p>Ë May not use their Government office to hold any meetings with campaign staff and may not attend such meetings held by PAS during duty hours.</p> <p>Ë May not attend political events while on official time.</p> <p>Ë May not write or assist others in writing political speeches on official time.</p> <p>Ë May not make calls and set up appointments for a political campaign or committee activity during duty hours, or use Government facilities, equipment, or supplies.</p>

¹ Non-PAS means all employees except PAS, Career SES, Administrative Law Judges, and members of the Interior Board of Contract Appeals.

General Policy Highlights

1. **Leave Without Pay may NOT be granted to a DOI employee for political activity.**
(DOI policy)
2. **Non-CareerSES and Schedule C employees must have written justification and approval for any political activity conducted on their own time while on official travel (mixed travel).**
(DOI policy)
3. **Employees, other than the Secretary of the Interior, may not use a government vehicle while engaging in political activities.**
(White House policy)
4. **Non-PAS employees may work and be paid for partisan campaign work conducted during non-duty hours.**

FOR NON-CAREER SES AND SCHEDULE C EMPLOYEES CRITERIA FOR APPROVING OFFICIAL TRAVEL WHEN POLITICAL EVENTS OCCUR

1. Ensure that the travel is necessary to conduct the official business of the Department and there are NO factors indicating that the trip was planned or timed primarily to allow participation in the political activity.
2. Consider the appearance of the misuse of position that may result and the risk associated with that appearance even when all of the facts justify both the travel and the political activity.
3. If leave is requested during the travel period, ensure that no extraordinary arrangements are made to accommodate the work of the office.
4. Consider any pattern of behavior that might apply to a given situation when applying criteria items 1-3 and put your determination in writing.

EXAMPLES:

(1) An employee needs to go to Denver for official business but she knows that there is a big political rally in Denver in one week. She asks if she can delay the trip so that she can attend that rally during her evening hours. The answer is no.

(2) An employee needs to be in Albuquerque for official business on Monday morning. Normally, the employee would leave on Sunday. However, he knows there is a political event in Albuquerque on Saturday evening so:

Case 1 -- He asks to leave on Friday since the Government cannot require travel on one's own time. The answer is no because normally the employee would leave on Sunday. If, for past trips, the employee usually left on Friday for Monday business in another town, then approval may be granted based on the pattern of behavior already established.

Case 2 -- He decides to use his own time for the travel but, he leaves Saturday instead of Sunday in order to attend the political event. The answer is it may be OK, it may NOT. In this case, the answer depends on the significance of the appearance of manipulation of the travel to accommodate the political event. How much risk is there that someone will allege a misuse of position? Low risk -- probably OK. High risk -- not OK.

(3) An employee going to Portland, OR on official business, learns that in the week following her planned travel there is a very important political function for a member of Congress. She asks for annual leave so she can attend the function. Approval of the leave should be made based on the impact of her absence to the office, just as if she were at home and requesting leave. Nothing other than normal work coverage adjustments for when someone takes leave should be made. However, because she

is on travel, the appearance and risk factors associated with the Government paying her round-trip airfare must also be considered before granting leave.

Summary of Rules Governing Political Activity

This summary provides in outline form some of the basic rules governing political and campaign activity .

I. Permissible Political and Campaign Activities by PAS Officials²

If the following activities are undertaken without expenditure of government funds, PAS officials:

A. May take an active part in or manage a political campaign:

1. While on official duty;
2. In a room or building occupied in the discharge of official duties;
3. While wearing a uniform or official insignia identifying the individual's office or position.

B. May attend and speak at political fundraisers but may not solicit contributions, funds or services.

C. May publicly endorse candidates in their official capacity.

D. May travel to campaign and political events.

II. Use of Government Facilities and Personnel

No government funds may be expended in connection with any campaign activity. No de minimis use standard exists. Political committees must reimburse the government even for incidental costs, where feasible.

A. Use of Office Space and Supplies

1. PAS officials may hold meetings with campaign staff or to discuss campaign matters in government offices. Such meetings should be occasional, and non-PAS federal employees should not attend unless the meetings are before or after duty hours or on lunch break.

