

POST-EMPLOYMENT RESTRICTIONS

Determining how the statutory restrictions and bar requirements apply can be complex, and we encourage current and former employees to consult with the component deputy designated agency ethics officials (DDAEOs) or the Departmental Ethics Office about the statutory requirements. Because of the significant consequences involved, all persons are advised to seek guidance from the component DDAEO before engaging in communications that may run afoul of the prohibitions. The names and contact information for DDAEOs and the Departmental Ethics Office are available on the Department’s website: <http://www.usdoj.gov/jmd/ethics>

While this chart interprets the standards of conduct and criminal conflict of interest statutes applicable to all former Department of Justice employees, former employees who are attorneys also must comply with the applicable rules of professional conduct.¹ Component Professional Responsibility Officers and the Department’s Professional Responsibility Advisory Office are available for guidance to attorneys on the bar requirements.

<u>SUBJECT OF RESTRICTION</u>	<u>STATUTORY REQUIREMENTS</u>	<u>BAR REQUIREMENTS</u>
<u>MATTERS AFFECTING AN ORGANIZATION WITH WHICH AN EMPLOYEE IS NEGOTIATING FUTURE EMPLOYMENT</u>	18 USC § 208 prohibits employees from participating personally and substantially in a particular matter in which an organization they are negotiating with, or have an arrangement with, for future employment has a financial interest.	Model Rule 1.11(d)(2)(ii) prohibits a government lawyer from negotiating for private employment with a party or an attorney or law firm representing a party in a matter in which the government lawyer is participating personally and substantially. Model Rule 1.7(a)(2) may prohibit a lawyer from negotiating for private employment with a witness, or a lawyer or a law firm representing a witness, in a case in which the lawyer is representing the government unless the appropriate official consents in writing. There are also confidentiality requirements. See “CONFIDENTIALITY” section below.

¹ Although this chart refers to the Model Rules, each attorney should analyze the issue under the applicable state rules of professional conduct.

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**MATTERS IN WHICH FORMER
EMPLOYEE HAD PERSONAL &
SUBSTANTIAL PARTICIPATION**

18 USC § 207(a)(1) bars all former employees from knowingly making, with the intent to influence, any communication to, or appearance before, a federal agency or any court on behalf of anyone other than the US on a particular matter involving specific parties in which they participated personally and substantially while in government.

Behind-the-scenes assistance and counseling are permitted.

This prohibition never expires.

Model Rule 1.11 prohibits essentially the same conduct as section 207(a)(1) except all aspects of legal representation and counseling are prohibited, including behind-the-scenes representation or assistance. The government may consent to the representation of the new client in writing. There are also confidentiality requirements. See “CONFIDENTIALITY” section below.

This prohibition never expires.

IMPUTED DISQUALIFICATION

There is no statute that imputes disqualification to a former employee’s new employer.

Under Model Rule 1.11(b), disqualification is imputed to the former employee’s law firm. Imputed disqualification can be eliminated by 1) timely screening the disqualified attorney, and 2) giving notice to the Government of the steps taken to screen.

This prohibition never expires.

**MATTERS UNDER FORMER
EMPLOYEE’S OFFICIAL
RESPONSIBILITY**

18 USC § 207(a)(2) bars all former employees from knowingly making, with intent to influence, any communication to, or appearance before, a federal agency or any court on a particular matter involving specific parties they know or should know was pending under their official responsibility during the last year of government service.

This prohibition is effective for two years.

Model Rule 1.11(a) prohibits a former government lawyer from using confidential government information in representing a new client and prohibits the lawyer from representing a new client in connection with a matter in which he participated personally and substantially while a government lawyer unless the government consents in writing. The lawyer’s new firm may not undertake the representation unless the former government attorney is screened and written notice of the screening is provided promptly to the government. There are also confidentiality requirements. See “CONFIDENTIALITY” section below.

This prohibition never expires.

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TREATIES & TRADE
NEGOTIATIONS UNDER THE
OMNIBUS TRADE &
COMPETITIVENESS ACT OF
1988 IN WHICH THE FORMER
EMPLOYEE PARTICIPATED

18 USC § 207(b) bars all former employees from knowingly representing, aiding, or advising on the basis of certain confidential information any person, other than the US, on certain ongoing trade or treaty negotiations in which they participated personally and substantially during the last year of government service.

This prohibition is effective for one year.

Model Rule 1.11(c) prohibits a former government lawyer from using confidential, nonpublic information about a person acquired while he or she was a government lawyer to assist in the representation of a new client whose interests are adverse to the interest of the person about whom the confidential information relates if the information could be used to the detriment of the person. The former government attorney's new law firm may only undertake representation of a client in the matter if the former government attorney is screened.

This prohibition never expires.

SHARING FEES FROM
ANOTHER'S REPRESENTATION

18 USC § 203 bars all former employees from sharing in fees for representational services rendered by another at the time of their government employment on matters in which the US is a party or has a direct and substantial interest.

Whenever a former government attorney is screened from working on a matter under Model Rule 1.11(b), if his law firm undertakes representation in the matter, the former government attorney may not receive any portion of the fees earned by the firm in the matter.

This prohibition never expires.

