



SUMMARY OF  
ETHICS  
RULES  
WHEN SEEKING  
EMPLOYMENT  
AND AFTER  
LEAVING  
FEDERAL  
SERVICE

ETHICS LAW AND PROGRAMS  
DIVISION

OFFICE OF THE  
ASSISTANT GENERAL COUNSEL  
FOR ADMINISTRATION

UNITED STATES  
DEPARTMENT OF COMMERCE

202-482-5384

[ethicsdivision@doc.gov](mailto:ethicsdivision@doc.gov)

[www.commerce.gov/ethics](http://www.commerce.gov/ethics)



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## 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 cannot:

- 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 behalf and 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).

Note that you are always entitled to look for a job, even if this will mean that you are disqualified from important duties, even most of your duties. If the period of disqualification is likely to be lengthy, however, consult with a Commerce ethics official.

*Prepared by the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, United States Department of Commerce – January 3, 2012*

## 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.

**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.

This restriction applies only to “specific-party” matters, which are applications, contracts, grants, law suits, licenses, patents and other matters in which there are named parties identified; it does not apply to general policy matters, such as legislation, regulations, most free trade agreements, and the development of policies.

**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.

As with the above rule, this restriction applies only to “specific-party” matters, such as contracts, grants, law suits, and patents; it does not apply to general policy matters.

**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.

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**3. 1-YEAR OR 2-YEAR BAR ON CONTACTING A FORMER EMPLOYING AGENCY** (*applicable to senior employees only (all employees whose base pay is 86.5% of Executive Level II—that is, a base pay of \$155,440 or more)*)

After leaving Federal service, if you are a senior employee,\* you will be barred:  
**for one year** if you are a senior career employee\* or  
**for two years** if you are a senior political appointee\* from  
contacting an official of your former agency†  
on behalf of someone other than yourself  
to influence Government action.

\* see the side bar for the definition of “senior employee”

† see the box on the next page for an explanation of “agency”

A “senior employee” is an employee whose base pay (in 2012) is \$155,440. Base pay excludes locality adjustments.

This restriction applies to all matters, regardless of

whether you or a subordinate of yours 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 restriction on former senior employees, your agency is:

- the Department of Commerce, if you serve as a Presidential Appointee in a position requiring Senate confirmation, or
- whichever component of the following employs you, if you are not a Presidential appointee in a Senate-confirmed position:  
(1) Office of the Secretary/OIG/ESA (except Census), (2) BIS, (3) Census, (4) EDA, (5) ITA, (6) MBDA, (7) NIST, (8) NOAA, (9) NTIA, (10) NTIS, or (11) USPTO.

**Waivers** – The Director of the Office of Management and Budget (or designee), in consultation with the Counsel to the President (or designee), may grant a waiver to the restriction applicable to political appointees if the application of the restriction is inconsistent with the purposes of the restriction or if it is in the public interest to grant the waiver. If such a waiver is granted the 1-year restriction would apply. Contact the Ethics Law and Programs Division for guidance on seeking a waiver, if appropriate.

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

The Secretary of Commerce is restricted for two years from representing others before the Department of Commerce (or any 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.

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**5. 1-YEAR BAR ON CONTACTING A FEDERAL AGENCY OR FEDERAL COURT OR CONGRESS ON BEHALF OF A FOREIGN GOVERNMENT OR FOREIGN POLITICAL PARTY** (*applicable to senior employees only (all employees whose base pay is 86.5% of Executive Level II—that is, a base pay of \$155,440 or more)*)

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, a 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.

A “senior employee” is an employee whose base pay (in 2011) is \$155,440. Base pay is pay that excludes locality adjustments.

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**6. BAR ON LOBBYING ANY POLITICAL APPOINTEE DURING THE PRESIDENT’S TERM** (*applicable to political appointees only*)

If you are a political appointee you will be barred **for the term of the President’s Administration** from

lobbying (providing services that require registration under the Lobbying Disclosure Act) any political appointee in the Executive Branch or an admiral or general.

**Waivers** – The Director of the Office of Management and Budget (or designee), in consultation with the Counsel to the President (or designee), may grant a waiver to this restriction if the application of the restriction is inconsistent with the purposes of the restriction or if it is in the

public interest to grant the waiver. Contact the Ethics Law and Programs Division for guidance on seeking a waiver, if appropriate.

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**7. PERMANENT AND 2-YEAR BAR ON PRACTICE BEFORE USPTO** (*applicable to United States Patent and Trademark Office employees only*)

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.

For guidance on this restriction, contact the Office of General Counsel of the U.S. Patent and Trademark Office, rather than an official of the Ethics Law and Programs Division of the Department of Commerce.



## POST-EMPLOYMENT RESTRICTIONS ON PROVIDING ADVICE OR OTHER SERVICES

### 8. 1-YEAR BAR ON ADVISING A FOREIGN GOVERNMENT OR FOREIGN POLITICAL PARTY (applicable to senior employees only (all employees whose base pay is 86.5% of Executive Level II—that is, a base pay of \$155,440 or more))

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.

Note that this restriction may apply to assistance provided to a company, university, or other entity owned or controlled by a foreign government.