A. Use of Office Space and Supplies - Continued

2. Government offices may not be used to house day-to-day operations of a campaign. PAS officials may not hold campaign events in government offices unless the facility is generally available to the public and the activity is paid for by a political entity, including payment for the use of space and overhead.
3. A campaign must reimburse the government for any expenses incurred in connection with campaign activity in government offices (including overhead).

² PAS Officials are those who are appointed by the President with the advice and consent of the Senate.

4. A campaign must reimburse the government for use of any office supplies, such as photocopying or phone expenses.
5. No campaign-related printed communication can bear official letterhead, the Great Seal, or terms such as "official business," nor may it be mailed in a franked envelope.
6. No government publication, or other government printed matter, may contain any campaign endorsements or advertisements.

B. Non-PAS Personnel³

1. PAS officials may not ask non-PAS assistants or other staff to make calls and set up appointments related to campaign activity. Only PAS employees may be involved in campaign-related activity while on official duty time.
2. Non-PAS employees may participate in political activity only during off-duty hours. Phone calls or other activities may be performed during lunch hour or before or after agency hours and without use of Government equipment.
3. Political committees cannot reimburse the government for use of on-duty employee time. Employees may be paid by a campaign or political committee for work done for the committee during off-duty hours. *Note: Under provisions in the Ethics Reform Act of 1989, Non-career SES employees may not have outside earned income in any given calendar year, that exceeds 15% of the salary for Executive Level II. For 1998, 15% of Executive Level II is \$20,505.*
4. A scheduler can perform minimal routine administrative tasks related to a senior official's travel, such as scheduling meetings, or answering questions about availability. Any significant work or arrangements with a political committee, or any assistance to a political committee regarding setting up or organizing an event itself, must be performed during off-duty hours and not with Government equipment.
5. A speech writer may write political speeches during lunch hour or other off-duty hours. Speeches originally written for official business purposes may be used for political purposes, but such speeches should not be modified for political use during duty hours. In any case no writing or modification of such speeches may be done on Government equipment.
6. Employees whose official duty requires travel with PAS officials must be off-duty in order to attend a political event unless the employee is performing official Governmental duties while at the event.

C. Use of Government Cars

PAS officials may not engage in political activity using a vehicle owned or leased by the Federal government.

³ Non-PAS officials are all employees, except PAS, career SES members, administrative law judges, and members of the Interior Board of Contract Appeals.

The Secretary may use a Government vehicle to attend a political event provided:

1. The political sponsor pays the anticipated costs in advance and security is necessary because of a recent threat to his life or safety or there are national security concerns, **OR**
2. The political sponsor pays the anticipated costs in advance **AND** the use of the vehicle will occur during the regular work week (Monday - Friday)⁴.

III. Travel Expenses

A. Political and campaign travel must be paid by a candidate's campaign committee or by the party. Travel for the following purposes is considered "political":

1. Any event or appearance at which contributions to a candidate or to the party are solicited.
2. Any event or appearance at which the election or defeat of a candidate or party is advocated.
3. Party-sponsored events such as conventions and mid-term meetings⁵

B. Mixed official/political travel (PAS only) must be allocated on a "hard-event time" basis; i.e., the total activity time is calculated by adding time spent on official activity to time spent on political activity. The allocation of costs is made by applying to the total cost, the percentage of time allocated respectively to political and official activity.

C. Official funds may not be used to pay political travel costs. The following methods of paying for political travel on a mixed official/political trip may be used:

1. The PAS official may pay the entire costs out of personal funds and be reimbursed by the appropriate entities.
2. The PAS official may estimate in advance the potential allocation and receive a travel advance from the government for the official share of expenses. The travel advance would be used to defray the official portion and the political committee would pay its share of expenses by check or credit card to the vendor.
3. The political committee may pay the costs of the trip and receive reimbursement for the official share of the trip.

D. If an individual pays political travel expenses personally and receives reimbursement, FEC rules require that the request for reimbursement be submitted promptly and be received from the political committee within 60 days of the date on which they were incurred if the expenses were charged to a credit card and within 30 days if paid by any other method such as a check. These time guidelines are being strictly enforced. Do not assume that the political committee will promptly reimburse without follow-up from you. Expenses not reimbursed within

⁴ These factors were issued by White House Counsel October 21, 1994.

⁵ The party may sponsor issue-only conferences which will probably be considered political even if not partisan. No party event should be considered official.

the time limits count towards the dollar limits for contributions.

