

SUBJECT: Ethics Rules on Seeking Employment and Post-Employment Restrictions

NEW MATERIAL: This is a summary of the rules and restrictions applicable to all employees who may be seeking other employment, and a summary of the rules on post-employment activities. This information is in addition to Handbook 24, Chapter 2 directives.

EFFECTIVE DATE: March 10, 1995

POLICY

USAID/General Notice
GC/EA
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SUBJECT: Ethics Rules on Seeking Employment and Post-Employment Restrictions

This General Notice is pursuant to the legal responsibility of the Ethics Office in the Office of General Counsel to provide ethics counseling and advisory services to Agency employees. This is a summary of the rules and restrictions applicable to all employees who may be seeking other employment, and a summary of the rules on post-employment activities. It does not address many of the technical aspects of the criminal statutes and regulations governing these activities. **THE BEST WAY TO AVOID ANY CONFLICT OF INTEREST IS TO SEEK GUIDANCE ON SPECIFIC FACTUAL SITUATIONS AS THEY ARISE.**

RULES ON SEEKING OTHER EMPLOYMENT

18 U.S.C. 208 - This criminal statute prohibits you from participating in a particular matter having a direct and predictable effect on the financial interest of a person or entity with which you are negotiating or have any arrangement concerning prospective employment. The statute does not prohibit you from looking for a job. It only prohibits you from participating in official matters involving potential employers, and you must disqualify yourself from such matters.

PROCUREMENT INTEGRITY - If you are a "procurement official" you may not discuss, solicit, or accept employment or any business opportunity from any competing contractor during the course of a procurement. You are a "procurement official" if you participate personally and substantially in the scope of work, specifications, solicitation, evaluation of bids and various other activities related to the procurement. The statute permits a procurement official to request, in writing, recusal from a particular procurement in order to discuss employment with a competing contractor. The recusal request is directed to the head of the contracting activity, who, after consulting with on Ethics Officer, may approve it if the procurement official's further participation is not essential to the procurement and if the recusal will not jeopardize the integrity of the

procurement process. However, recusals are not permitted if the procurement official evaluated bids, participated in the selection, or conducted negotiations on the procurement. Violations of these rules can subject you to civil and criminal penalties.

ORGANIZATIONAL CONFLICTS OF INTEREST - In rare instances a Federal employee's prospective employment with an entity who is seeking or performing a Government contract may result in an unfair competitive advantage to the contractor, or a potential bias in the manner in which the contractor would perform under the contract. This is an "organizational conflict of interest" which may arise even though the employee's prospective employment would not violate procurement integrity or other ethics laws or rules. Contracting Officers have authority to make determinations on organizational conflicts of interest.

STANDARDS OF CONDUCT RULES - The Federal Standards of Ethical Conduct, 5 C.F.R. Part 2635, prohibit you from participating in a matter affecting the financial interests of a person or entity with which you are seeking employment, even if you have not technically entered into negotiations or made an arrangement for employment as prohibited by the criminal statute 18 U.S.C. 208. The regulations are very broad and include such things as making unsolicited communications to any person regarding employment, and even sending out an unsolicited resume. An Ethics Official may grant a waiver to permit your participation in a particular matter involving a potential employer if it would not result in an impermissible appearance of a loss of impartiality.

RULES ON POST-EMPLOYMENT ACTIVITIES

In addition to the rules governing your activities while seeking employment, there are special post-employment rules imposed by the criminal statute 18 U.S.C. 207, the Office of Federal Procurement Policy Act, 41 U.S.C. 423, which also contains criminal penalties, and President Clinton's Ethics Pledge.

18 U.S.C. 207 - Restrictions Applicable to Senior Employees

Two post-employment restrictions in 18 U.S.C. 207 apply only to "Senior Employees". "Senior Employees" in AID include all officers appointed by the President, by and with the advice and consent of the Senate; and any other officer or employee whose base pay is at or above Level V of the Executive Schedule (currently \$108,200), including members of the Senior Executive Service (SES employees at ES-5 and ES-6 levels) and the Senior Foreign Service (SFS employees at the Minister Counselor (level 5) and Career Minister ranks), as well as Administratively Determined Employees (AD's) or any other employee appointed, assigned or detailed to a position paid at or above Level V of the Executive Schedule. "Special Government Employees" who serve in a senior position for 60 or more days during the one-year period before terminating service as a senior employee are also covered.

(1) For one year after service in a senior position terminates, no former Senior Employee of AID may knowingly make, with the intent to influence, any communication

to or appearance before any officer or employee of AID, if that communication or appearance is made on behalf of any other person in connection with any matter concerning official action.

(2) For one year after service in a senior position terminates, no former Senior Employee of AID may knowingly represent, aid or advise a foreign entity (i.e., government of a foreign country or a foreign political party) with the intent to influence any decision of an officer or employee of any department or agency of the United States.

18 U.S.C. 207 - Restrictions Applicable to All Employees:

In addition to the restrictions applicable only to "Senior Employees," all employees of the Agency, including Senior Employees, are subject to the following post-employment restrictions:

(1) No former employee may knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of the United States, on behalf of any other person, in connection with a particular matter involving specific parties, in which the former employee participated personally and substantially in an official capacity. This is a lifetime bar.

(2) For two years after service with the Government terminates, no former employee may make, with the intent to influence, any communication to or appearance before an officer or employee of the United States, on behalf of any other person, in connection with a particular matter involving specific parties, which was pending under the former employee's official responsibilities during the last year of Government service.

(3) For one year after Government service terminates, no former employee may knowingly represent, aid, or advise any other person on the basis of certain covered information concerning any ongoing trade or treaty negotiations in which the employee participated personally and substantially during the last year of Government service.

41 U.S.C. 423 - Procurement Integrity Restrictions

For two years after participating personally and substantially as a "procurement official" in a procurement matter, no employee may participate in any manner on behalf of a competing contractor in any negotiations leading to an award, modification, or extension of a contract for such procurement; or participate personally and substantially on behalf of the competing contractor in the performance of such contract.

President's Ethics Pledge - Applicable to Senior Employees

Under President Clinton's Executive Order 12834, all full-time, non-career Presidential, Vice-Presidential or agency head appointees whose basic rate of pay is not less than

Level V of the Executive Schedule (except members of the Senior Foreign Service (SFS)), and who are appointed on or after January 20, 1993, are subject to the following post-employment restrictions beyond those imposed by the criminal statute 18 U.S.C. 207:

(1) For five (5) years after terminating employment as a senior appointee, you may not communicate to or appear before any employee of A.I.D. on behalf of another with the intent to influence any official action.

(2) After the termination of your employment you may never engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require you to register under the Foreign Agents Registration Act of 1938, as amended.

(3) For five years after termination of personal and substantial participation in any trade negotiation, you may not represent, aid, or advise any foreign government, foreign political party, or foreign business entity with the intent to influence an official decision of any officer or employee of the Executive branch.

If you have any questions regarding these various restrictions, please do not hesitate to contact Arnold Haiman, GC/EA, Room 6892 Main State, (202) 647-8218. If you are located overseas, please contact your Regional Legal Advisor for guidance.

Point of Contact: **Susan Hall**, GC/EA, (202) 712-**0539**.

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