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### 9. 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.

This rule does not totally bar a post-employment activity, but allows the activity if the buy-out is repaid.

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**10. 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

cannot 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

cannot 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 first receiving prior authorization from the General Counsel (or agency counsel)

if the testimony or documents

relate to your Federal employment or

involve Government information.

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

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**11. 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.

Because bar rules are state law, Commerce ethics officials do not advise on them or their application to specific situations.

**12. PERMANENT AND 2-YEAR BAR ON ASSISTING IN PRACTICE BEFORE USPTO** (*applicable to United States Patent and Trademark Office employees only*)

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.

For guidance on this restriction, contact the Office of General Counsel of the U.S. Patent and Trademark Office, rather than an official of the Ethics Law and Programs Division of the Department of Commerce.

## POST-EMPLOYMENT RESTRICTIONS ON RECEIVING PAYMENTS OR OTHER FINANCIAL INTEREST

### 13. 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 with a Federal practice after leaving the Government that distributes income based in part on partnership earnings. 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 partnership earnings, you must ensure that any distribution you receive does not include payments based on representational services the firm provided in matters before the U.S. Government during the period in which you worked for the Government. Usually, this means that the first distribution you receive may require some reduction if the firm has a Federal practice.

Note that restrictions on payments you receive based on the representational activities of others also applies while you are a Federal employee. In general, you are barred from both representing other persons before the Government and from receiving payments for representational activities by 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 or [ethicsdivison@doc.gov](mailto:ethicsdivison@doc.gov) to obtain such approval.

**Rule for special Government employees (SGEs).** If you served for less than 130 days during a 365-day period (and are, therefore, an SGE), this restriction is more limited. You cannot receive payment in connection with representational activities concerning particular matters involving specific parties if: (1) you participated in the matter as a Government official or (2) you served for 61-130 days and the matter was pending before Commerce during your Commerce service.

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**14. 1-YEAR BAR ON RECEIVING COMPENSATION FROM THE WINNING CONTRACTOR OF A MAJOR CONTRACT OR PROCUREMENT ON WHICH A FORMER EMPLOYEE WORKED SUBSTANTIALLY** *(applicable to 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.

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**15. 2-YEAR BAR ON SEEKING OR ACCEPTING EMPLOYMENT WITH A FEDERAL AGENCY AFTER LOBBYING THE AGENCY** *(applicable to political appointees only)*

If you are a political appointee and serve as a lobbyist (are required to register under the Lobbying Disclosure Act) after leaving Federal service or are employed by a lobbying organization (an organization that employs lobbyists), you will be barred **for two years** after engaging in such lobbying activity from seeking or accepting employment with a Federal agency (or other entity in the Executive Branch) that you lobbied

**Waivers** – The Director of the Office of Management and Budget (or designee), in consultation with the Counsel to the President (or designee), may grant a waiver to this restriction if the application of the restriction is inconsistent with the purposes of the restriction or if it is in the public interest to grant the waiver. Contact the Ethics Law and Programs Division for guidance on seeking a waiver, if appropriate.

**16. 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.

For guidance on this restriction, contact the Office of General Counsel of the U.S. Patent and Trademark Office, rather than an official of the Ethics Law and Programs Division of the Department of Commerce.

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**17. 2-YEAR BAR ON EMPLOYMENT WITH OR RECEIVING AN EMPLOYMENT OFFER FROM A FIRM RECEIVING ASSISTANCE** (*Economic Development Administration employees only*) (*applicable to all EDA employees who had discretionary responsibilities regarding the award of assistance*)

If you are an 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 assistance if you occupied a position or 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.

For guidance on this restriction, contact the Office of General Counsel of the Chief Counsel of the Economic Development Administration.

This restriction is actually a limitation on the financial assistance recipient, who agrees for two years after assistance is provided not to hire, retain, or offer employment to an EDA 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 NONPUBLIC INFORMATION

### 18. 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.

**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.

This restriction applies only while negotiations are on-going, not after negotiations have been abandoned or successfully concluded. However, other rules may bar disclosure of nonpublic information relating to treaty negotiations.

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### 19. 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 and confidential economic data,  
procurement information,  
national security information, and  
confidential economic data.

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## POST-EMPLOYMENT DISCLOSURE REQUIREMENTS

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

If you in a position that has required you to file a public financial disclosure report (OGE Form 278), you will be required to file a final report within **30 days** of leaving that position. This termination report will cover the period between the filing of your prior report and the date you left your Federal position. Information required to be disclosed includes any agreement entered into for future employment while the employee was serving in the Government.

**Exception.** You do not need to file a termination financial disclosure report if you will be entering into another Federal position within 30 days that requires the filing of an OGE Form 278.

You are required to file a public financial disclosure report (OGE Form 278) if you are a political appointee or a member of the Senior Executive Service or Senior Foreign Service or a senior NOAA Corps officer.

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### 21. 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 Senate confirmed position (Executive Level I-V),  
admiral in the NOAA Corps (uniformed service grade O-7), or  
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, or
- a position as a member of a Federal advisory committee.

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