E. If traveling on behalf of a candidate for state or local office, state or local laws may apply and should be checked.

IV. Prohibition on Political Contributions

A. Except for IV. C. below, federal employees are prohibited from soliciting, accepting, or receiving any political contributions.

B. Federal employees are prohibited from soliciting, accepting, or receiving volunteer services from subordinates for political activities.

C. Federal employees who are members of Federal Labor organizations may accept or receive contributions from any non-subordinate employee who is a member of the same labor organization if the contribution is to the labor organization's multi-candidate committee.

D. No one may solicit, pay, or receive contributions in any Federal office or building.

V. Political Contributions

Contributions to federal election campaigns include payments of money, services, in-kind gifts, or other things of value. For example, a loan is a contribution when made, and remains a contribution until repaid. In-kind contributions are valued at the price of the same thing in the market. Expenses not reimbursed within the time limits count towards the dollar limits for contributions. The limits on contributions to federal campaigns are:

A. \$1,000 per candidate per election.

B. \$20,000 per National Party in a calendar year.

C. Maximum of \$25,000 by an individual in a calendar year.

In addition, many states now have limits on contributions to state and local campaigns. We recommend you check with the state or local party or committee before making a contribution.

Legal References:

Federal Election Campaign Act, 2 U.S.C. 431 et seq; 11 C.F.R. 100.1 et seq.

Hatch Act, 5 U.S.C. 7321 et seq.

OGE Regulations, 5 C.F.R. Part 2635

18 U.S.C. Sections 597-607, 641, 713

5 U.S.C. 7353

31 U.S.C. 1302

***This outline is intended only as a general guideline and not a legal opinion. Any specific questions should be directed to the Solicitor's Office or the Department Ethics Office.

EXAMPLES

1. The Assistant Secretary for Land and Minerals Management plans a meeting in his office to discuss his potential campaign for the U.S. Senate. At the meeting, someone suggests using the Interior auditorium for a big fundraiser. The Assistant Secretary agrees:

È Is the meeting in his office okay? Yes, provided those in attendance are all PAS employees or not federal employees.

È What about the event in the auditorium? No, the Interior auditorium may not be used for a fundraiser. The Assistant Secretary's campaign will have to pay for use of the auditorium if it is used for other campaign purposes.

È May the Assistant Secretary ask a staff member to reserve the auditorium? No. He may not solicit the services of subordinates for political activity.

È May the staff member do it? This is work the campaign committee should do therefore, a staff member may not be involved unless s/he is on off-duty time.

È What about the building manager. Can s/he be involved? Yes. Scheduling the auditorium is a standard part of the building manager's duties and s/he may schedule the auditorium for the Assistant Secretary's campaign in the same way s/he would handle the scheduling for any other organization.

È May the Assistant Secretary FAX an acceptance of an invitation to speak at a political fundraiser to the campaign committee using the Government's FAX machine? Yes. The committee must reimburse the government for the expenses associated with the faxing of this material.

È May the Assistant Secretary ask a staff member to FAX an acceptance of an invitation to speak at a political fundraiser to the campaign committee using the Government's FAX machine? Yes, if the staff member's normal duties include scheduling, etc. The committee must reimburse the Government for the use of the FAX machine.

È Once the Assistant Secretary decides to run for the nomination or is made a candidate, whichever comes first, he must resign his post.

2. The Secretary, the Director of the National Park Service and a staff member (non-career SES) are all on official travel status in California. During the day they tour and attend meetings regarding the Presidio operations. At the end of the day all are invited to attend a fundraising dinner for a member of Congress running for re-election:

È May they attend the dinner? Yes. The Secretary may attend in his official capacity. However, the Director and staff member may only attend in their personal capacity on their off-duty hours. Also, since they are all on official travel, the Director and staff member must have written justification and prior authorization to mix official travel with political activities and they may not be in a Park Service uniform. Duty hours when on travel are calculated the same way that duty time is calculated when at one's official duty station.

È Can they go to the dinner in a government vehicle? The Secretary may use a government vehicle only under certain circumstances (See II. C. above). Provided those circumstances are met, the Secretary may invite the Director and staff member to go along if there is space available. The campaign must pay the government in advance for the costs associated with using the vehicle for the Secretary.

