

UNITED STATES DEPARTMENT OF COMMERCE

**SEEKING EMPLOYMENT AND
POST-EMPLOYMENT ACTIVITIES
SUMMARY OF ETHICS RULES
2008**



**Ethics Law and Programs Division
Office of the Assistant General Counsel for Administration**

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www.ogc.doc.gov/ethics.html**



SEEKING EMPLOYMENT

DISQUALIFICATION REQUIREMENTS RELATING TO A JOB SEARCH

You are entitled to engage in a job search for future employment outside the Government. However, you may not

- work as a Federal employee
- on any matter affecting a prospective employer's financial interests,
- either individually or as a member of an industry sector or other group,
- during the period of the job search, which will begin when you
 - first contact the prospective employer (such as through submission of a résumé, or a personal contact),
 - are first contacted by the prospective employer, or
 - you learn from a headhunter or other agent that a firm has been contacted on your behalfand will continue until
 - you notify the prospective employer of no further interest,
 - the prospective employer notifies you of no further interest, or
 - two months have elapsed since you (or your agent) sent a prospective employer an unsolicited résumé or other submission regarding a job.

NOTIFICATION REQUIREMENTS

If you are engaged in an employment search, you must give notice of disqualifications due to the employment search if:

- you are accepting travel payments or reimbursement from a prospective employer (in which case the notification should be in writing and may be either to your supervisor or to an ethics official);
- you are participating in a procurement of greater than \$100,000 in value and you contact, or are contacted by, competing contractors in the procurement (in which case you must provide written notification to both your supervisor and an ethics official, even if you do not pursue discussions further after the initial contact); or
- disqualification will affect your participation in a current assignment (in which case the notification may be verbal to the person who assigned you the work).

SUMMARY OF POST-EMPLOYMENT RESTRICTIONS

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POST-EMPLOYMENT RESTRICTIONS ON CONTACTING FEDERAL OFFICIALS

1. PERMANENT BAR ON REPRESENTING OTHERS BEFORE ANY FEDERAL AGENCY OR FEDERAL COURT ON SPECIFIC-PARTY MATTERS ON WHICH A FORMER EMPLOYEE WORKED

After leaving Federal service, you will be barred **permanently** from:

- contacting an employee of any Federal agency or Federal court
- on behalf of someone other than yourself
- to influence Government action
- concerning a particular matter involving specific parties
- in which you participated
- personally and substantially as a Federal employee.

Participation for these purposes includes any substantive involvement, it is not limited to making the final decision.

This restriction only applies to *specific-party matters*, such as contracts, grants, investigations, licenses, litigation, patents, and some trade agreements and treaties; it does not apply to *general policy matters*, such as legislation, regulations, and development or implementation of policies.

Exceptions – This restriction does not apply to:

- activities on behalf of the District of Columbia or as an elected official of a state or local government;
- activities on behalf of an international organization that includes the United States, if the Secretary of State approves;
- communications of scientific or technological information, if approved by the Secretary of Commerce and if notice is given in the Federal Register; and
- testimony under oath or made under penalty of perjury, in certain circumstances.

2. 2-YEAR BAR ON REPRESENTING OTHERS BEFORE ANY FEDERAL AGENCY OR FEDERAL COURT ON SPECIFIC-PARTY MATTERS ON WHICH SUBORDINATES OF A FORMER EMPLOYEE WORKED OR WHICH WERE UNDER THE FORMER EMPLOYEE'S OFFICIAL RESPONSIBILITY

After leaving Federal service, you will be barred for **two years** from:

- contacting an employee of any Federal agency or Federal court
- on behalf of someone other than yourself
- to influence Government action
- concerning a particular matter involving specific parties
- that was under your official responsibility in a Federal position
- during the last year of your service in the Federal position, including
 - matters in which subordinates participated personally and substantially.

This restriction only applies to *specific-party matters*, such as contracts, grants, investigations, licenses, litigation, patents, and some trade agreements and treaties; it does not apply to *general policy matters*, such as legislation, regulations, and development or implementation of policies.

