

SEEKING EMPLOYMENT AND POST GOVERNMENT EMPLOYMENT RESTRICTIONS ETHICS DO'S AND DON'TS

The following summarizes restrictions that apply to many Executive Branch employees after they leave Government employment. Failure to comply with these restrictions can result in a fine or imprisonment or both. If you believe that these restrictions, or others not referenced here, may apply to you with regard to a specific employment situation, you should seek advice from the office that provides your agency's legal counsel.

I. Searching for a Job

Employees must consider the Standards of Ethical Conduct and two statutes that restrict their ability to seek future employment.

a. Under the Standards of Ethical Conduct regulation, employees are prohibited from participating in any matter which involves the entity with whom they are **seeking employment**. Under the regulation, an employee is "**seeking employment**" once he or she makes an unsolicited communication regarding possible employment or responds positively to an offer of possible employment.

Remedy: Employees must recuse themselves from participating in **any** official matter involving the organization with whom he is **seeking employment**.

b. Under 18 U.S.C. § 208 all Federal employees are prohibited from participating in any official matter (including policy matters) which may affect an organization with whom they are "**negotiating**" prospective employment.

Remedy: Prior to commencement of negotiations, employees must recuse themselves from participating in **any** official matter (including policy matters) that could directly and predictably affect an organization with whom they are **negotiating** prospective employment.

c. Under the **Procurement Integrity law**, **Department officials who participate personally and substantially** in an agency procurement in excess of the simplified acquisition threshold who contact, or are contacted by, a person who is a bidder or offeror in that procurement regarding possible non-Federal employment, must promptly report the contact in writing to the official's supervisor and the designated agency ethics official.

Remedy: Employees must report contacts regarding future employment with bidders or offerors and immediately reject the employment possibility or disqualify themselves from further participation in the procurement.

II. Representational Restrictions

18 U.S.C. § 207 restricts certain representational activities of former Government employees. Five subsections are relevant to employees.

a. Subsection (a)(I) prohibits **all** former officers and employees from knowingly representing anyone, with the intent to influence, before **any department**, agency, court, etc., **of the U.S.**, in any **particular matter** involving a specific party or parties, in which the U.S. is a party or has an interest, in which he participated **personally and substantially** while an officer or employee.

Prohibition: Employees may not communicate with any part of the Federal Government on particular matters involving specific parties, if they worked personally and substantially on the matter. This is a lifelong restriction.

Permitted Conduct: Behind the scenes involvement in the matter that does not involve oral or written communication with the Federal Government.

b. Subsection (a)(2) prohibits **all** former officers and employees, within two years after ceasing employment, from knowingly representing anyone, with the intent to influence, before **any department**, agency, court, etc., **of the U.S.**, on any **particular matter** involving a specific party or parties, in which the U.S. is a party or has an interest, which was, within the last year of Government service, **actually pending** under his **official responsibility** .

Prohibition: Employees may not communicate orally or in writing with any part of the Federal Government on particular matters involving specific parties, if the matter was under their official responsibility within the last year of Government service. This is a two-year restriction.

Permitted Conduct: Behind the scenes involvement on the matter that does not involve communicating with the Federal Government.

c. Subsection (c) prohibits **senior employees** (any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (i.e., equal to or greater than \$155,441 in 2011-2012); within one year after ceasing employment, from knowingly communicating or appearing before his **department or agency**, on **any matter** (past or future), on behalf of another person, with the intent to influence. (Senior employees should also see Section III below).

Prohibition: Senior employees may not communicate with their department or agency on any matter in which they are seeking official action. This is a one-year prohibition.

Permitted Conduct: Former senior employees may deliver speeches or participate on panels or public debates in events sponsored by private sector organizations where employees of his department or agency happen to attend. Editorials or letters to the editor are similarly not prohibited.

d. Subsection (d) prohibits **very senior employees** (persons in EX Level I positions), within one year after ceasing employment, from knowingly communicating or appearing before his **department or agency, and from** knowingly communicating or appearing before **any employee occupying any Executive Schedule position, on any matter** (past or future), on behalf of another person, with the intent to influence.

e. Subsection (f) prohibits **senior employees** (any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (i.e., equal to or greater than \$155,441 in 2011-2012), within one year after ceasing employment, from representing a foreign entity before **any department** of the U.S., or **aiding or advising** a foreign entity with the intent to influence a decision of a U.S. official.

Prohibition: Senior employees may not aid or assist a foreign entity for one year if the assistance will be used to influence a decision of a U.S. official. Nor may they communicate with the Federal Government on behalf of a foreign entity if the communication attempts to influence a decision of a U.S. official. This is a one-year prohibition.

18 U .S.C. § 207(j) provides some exceptions to subsections (c) and (d) above. See your agency ethics official for more information.

III. Procurement Integrity Restrictions

These restrictions apply to all employees who have **participated personally and substantially** in any of the following activities:

1. Drafting a specification or statement of work;
2. Reviewing or approving a specification or statement of work;
3. Preparing or developing a procurement or purchase request;
4. Preparing or issuing a solicitation for a procurement;
5. Evaluating bids or proposals for a procurement;
6. Selecting sources for a procurement;
7. Negotiating to establish the price or terms of a contract or contract modification;
8. Reviewing and approving the award of a contract or contract modification.

Agency employees subject to this restriction are **prohibited from accepting compensation** from a contractor for a **period of one year** after the official participated:

- As the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team, in a procurement in which that contractor was selected for award of a contract in excess of \$10 million;
- As the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10 million awarded to that contractor;

- As the official deciding to award a contract, a modification of a contract, a task order or delivery order in excess of \$10 million to that contractor, establish overhead or other rates applicable to a contract for that contractor valued in excess of \$10 million, approve issuance of a contract payment or payments in excess of \$10 million to that contractor, or payor settle a claim in excess of \$10 million with that contractor.

Determining whether a contract's value is "in excess of \$10 million" turns on a number of factors. For example, it may mean the value or estimated value of the contract at the time of award of the contract including all options. If you might be subject to this provision, it is important that you check with an agency ethics official or the chief procurement official for more information.

Prohibition: Former employees may not accept compensation for a period of one year from a contractor if they participated personally and substantially in an agency procurement in excess of \$10 million.

Exception. This rule does not prohibit a former official from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract in which the employee participated.

IV. Standards of Ethical Conduct Restrictions

Employees planning to leave the Department should also be mindful of the following Standards of Ethical Conduct rules:

Under 5 C.F.R. § 2635.704, employees may not use Government property for other than authorized purposes. See, CIO-00-01, "Policy on Limited Personal Use of Government Office Equipment Including Information Technology."

Under 5 C.F.R. § 2635.703, employees may not use official information which has not been made available to the public for furthering a private interest.

I received a copy of this notice.

Signature

Date

Name (please print)

Agency