È During the evening, the Congresswoman running for re-election learns that the Secretary and the staff member will be in Denver the next day and she asks the Secretary if he would attend a fundraiser in Denver the next evening. The Secretary asks the staff member to call ahead to change the Secretary's official schedule in order to accommodate the request. May the staff member make the call? Yes, but only to rearrange the schedule, because this is a minimal routine administrative task.

3. **During a staff meeting, a senior administration official (PAS) tasks his special assistant to call a government contractor. The purpose of the call was to advise the contractor that the campaign committee for a local partisan candidate would be issuing an invitation to a fundraising event. Is this permissible since neither the senior administration official nor the special assistant will be asking for donations directly?**

All Federal employees are prohibited from soliciting contributions directly or indirectly. Further, any activities that would lead a contractor to believe that Federal benefits would be promised or denied based on political contributions is not permissible. The request by the PAS employee would be an improper solicitation of services. While the PAS may engage in certain political activities during work hours and in the office, the special assistant and most other Federal employees are prohibited from engaging in political activity during duty hours **AND** at the office.

4. **A senior administration official (PAS) is asked to make a speech at a fundraiser for a local partisan candidate while visiting Wyoming in her official capacity. May she speak at the fundraiser? Who pays for her travel?**

Yes, she may speak at the fundraiser in her official capacity thanking the audience for attending and touching on such topics as furtherance of the programs/policies of the Administration and endorsement of the candidate. She may not however, directly or indirectly solicit contributions on behalf of the candidate at any event. Whenever official and political travel are combined for a PAS official, the cost of the trip must be prorated between the sponsors of the event and the government.

5. **An Assistant Secretary (PAS) and a Bureau Director (Non-Career SES) are invited to attend an all-day campaign planning meeting. May they attend?**

Both may attend. However, the Bureau Director must take annual leave if the meeting occurs at a time that he would otherwise be on duty. PAS employees are on duty 24 hours a day and thus are excepted from the rule against political activity during working hours. If this situation were to occur while both are on official travel status, the Bureau Director must still use his or her own time and, in addition, he or she must have written justification and prior authorization to attend.

6. **A Bureau Director (PAS) has set up meetings related to advancing the partisan goals of her party. The meetings will be held in her office during working hours. There is so much to do to prepare that**

she asks her Special Assistant (Schedule C) to assist. In turn the Special Assistant asks the rest of the staff if they would be willing to stay after work to finish the preparations. May they help out?

It is permissible for the Bureau Director to set up the meeting during office hours. It is not permissible for her to solicit a contribution of services from her Special Assistant, nor is it permissible for the Special Assistant to undertake any political activities during official duty hours **or** in government facilities. Further, it is improper for the Special Assistant to solicit a contribution of services from the rest of the staff. It is permissible for the Special Assistant and staff members to volunteer to help on their own time, away from the office.

- 7. The wife of a Schedule C employee has decided to run for Congress and wishes to hold a fundraiser in her home. May the Schedule C employee participate in the fundraiser? Sign or endorse the invitation? Make speeches during the fundraiser? Collect money?**

The Schedule C employee may actively campaign for his wife away from his government office and while not on duty. He may distribute literature, stuff envelopes, attend fundraisers, and make speeches encouraging people to vote for his wife. His wife may have a fundraiser in the family's home. However, the Schedule C employee may not sign the invitation to the fundraiser and may not solicit donations either in speeches, conversation, or in written form. If, while attending a fundraiser, a guest attempts to give a donation to him, he should refer the donor to his wife, her campaign treasurer or other campaign official.

- 8. A partisan political candidate calls his friend, a Schedule C employee in the Office of Congressional and Intergovernmental Affairs to request an appointment with the Director and to discuss an upcoming campaign. May the employee take the call?**

If it is part of his official responsibilities to keep the Director's schedule he may make the appointment. If not, he should refer the caller to the Director's Appointment Secretary. In no case should he discuss the campaign at the office. He should tell her that he is unable to discuss the campaign during office hours, but he may call back from home later that evening.

- 9. Several Schedule C employees from New Mexico have been approached by a candidate and invited to be "extras" in her upcoming campaign video. Some have even been asked to give "citizen testimonials" in the video. May they do so?**

Yes. As long as they do not use their official positions, they do not solicit contributions, it is not during duty hours, on government premises, wearing a government uniform, or in a government vehicle, they may participate in the video and other voter identification/ outreach activities. They may sign "citizen testimonials," in their private capacity, that will be published in the newspaper. Further, they may be actively involved in passing out flyers, making cold calls, canvassing neighborhoods, holding voter registration drives, driving voters to the polls, and other similar activities.