Exceptions – This restriction does not apply to:

- activities on behalf of the District of Columbia or as an elected official of a state or local government;
- activities on behalf of an international organization that includes the United States, if the Secretary of State approves;
- communications of scientific or technological information, if approved by the Secretary of Commerce and if notice is given in the Federal Register; and
- testimony under oath or made under penalty of perjury.

3. 1-YEAR BAR ON CONTACTING A FORMER EMPLOYING AGENCY (*senior employees only (all employees whose base pay is 86.5% of Executive Level II—that is, base pay of \$148,953 or more in 2008)*)

After leaving Federal service, if you are a senior employee, you will be barred for **one year** from:

- contacting an official of your former agency
- on behalf of someone other than yourself
- to influence Government action.

This restriction applies to all matters, regardless of whether you or your subordinates worked on the matter and regardless of whether the matter at issue involves specific parties or is a broad policy matter. However, you may request information that is available to the general public and you may have social contacts with employees of your former agency.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia or as an elected official of a state or local government;
- official activities as a state or local government employee;
- activities as an employee of and on behalf of an institution of higher education, a hospital, or a medical research organization;
- appearances on behalf of an international organization that includes the United States, if the Secretary of State approves;
- communications of scientific or technological information, if approved by the Secretary of Commerce and if notice is given in the Federal Register;
- testimony under oath or made under penalty of perjury;
- statements based on special knowledge, if no compensation is received; and
- some communications on behalf of a candidate for Federal, state, or local office or a campaign committee or political party.

Definition of “agency.” For purposes of the above restriction, your agency is:

- the Department of Commerce, if you serve as a Presidential Appointee in a position requiring Senate confirmation, or
- for other senior officials, whichever of the following components you serve in:
 1. Office of the Secretary, OIG, and ESA (except Census)
 2. BIS
 3. Census
 4. EDA
 5. ITA
 6. MBDA
 7. NIST
 8. NOAA
 9. NTIA
 10. NTIS
 11. USPTO

4. 2-YEAR BAR ON CONTACTING ANY PRESIDENTIAL APPOINTEE (*Secretary of Commerce only*)

The Secretary of Commerce is restricted for two years from representing others before the Department of Commerce (or other agency in which the Secretary serves *ex officio*) and before any Presidential appointees throughout the Executive Branch.

Exceptions – The exceptions described in Number 3 above also apply to this restriction.

5. 1-YEAR BAR ON CONTACTING A FEDERAL AGENCY OR FEDERAL COURT OR CONGRESS ON BEHALF OF A FOREIGN GOVERNMENT OR FOREIGN POLITICAL PARTY (*senior employees only (all employees whose base pay is 86.5% of Executive Level II—that is, base pay of \$148,953 or more in 2008)*)

After leaving Federal service, if you are a senior employee, you will be barred for one year from:

- contacting an official of a Federal agency, Federal court, or Congress
- on behalf of a foreign government or foreign political party
- with the intent of influencing any action by the United States Government.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia or as an elected official of a state or local government;
- appearances on behalf of an international organization that includes the United States, if the Secretary of State approves; or
- testimony under oath or made under penalty of perjury.

6. PERMANENT AND 2-YEAR BAR ON PRACTICE BEFORE USPTO (*former United States Patent and Trademark Office employees*)

United States Patent and Trademark Office (USPTO) employees intending to practice before USPTO are required to sign a written agreement:

- not to represent
- or assist in the representation of any other person
- before USPTO
- in connection with:
 - any particular patent or patent application in which the employee participated personally and substantially as a USPTO employee *and*
 - for two years, any particular patent or patent application which was pending under the employee’s official responsibility during the year before terminating such responsibility.

POST-EMPLOYMENT RESTRICTIONS ON PROVIDING ADVICE OR OTHER SERVICES

7. 1-YEAR BAR ON ADVISING A FOREIGN GOVERNMENT OR FOREIGN POLITICAL PARTY (*senior employees only (all employees whose base pay is 86.5% of Executive Level II—that is, base pay of \$148,953 or more in 2008)*)

After leaving Federal service, if you are a former senior employee, you will be barred for **one year** from:

- aiding or advising a foreign government or foreign political party
- with the intent of influencing any action by the United States Government.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia or as an elected official of a state or local government;
- appearances on behalf of an international organization that includes the United States, if the Secretary of State approves; or
- testimony under oath or made under penalty of perjury.

