

Employee Notice: EDA's Post-Employment Restriction under Section 606 of the Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. § 3216)

Please note: this notice only addresses the restrictions on EDA employees imposed by section 606 of PWEDA. Other Department of Commerce (DOC) and government-wide restrictions also apply to EDA employees. See the table below for a brief overview of all post-employment restrictions that apply to you as a Federal employee.

Overview of PWEDA's post-employment restriction

The post-employment restriction under section 606 of PWEDA requires businesses that have received EDA assistance to certify that for two years from the grant of assistance, the business will refrain from offering employment to or employing any EDA employee that exercised discretion in the grant of assistance. The date of the grant of assistance is the date the Grants Officer signs the award document (generally Form CD-450 or Form CD-451). The restriction requires interpretation on two fronts: (1) what type of recipients are considered "businesses;" and (2) which EDA employees occupy positions or engaged in activities which involved the exercise discretion in the granting of assistance.

What is a "business" in the context of the post-employment restriction?

EDA interprets the term "business" to mean the restriction applies to recipients that are: (1) non-profit organizations; (2) District Organizations of an Economic Development District (EDD); and (3) for-profit organizations. The post-employment restriction does not apply to EDA recipients that are States, local governments, Tribal entities, and most universities. A for-profit university is subject to the post-employment restriction. Also note that a university-affiliated non-profit may be subject to the post-employment restriction on a case-by-case basis.

What EDA employees exercise discretion in granting assistance?

In general, an EDA employee that exercises discretion with respect to the granting of assistance will be someone that had substantial involvement in developing a project and making the final award decision. Of course, which EDA employees exercise discretion may change from project to project, but a general list of EDA employees that exercise discretion follows:

- The Assistant Secretary and Deputy Assistant Secretary (DAS) for Economic Development in their role as Grants Officers for Headquarters (HQ) programs and as evaluators of Regional Director (RD) performance,¹
- The DAS for Regional Affairs for his role in HQ programs and oversight of the Regional Offices,
- The Director of Performance and National Programs and the Trade Adjustment Assistance for Firms Program,
- The RDs in their role as Grants Officers,
- Area Directors, in that they are responsible for managing the grant process, and
- Economic Development Representatives (EDRs) because developing projects is inherent in their role.

Note: Section 606 of PWEDA extends the limitation to employees who occupied a position or engaged in activities which involve discretion at any time during the 12-month period prior to the date of the award. As a result, if an employee exercised discretion with respect to a project award on December 2, retired on December 31, and the award was made on December 1 of the following year, the two year limitation starts from the date of the award on December 1 of the following year.

Implementation. EDA will include the "Expeditors and Administrative Employees" special award condition (SAC) in all awards to non-profit (including university-affiliated non-profit organizations on a case-by-case basis), District Organization, and for-profit recipients. Please contact your Regional Counsel with any questions.

¹ Note that it is possible that the Secretary of Commerce may be subject to section 606 of PWEDA. Inasmuch as the Secretary has delegated grants-making and administrative authorities under PWEDA to the Assistant Secretary in accordance with Departmental Organizational Order (DOO) 10-4, if the Secretary ever decided to make a grant under his own authority, the Secretary likely would be considered an employee that exercises discretion under section 606.

Brief Overview of Seeking and Post-Employment Restrictions

**EDA-specific:
post-
employment
restrictions**

Restriction: You cannot work for a recipient for **two years** after the award (Date EDA grants officer signs the Form CD-450 or CD-451) under certain circumstances:

1. You served as an officer, attorney, agent or employee of the Department and occupied a position or engaged in activities that the Assistant Secretary determines involved discretion on the date the award was made or within 12 months of the date of the award;
2. The award was extended to a (a) non-profit organization (b) District Organization of an Economic Development District (EDD); or (c) for-profit organization.

The post-employment restriction does not apply if the recipient is a State, local government, Tribal entity, or, in most cases, a university. A for-profit university is subject to the post-employment restriction and a university-affiliated non-profit may be subject to the post-employment restriction on a case-by-case basis.

**Government-
wide:
during-
employment
restrictions**

Once you begin to seek non-Federal employment, you must disqualify yourself from working on any matter that will affect your prospective employer. The disqualification continues until either you or the prospective employer indicates a decision not to pursue the matter further (or until two months with no response after submitting a résumé).

See below for Government-wide post-employment restrictions

<p>Government-wide: post-employment restrictions</p>	<p>If you worked personally on a specific-party matter at EDA (such as an application, grant, or program question) you cannot contact EDA or any Federal agency with respect to that matter on behalf of anyone anytime after leaving Government service.</p>	<p>For any specific-party matter under your “official responsibility” (this includes any specific-party matters worked on that you did not personally work on), you cannot contact EDA or any Federal agency with respect to that matter on behalf of anyone for a period of two years after leaving Government service.</p>	<p>If you are a “senior employee” (hold a position for which the base pay [which excludes locality pay] exceeds \$155,440), you cannot contact EDA on behalf of anyone for one year (for two years if you were a senior political appointee) after leaving Government service.</p>	<p>If you are a “senior employee,” you cannot represent a foreign government or political party before the Federal Government for one year after leaving Government service.</p>	<p>You may not disclose or use protected nonpublic Federal information, such as private personnel information, trade secrets or proprietary business information, anytime after leaving Government service, as long as the information remains protected from public disclosure.</p>	<p>If you are a political appointee, after leaving Government service you may not lobby any political appointee in the Executive Branch for the remainder of the President’s Administration.</p>
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If you have questions about the application of the seeking and post-employment rules, contact the DOC Ethics Law and Programs Division at 202-482-5384 or ethicsdivision@doc.gov.