Post-Employment Training Table of Contents

Page	Provision
1.	18 USC 207(a)(1) - Lifetime ban on post-employment <u>representation</u> for a non-federal entity on a <u>particular matter</u> involving a <u>specific party or parties</u> with which you dealt on a <u>personal and substantial</u> basis while you were employed by the USDA. Aims at proscribing one from “ switching sides. ”
2.	18 USC 207(a)(2) - Two year ban on post-employment representation for a party on a particular matter over which you had <u>official responsibility during the last year</u> of your USDA employment.
3.	18 USC 207(b) - One year ban on using non-public information regarding ongoing trade or treaty negotiations.
4.	18 USC 207(c) - One year “ cooling off ” period for any “ <u>senior</u> ” (Executive Schedule employees or, currently, <u>SES employees above level 4</u>) banning his or her representing any person before <u>any element of your agency.</u>
5.	18 USC 207(d) - One year ban on the Secretary representing any person before <u>any executive schedule employee</u> (Executive Level I through V) <u>anywhere within the Federal government.</u>
6.	18 USC 207(f) - One year ban on any Executive Schedule employee or SES employee above level 4 from representing or <u>advising</u> a foreign entity before <u>any</u> Federal department or agency.
7.	18 USC 203 - Proscription on receiving compensation directly derived from past representational work performed by your new employer in a matter in which the government was a party or had a substantial interest during the time frame that you were still a Federal employee.
8.	41 USC 423(d) - One year ban on a former Federal employee <u>accepting any compensation</u> from a contractor if that employee was personally involved in a contract or claim by that contractor of more than <u>\$10,000,000.</u>
9.	48 CFR 3.104-4 - Non-disclosure of bidder information or selection criteria on any competitive procurement prior to the award of that contract.
10.	Executive Order 12834 - A binding pledge by Executive Schedule, non-career SES above level 4, or non-career trade negotiators not to lobby one’s former agency or represent, aid or advise any foreign entity for a period of <u>five years</u> after leaving Federal government service.

18 USC 207(a)(1) - Switching Sides -

Lifetime ban on post-employment representation for a non-federal entity on a particular matter involving a specific party or parties with which you dealt on a personal and substantial basis while you were employed by the government.

- The ban applies even ‘though the jurisdiction for the particular matter (a claim, grant, contract, investigation, etc.) may have moved beyond your agency (e.g., into the courts).
- Your involvement in the matter while you were an employee had to be personal and substantial and the government must either continue to be a party or have a direct and substantial interest in the matter’s resolution.
- The matter must have had a non-Federal party (or parties) involved both when you were participating in the matter as a government employee and at present. For example, if you were involved in a proposed transaction, but left the government before there was any public contact or public comment on the matter, then you could represent parties on the matter after leaving the government.
- The ban extends for the administrative life of the particular matter or your personal life, whichever concludes first.
- The ban proscribes communications or appearances before any government employee or officer with the intent to influence their action on the matter.
- The ban applies whether or not you receive compensation for this representation.
- The ban applies to all former employees without regard to grade level or special government employee status.
- The ban does not extend to ‘behind-the-scenes’ work for a party.
- The ban does not preclude requests for factual information that is publicly available or purely social contacts as these are not “with the intent to influence.”
- The ban does not apply if the former employee is representing him or herself on the matter. For example, the former employee may have strong opinions on a proposed environmental rule and wish to file personal pleadings or lobby the Department. He or she may do so provided such representations are not on behalf of another party.
- The ban does not apply to appearances before, or communications to, members of Congress or Congressional staff.

18 USC 207(a)(2) - Switching Sides Jr. -

Two year ban on post-employment representation for a party on a particular matter over which you had official responsibility during the last year of your employment.

This provision is similar and triggered by the same circumstances applicable to 207(a)(1), with the following exceptions:

- It pertains to particular matters with which you were not personally and substantially involved, but for which you were “officially responsible.” Generally, this attachment results from your having supervised the individuals who were personally and substantially involved.
- Even absent your hands-on involvement, it applies if you knew or should have known about the pendency of the matter.
- The duration of this restriction is for two years after you leave the agency rather than lifetime.
- This two-year restriction only occurs on those matters that were pending during the last year of your government employment.
- The two-year ban extends even to those matters for which you were responsible but on which you disqualified yourself for whatever reason.