8. 5-YEAR REPAYMENT REQUIREMENT IF ACCEPTING EMPLOYMENT OR CONTRACT WORK WITH THE FEDERAL GOVERNMENT (*applicable to all former employees who received a buy-out*)

After leaving Federal service, if you received a buy-out payment, you

- must repay to the Government the buy-out, if
- within 5 years of leaving Federal service
- you accept Government employment or
- enter into a personal services contract with the Government.

Repayment may be required even if your personal services contract is not directly with the Government; repayment may be required if you provide services to a Government contractor that is providing services to the Government.

Exception – A waiver of may be available in extraordinary circumstances.

9. BAR ON TESTIFYING OR PROVIDING DOCUMENTS IN LITIGATION ON MATTERS RELATING TO FEDERAL EMPLOYMENT OR CONCERNING INFORMATION OBTAINED DURING FEDERAL EMPLOYMENT

After leaving Federal service, you

- may not testify
 - in Federal court
 - as an expert witness
 - for a person other than the United States
 - if such testimony is inconsistent with the restrictions on post-employment contacts with Federal officials, as set forth above (unless an exception applies, including the exception for testimony compelled by subpoena),and you
- may not testify or
- respond to a request for production of documents
 - in a Federal court, a state court, a foreign court, or in any other legal proceeding
 - as either an expert witness or a fact witness
 - without receiving prior authorization from the General Counsel (or agency counsel)
 - if the testimony or documents
 - relate to your Federal employment or
 - involves Government information.

The United States Government retains the right to intervene in court proceedings to block testimony relating to Government employment or information.

10. RESTRICTIONS ON ATTORNEYS SWITCHING SIDES REGARDING MATTERS ON WHICH THEY WORKED (*applicable to all former employees who are members of a bar*)

If you are licensed to practice law, you are subject to bar rules, including restrictions that may apply to you after leaving Federal service regarding providing legal services to an employer or client if the subject matter is related to work you provided to the Federal Government or your position with the Government. Bar rules apply regardless of whether you served with the Government in an attorney position. You should contact the applicable bar associations or private counsel for advice regarding these restrictions.

11. PERMANENT AND 2-YEAR BAR ON ASSISTING IN PRACTICE BEFORE USPTO (*former United States Patent and Trademark Office employees*)

As noted above, United States Patent and Trademark Office (USPTO) employees intending to practice before USPTO are required to sign a written agreement:

- not to represent
- or assist in the representation of any other person
- before USPTO
- in connection with:
 - any particular patent or patent application in which the employee participated personally and substantially as a USPTO employee *and*
 - for two years, any particular patent or patent application which was pending under the employee's official responsibility during the year before terminating such responsibility.

POST-EMPLOYMENT RESTRICTIONS ON RECEIVING PAYMENTS OR OTHER FINANCIAL INTERESTS

12. BAR ON RECEIVING PAYMENTS FOR THE REPRESENTATIONAL ACTIVITIES OF OTHERS DURING A PERIOD OF FEDERAL EMPLOYMENT

After leaving Government service, you will be barred from:

- receiving any payment
- that is based on representational activities
- performed by yourself or by any other person (such as a law partner)
- before a Federal agency or Federal court
- that took place during the period of your Federal service.

This restriction is most likely to affect you if you join a partnership after leaving the Government that distributes income based in part on representational activities of others in the partnership. Thus, if you leave the Government and accept a position with a firm that has a Federal practice and that will make payments based in part on past representational activities of the firm (such as through an annual partnership distribution), you must ensure that any distribution you receive does not include payments based on representational services the firm provided in matters before the Federal Government during the period in which you worked for the Government. Usually, this means that the first partnership distribution share you receive will require some reductions if the firm has a Federal practice.