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**CONTACT WITH FORMER
AGENCY**

18 USC § 207(c) bars senior employees from knowingly making, with intent to influence, any communication to or appearance before all or part of their former agency on behalf of another person on a matter on which they seek official action. Senior employees include Executive Level officials, SES officials paid at or above \$148,953, and other senior level employees whose base pay is \$148,953 as of January, 2008. (The minimum salary trigger increases in January each year.)

There is no parallel bar rule, and no imputation to the law firm.

Designated separate components are: Antitrust Division, ATF, BOP, Civil Division, Civil Rights Division, Community Relations Service, Criminal Division, DEA, Environment and Natural Resources Division, EOUSA, and each USAO*, EOUST, and each UST office*, FBI, FCSC, special prosecutors appointed by the AG, OJP, OVW**, OPA, Tax Division, USMS, and USPC.

- 1) Executive Level employees are barred from the whole Department.
- 2) SES level and other senior level employees who worked in a designated separate component are barred from appearing before their own component. In addition, an employee may not appear or communicate with an otherwise permissible component if his communications are shared, with attribution, with members of his former office. All circumstances are considered in assessing whether there is an inference of intent for attribution when communications are made with a permissible component. (E.g., former Criminal Division employee cannot contact DEA if circumstances support inference of intent that his communications with DEA will be shared, with attribution, with the Criminal Division.)
- 3) Those employees not from a separate component are barred from parts of the Department not designated separate, including their own components. In addition, an employee may not appear or communicate with an otherwise permissible component if his communications are shared, with attribution, with members of an office not designated separate. All circumstances are considered in assessing whether there is an inference of intent for attribution when

*But not from their Executive Office

**But not from OJP

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communications are made with a permissible component. (E.g., former ODAG employee cannot contact Civil Division if circumstances support inference of intent that his communications with Civil will be shared, with attribution, with the Associate AG's office.)

This prohibition is effective for one year.

**CONTACT WITH EXECUTIVE
LEVEL OFFICIALS**

18 USC § 207(d) further bars a former cabinet-level official from making, with the intent to influence, a communication to or appearance before any Executive Level official in the Executive Branch and anyone in the official's former Department or agency.

This prohibition is effective for two years.

There is no parallel bar rule.

**REPRESENTATION OF A
FOREIGN ENTITY AS DEFINED
IN THE FOREIGN AGENTS
REGISTRATION ACT**

18 USC § 207(f) bars all former senior employees from knowingly, with intent to influence, representing a foreign entity before an agency of the US or aiding or advising a foreign entity.

This prohibition is effective for one year.

There is no parallel bar rule.

CONFIDENTIALITY

There is no parallel statutory requirement, but former employees who had access to national security information have special responsibilities of confidentiality. (See also, 28 CFR § 16.21 regarding disclosure of Department information in Federal and State proceedings.)

Model Rules 1.6, 1.9, and 1.11(a) prohibit a lawyer from using or disclosing the confidences and secrets of clients unless the client consents. Model Rule 1.11(c) prohibits a former government lawyer from using confidential information about a person acquired when the lawyer worked for the government in a matter on behalf of a new client if the new client's interests are adverse to the person and the information could be used to the detriment of

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the person.

This prohibition never expires.

PROCUREMENT INTEGRITY RESTRICTIONS (41 USC § 423)

**ACTIONS REQUIRED OF AGENCY OFFICIALS
WHEN CONTACTED BY OFFERORS REGARDING
NON-FEDERAL EMPLOYMENT**

An agency official who is participating personally and substantially¹ in a Federal agency procurement for a contract in excess of \$100,000 must report any contact with a person who is a bidder or offeror in that procurement if the contact is in regard to non-federal employment. She must report the contact in writing to her supervisor and her agency ethics official. She may reject the offer or disqualify herself in writing to the Head of the Contracting Activity. She may be authorized to resume work if the offeror is no longer a bidder or all discussions have ended without an agreement for employment. 48 CFR 3.104-3(c)

**ACCEPTING COMPENSATION FROM A
CONTRACTOR AFTER SERVING IN CERTAIN
POSITIONS OR MAKING CERTAIN DECISIONS ON
A PROCUREMENT OR CONTRACT**

A former official is prohibited from accepting compensation from a contractor within a period of one year after such official served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement for a contract in excess of \$10 million. The above restriction also applies to a former official who served as program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10 million. It applies to a former official who made a decision to award a contract, subcontract, modification, task order, or delivery order; to establish overhead or other rates for a contract; to approve issuance of a contract payment or payments; or to pay or settle a claim in excess of \$10 million. 48 CFR 3.104-3(d)

**PROHIBITION ON DISCLOSING PROCUREMENT
INFORMATION**

A present or former official, or someone acting on behalf of or advising the government with respect to a Federal procurement, who has or had access to contractor bid or proposal information or source selection information is prohibited from disclosing that information before the award of the contract to which the information relates. 40 CFR 3.104-4(a)

1. Participating personally and substantially in a procurement means active and significant involvement in any of these activities: 1) drafting, reviewing or approving the specification or statement of work; 2) preparing or developing the solicitation; 3) evaluating bids or proposals or selecting a source; 4) negotiating price or terms and conditions of the contract; or 5) reviewing and approving the award of the contract.