18 USC 207(b)

One year ban on using non-public information regarding ongoing trade or treaty negotiations.

- This provision applies to formal trade or treaty negotiations. For the purpose of this restriction, the point at which “ongoing negotiations” either commence or conclude has highly specific definitions on which you should inquire
- This proscription applies not just to representational work but also to behind-the-scenes work on behalf of any person other than yourself. Behind-the-scenes work encompasses activities such as aiding, advising or other forms of assistance beyond direct representation.
- It applies only to trade or treaty negotiations that are on-going and with which you had personal and substantial participation, but this doesn’t mean you had to have direct contact with foreign negotiators.
- It applies only to those negotiations that were occurring during your last year of Departmental service.

18 USC 207(c) - Senior Employees' Cooling Off -

One year “cooling off” period for any senior (Executive Schedule employee or any SES employee above level 4) banning his or her representing any person before his or her agency.

- This one-year restriction applies to any employee in an Executive Schedule V through II appointment or those in the career or non-career Senior Executive Service at the SES 5 or 6 level.
- It also covers special government employees compensated at “senior” employee rates, but only those who serve 60 or more days during the last year of their service.
- The one-year clock begins to tick at the point at which one no longer occupies a senior position; an event that could occur before one terminates their employment.
- Unlike 207(a), it is not restricted to matters with which you were involved personally and substantially, but rather in connection with any matter before the agency in the year following your departure.
- Unlike 207(a), it only applies to representation before his or her agency, not other Federal government agencies.
- At the USDA this is a department-wide restriction - not simply the mission area or agency in which you worked. The US Office of Government Ethics (OGE) will, however, entertain requests to set up components if a showing can be made that restrictions on former employees from one “component” are unwarranted when applied to another component. Other Departments have done so.
- Similarly, OGE can entertain requests for individual or group exemptions to this restriction if and when a compelling agency need for the service can be demonstrated. Under such exemptions, the one year restriction is only deferred until that person leaves that non-governmental position; at which point, the one year restriction commences.
- As in 207(a), this restriction does not bar “behind-the-scenes” work, but only direct representational work.
- As in 207(a), it does not bar self-representation, re-employment or an individual personal service contract with the agency.
- This restriction does not bar representation on behalf of a state or local government, an accredited college or university, federal or state candidate or political party, or a hospital or medical research organization.

18 USC 207(d) Really Senior Cooling Off

One-year ban on the Secretary representing any person before any executive schedule employee (Executive Level V through I) anywhere within the Federal government.

- This restriction on “very senior” employees - i.e., Cabinet Rank..
- This is a statutory restriction, as distinguished from the five-year restriction under the pledge imposed by Executive Order 12834.
- For the one year period, it bars representation before any employee of his or her Department or an Executive Level appointee (see 5 USC §§ 5312-5316) anywhere within the Federal government.
- Unlike 207(c), there are no provisions for securing OGE approval to divide the Department into components or granting exemptions.
- As in 207(d), this restriction does not bar representation on behalf of a state or local government, an accredited college or university, federal or state candidate or political party, or a hospital or medical research organization.

18 USC 207(f) Working for Foreign Entities

One-year ban on any Executive Schedule employee or SES employee above level 4 from representing or advising a foreign entity before any Federal department or agency.

- This ban applies both to “senior” and “very senior” employees – SES 5 and 6 and all Executive Schedule appointees.
- The one year clock commences to tick when one ends his or her senior level service, which may or may not coincide with leaving government service.
- It applies to “behind-the-scenes” as well as representational services.
- A foreign entity means a foreign government(*de factor or de jure*) or a foreign political party (whether or not recognized by the government in power). It also applies to insurgencies exercising some governmental functions somewhere in a foreign country whether or not recognized by the United States.
- The restriction does not apply to foreign corporations unless they exercise some sovereign powers.

18 USC 203* - Partnership Shares

Proscription on receiving compensation directly derived from past representational work performed by your new employer in a matter in which the government was a party or had a substantial interest during the time frame that you were still a Federal employee.