If you are a special Government employee (a Federal employee who serves for less than 130 days in a 365-day period), the restriction on compensation you may receive after leaving the Government will be more limited. You may not receive payments based on representation with respect to matters involving specific parties in which you participated while with the Government and, if you served 61-130 days, from matters involving specific parties that were pending before your agency during the period of your Government service.

Note that the restriction on compensation you may receive based on the representational activities of others also applies to you currently as a Federal employee. In general, you are barred from both representing other persons before the Government

and from receiving payments for representational activities by yourself or others (or, if you are a special Government employee, from the representational activities of others concerning a specific-party matter on which you worked or that is pending before your agency). There are limited exceptions regarding representing certain family members or a trust or estate you administer, if you have received prior approval, and if the representation does not concern a matter under your official responsibility. Contact the Ethics Law and Programs Division at 202-482-5384 to obtain such approval.

13. 1-YEAR BAR ON RECEIVING COMPENSATION FROM THE WINNING CONTRACTOR OF A MAJOR CONTRACT OR PROCUREMENT ON WHICH A FORMER EMPLOYEE WORKED SUBSTANTIALY *(procurement officials and program managers only) (applicable to all employees who had substantial responsibilities regarding a procurement)*

After leaving Government service, if you had substantial responsibilities regarding a procurement or contract, you will be barred **for one year** from your last work on the contract from:

- accepting any compensation or payment
- for service as an employee, officer, director, or consultant
- from the winning contractor
- of a Government procurement or contract
- valued at greater than \$10,000,000.

This restriction applies if you served as the procuring contracting officer, source selection authority, a member of the source evaluation board, or as the chief of a financial or technical evaluation team on a procurement when a selection was made; or as a program manager, deputy program manager, or administrative contracting officer for a contract; or personally made a decision regarding the award or modification of a contract, subcontract, task order, or delivery order; or made a substantive decision regarding a contract valued at \$10,000,000 or more, such as regarding settlement of a claim or establishment of overhead rates.

14. 1-YEAR BAR ON OBTAINING PATENT RIGHTS *(U.S. Patent and Trademark Office employees only) (applicable to all USPTO employees)*

If you are an employee with the U. S. Patent and Trademark Office, after leaving USPTO you will be barred **for one year** from:

- applying for a patent or
- acquiring patent rights or interests in a patent (other than by inheritance).

This restriction also applies to you currently, if you are a USPTO employee. This statutory rule may restrict you currently or for one year after you leave USPTO service from serving on the board of directors of an organization that holds patent interests because, for purposes of this restriction, the patent interests of a firm on whose board you serve would be attributed to you as though the interests were held directly by you. Thus, this restriction may limit you from serving on a board of an organization that has patent interests or it may limit an organization from obtaining patent rights if you (or other USPTO employees) serve on its board, for one year after you leave USPTO. Contact the USPTO General Counsel's Office for advice regarding this restriction.

15. 2-YEAR BAR ON EMPLOYMENT WITH OR RECEIVING AN EMPLOYMENT OFFER FROM A FIRM RECEIVING TRADE ADJUSTMENT ASSISTANCE *(Office of the Secretary and Economic Development Administration employees only) (applicable to all Office of the Secretary and EDA employees who had discretionary responsibilities regarding the award of trade adjustment assistance)*

If you are an Office of the Secretary or Economic Development Administration employee, after leaving the Department you will be subject to restrictions **for up to two years** regarding:

- employment with,
- being retained to provide professional services to, or
- receiving an employment offer from
- a firm to which EDA provided trade adjustment assistance
- under Part 3 of the Trade Act of 1974, Adjustment Assistance for Firms,
- if you engaged in activities that involved discretion with respect to the financial assistance
- on the date the assistance was provided or within one year prior to the date the assistance was provided.

This restriction is a limitation on the financial assistance recipient for two years after assistance is provided, rather than on you as a former employee; the financial assistance recipient must agree not to hire, retain, or offer employment to an EDA employee (or Office of the Secretary employee) who worked on the financial assistance application when the assistance was provided or within a one-year period prior to the date the assistance was provided.

POST-EMPLOYMENT RESTRICTIONS ON USING NON-PUBLIC INFORMATION

16. 1-YEAR BAR ON USING NON-PUBLIC INFORMATION REGARDING ONGOING TREATY NEGOTIATIONS

After leaving Federal service, you will be barred for **one year** from:

- using designated non-public information
- with regard to
 - any advice to a non-Government entity, or
 - representational activities to a Federal official
- concerning any ongoing treaty negotiation.

This restriction applies only while negotiations are on-going, not after the negotiations have been abandoned or successfully concluded.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia or as an elected official of a state or local government;
- appearances on behalf of an international organization that includes the United States, if the Secretary of State approves; or
- testimony under oath or made under penalty of perjury.

17. RESTRICTIONS ON USING NON-PUBLIC INFORMATION

After leaving Federal service, you will be barred from:

- using or disclosing information that is protected by statute or other legal authority, including, but not limited to:
 - personal information covered by the Privacy Act
 - trade secrets
 - procurement information
 - national security information
 - protected census data, and
 - confidential economic data.

DISCLOSURE REQUIREMENTS

18. REQUIREMENT TO FILE A TERMINATION PUBLIC FINANCIAL DISCLOSURE REPORT (*Presidential appointees, SES members, SFS members, and Schedule C employees*)

Within **30 days** of leaving a position that requires an employee to file a public financial disclosure report (SF 278), the filer must file a termination report that covers the period covered between the filing of the last SF 278 and the date of termination of Federal employment. Information required to be disclosed includes any agreement entered into for future employment while the employee was serving in the Government.

Exclusion. Such a report need not be filed if the employee is entering another Federal position within 30 days that requires the filing of an SF 278.

19. 20-YEAR REQUIREMENT ON LOBBYISTS TO REPORT CERTAIN FORMER FEDERAL POSITIONS HELD (*applicable to all Presidential appointees in Senate-confirmed positions, NOAA Corps admirals, and Schedule C employees*)

Any former Federal employee who becomes a lobbyist (meaning someone who is required to register under the Lobbying Disclosure Act) and who served in any of the following positions will be required **for 20 years** to list that position on the lobbying registration that is required to be submitted to Congress:

- Presidential appointee position that requires Senate confirmation (Executive Level I-V)
- admiral in the NOAA Corps (uniformed service grade O-7)
- Schedule C position (non-career grade level GS 15 or below).

Exclusions. Note that registration is not required for a former employee who served in:

- a Senior Executive Service (SES) or Senior Foreign Service (SFS) position (even if serving in a non-career (political) position)
- a general schedule (GS) competitive service or excepted service position
- a position as a member of a Federal advisory committee.

LIST OF LEGAL AUTHORITIES

- 2 U.S.C. §§ 1603 and 1603 – post-employment requirement 19
- 5 U.S.C. § 552a – post-employment restriction 17
- 5 U.S.C. § 5597 – post-employment restriction 8
- 5 U.S.C. App. 4, § 101 – post-employment requirement 18
- 13 U.S.C. § 9 – post-employment restriction 17
- 18 U.S.C. § 203 – post-employment restriction 12
- 18 U.S.C. § 207 – post-employment restrictions 1, 2, 3, 4, 5, 7, 9, and 16
- 18 U.S.C. § 208 – restrictions on activities while seeking employment
- 18 U.S.C. § 1905 – post-employment restriction 17
- 19 U.S.C. § 2348 – post-employment restriction 15
- 22 U.S.C. § 3104 – post-employment restriction 17
- 35 U.S.C. § 4 – post-employment restriction 14
- 41 U.S.C. § 423 – post-employment restrictions 13 and 17
- 50 U.S.C. § 421 – post-employment restriction 17
- 15 C.F.R. §§ 15.11-15.16 – post-employment restriction 9
- 37 C.F.R. § 11.10(b) and (c) – post-employment restrictions 6 and 11
- local bar rules – post-employment restriction 10

For further legal advice regarding seeking employment, post employment restrictions, and other ethics issues, contact the Ethics Law and Programs Division of the Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, at 202-482-5384 or ethicsdivision@doc.gov.

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Prepared by the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, U.S. Department of Commerce – September 24, 2008