- This applies only if you go to work in a law, accounting or public relations partnership or other type of firm that distributes partnership shares or otherwise shares its profits.
- The restriction is triggered by the following:
 - past representation by your new employer;
 - before any element of the Federal government (not limited to representation before one's agency);
 - at a time when you were a Federal employee; and
 - you would, in your new job, be receiving compensation derived from that work.
- The problem arises because of the time lag between when representational services were provided and when the payments for those services are distributed to the firm's partners.
- This can be remedied by either:
 - being employed on a salaried basis until such time as the payments for such work have been concluded (generally within a year), or
 - accepting a partnership share that has been so allocated as to exclude the "tainted" payments.
- You may, of course, share in the profits derived from your new firm's government related representational work that commenced after you left Federal employment or was concluded before you were a government employee.
- If you were a special government employee (SGE), lesser restrictions apply and you should consult our office.

* The intent of Section 203 was to bar the distribution of profits generated through government related work to current government employees or members of Congress who are or were partners in firms that represented clients before the Federal government. Because payments sometimes lag behind performance, it has been, by extension, applied to former government employees who now work for firms that performed such work while he or she still worked for the government.

41 USC 423(d) Procurement Officials

One year ban on a former Federal employee accepting any compensation from a contractor if that employee was personally involved in a contract or claim by that contractor of more than \$10,000,000.

- If the employee served in the capacity of procuring contracting officer, source selection authority, member of a source selection evaluation board, or the chief of either the financial or technical evaluation team, then the clock ticks from the point of selection or award .
- If the employee served in the capacity of administrative contracting officer, program manager or deputy program manager, then the clock ticks from the last date on which one served in that capacity over that contract.
- The clock ticks from the last date on which one, in any capacity, personally made a decision in regards to the contractor that either:
 - awarded a contract, subcontract, modification or task order in excess of \$10,000,000
 - established overhead or other rates applicable to the contract in excess of \$10,000,000
 - approved issuance of a payment of, or payments aggregating, in excess of \$10,000,000
 - settled a claim by the contractor in excess of \$10,000,000
- This restriction does not apply if the new employing unit is a division or affiliate of the contractor unless it produces the same or similar products or services as in the contract on which one was involved.
- Questions on the interpretation of this provision of the Federal Procurement Policy Act should be directed to your Contracting Policy Staff.

48 CFR 3.104-4

Non-disclosure of bidder information or selection criteria on any competitive procurement prior to the award of that contract.

- This restriction applies to any employee who has or had access to contractor proposal or bid information or the source selection information on which proposals are being evaluated.
- The disclosure of such information is proscribed regardless if the employee or former employee is on the payroll of or otherwise compensated by the person to whom the information would be provided.
- While this is a regulatory, not a statutory citation, the penalties can be either civil or criminal.
- The restriction expires on award of the contract.
- Questions on the interpretation of this provision of the Federal Acquisition Regulations should be directed to your Contracting Policy Staff.

Executive Order 12834 - The Pledge

A binding pledge by Executive Schedule, non-career SES above level 4, or non-career trade negotiators not to lobby one's former agency or represent, aid or advise any foreign entity for a period of five years after leaving Federal government service.

- This is not a statutory restriction, but rather a contractual condition of employment between the appointee and the Administration.
- It is enforceable by the Justice Department in the civil courts and/or by the agency debarring the former employee from lobbying the department for the same five year period.
- The pledge is directed at full-time, non-career appointees who are either:
 - paid on the Executive Schedule (V - I),
 - Senior Executive Service -- levels 5 and 6, or
 - personally and substantially participating in trade negotiations, regardless of grade level.
- Executive Schedule and SESers agree not to lobby any employee of the USDA for a period of five years after they leave the Department (which is not necessarily when they leave Federal employment).
- Executive Schedule and SESers agree never to engage in any activity which would require them to register as foreign agents.
- Executive Schedule, SESers and trade negotiators at any level agree neither to directly represent or perform behind-the-scenes aid and advice to any foreign government, foreign political party or foreign business interest with the intent of influencing an employee of the Executive Branch for a period of five years after the termination of personal and substantial participation with a trade negotiation.
- Only the President can waive the restrictions in this pledge. Requests for waivers must be submitted to the Secretary who then forwards it to the President through the Counsel to the President.