

U.S. Department of Transportation
Office of the Secretary of Transportation
General Counsel
1200 New Jersey Ave. S.E.
Washington, D.C. 20590

May 31, 2011

MEMORANDUM TO DEPARTMENTAL EMPLOYEES

From: /s/ Original signed by:
Rosalind A. Knapp
Deputy General Counsel
Designated Agency Ethics Official

Subject: Guidance on Post Employment Matters and Negotiating for Future
Employment

I am attaching Guidance on Post Employment Matters and Negotiating for Future Employment, updating a memorandum previously issued in October 2008. This Guidance explains post employment restrictions that apply to former Department of Transportation (DOT) employees. This Guidance also explains how to comply with restrictions relating to negotiating for future employment. The purpose of this Guidance is to assist employees in avoiding conflicts of interest that can arise in negotiating for future employment and in working on matters involving DOT after leaving Federal service.

Employees who are leaving or are contemplating leaving Federal service are strongly encouraged to talk with an Ethics Official. A list of Ethics Officials is attached to the Guidance.

Attachment

**U. S. DEPARTMENT OF TRANSPORTATION
GUIDANCE ON POST EMPLOYMENT RESTRICTIONS AND NEGOTIATING
FOR FUTURE EMPLOYMENT**

MAY 2011

This guidance provides general ethics advice to employees of the U.S. Department of Transportation (DOT) on issues involving post employment concerns and negotiating for future employment. Seek advice from agency Ethics Officials listed in Attachment 2 for specific guidance based upon your particular circumstances.

PART I: Restrictions After Leaving Federal Service

A. General Restrictions

Federal statutes and regulations address post employment restrictions that apply to employees leaving Federal service. Generally, these statutes and regulations prohibit certain former employees from representing anyone before their former operating administration or the Office of the Secretary of Transportation (OST). Representation means knowingly communicating - orally or in writing - with the intent to influence, with any Federal employee on behalf of any person other than yourself. Representation can include mere attendance at a meeting depending on the circumstances.

All Employees: Permanent Restriction: A former employee may not represent anyone before DOT, including any of its operating administrations or OST, or before any U.S. court, court-martial, or any other agency or department, concerning any particular matter (e.g., a contract, grant, inspection, enforcement action, court or administrative case, etc.) in which he or she participated personally and substantially while in Federal service, and which involved a specific party or parties. This does not prohibit a former employee subject to this restriction from providing “behind-the-scenes” aid and advice.

EXAMPLE: Chris is an Engineer in the Federal Railroad Administration (FRA). While at FRA, he worked on the testing of certain rail cars. Chris leaves FRA to go work for a railroad. He may never represent his new employer before FRA, any other operating administration, or OST, or any other Federal department or agency on the specific testing matters he worked on while at FRA. He can, however, provide his new employer with aid and advice using his expertise in rail car testing, so long as he does not disclose non-public information.

Supervisors: Two-Year Restriction: A former employee may not represent anyone before DOT, including any of its operating administrations or OST, or before any U.S. court, court-martial, or any other agency or department, for two years after leaving Federal service concerning any particular matter which was pending under his or her official responsibility during his or her last year in Federal service, and which involved a specific party or parties. This does not prohibit a former employee subject to this restriction from providing “behind-the-scenes” aid and advice.

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EXAMPLE: Sally, a Federal Aviation Administration (FAA) career supervisor, oversees all employees working on an airline inspection, though she did not herself work on the inspection personally. The inspection occurred within the year before Sally left FAA. Sally would not be able to represent anyone before FAA, any other operating administration, or OST, or any other Federal department or agency concerning that inspection for two years after leaving Federal service. However, if Sally worked personally and substantially on that inspection, she would also be subject to the permanent restriction.

Presidential Appointees with Senate Confirmation (PAS) and Senior Employees: One-Year Restriction: Each former PAS may not represent anyone in any matter before DOT for one year after leaving Federal service. Each former senior employee who worked in OST, the Pipeline and Hazardous Materials Safety Administration (PHMSA), or the Research and Innovative Technology Administration (RITA) and who was paid at the current annual rate of basic pay of \$155,440.50 or more (exclusive of any locality pay) may not represent anyone in any matter pending before any of these three organizations for one year after leaving Federal service. Each former senior employee who worked in any other operating administration and who was paid at the current annual rate of basic pay of \$155,440.50 or more (exclusive of any locality pay) may not represent anyone in any matter before his or her former operating administration for one year after leaving Federal service. However, these one-year restrictions do not apply to a former PAS or former senior employee who is representing a State or local government entity or an accredited institution of higher education as an employee of that entity or institution.

EXAMPLE: Two months after resigning from DOT, Tanique, a former Deputy Assistant Secretary, who was a career official with an annual salary of more than \$155,440.50, is asked to represent a domestic airline in an enforcement matter pending in OST. Tanique did not work on the enforcement matter while at DOT and the matter was never pending in OST. Tanique may not represent the airline before an OST employee in connection with the compliance matter. She has ten months remaining on the one-year restriction applicable to senior employees.

B. Restrictions Applicable to Appointees of the Obama Administration

As a condition of their employment, appointees of the Obama Administration are required to sign an Ethics Pledge pursuant to Executive Order 13490 (January 21, 2009, "Ethics Commitments by Executive Branch Personnel"). The following post employment restrictions apply to appointees of the Obama Administration:

Senior-Level Appointees Leaving Federal Service: Each former Senior-Level appointee of the Obama Administration who was a PAS may not represent anyone in any matter before DOT for two years after his or her appointment ends. Each other former Senior-Level appointee who worked in OST, PHMSA or RITA and who was paid at an annual rate of basic pay of \$155,400.50 or more (exclusive of any locality pay) may not represent anyone in any matter pending before any of these three organizations for two years after his or her appointment ends. Each other former Senior-Level appointee of the Obama Administration who was worked in any

other operating administration and who paid at an annual rate of basic pay of \$155,440.50 or more (exclusive of any locality pay) may not represent anyone in any matter before his or her former operating administration for two years after his or her appointment ends.

Appointees Leaving Federal Service to Lobby: A former appointee of the Obama Administration may not lobby any covered executive branch official, including senior White House officials, Presidential Appointees with Senate Confirmation, and Schedule C employees, or any non-career Senior Executive Service appointee, for the remainder of the Obama Administration.

These restrictions do not prohibit a former appointee from providing “behind-the-scenes” aid and advice.

EXAMPLE: Two months after resigning from DOT, a former Deputy Assistant Secretary, who was an appointee of the Obama Administration with an annual salary of more than \$155,440.50, is asked to represent a domestic airline in an enforcement matter pending in OST. The former Deputy Assistant Secretary did not work on the enforcement matter while at DOT and the matter was never pending in her office. The former Deputy Assistant Secretary may not represent the airline before an OST employee in connection with the compliance matter. She has one year and ten months remaining on the two-year restriction applicable to Senior-Level appointees of the Obama Administration.

C. Special Two-Year Restriction Applicable to the Secretary of Transportation

The Secretary of Transportation has a special two-year restriction after leaving Federal service. A former Secretary may not, with the intent to influence, appear before or communicate with any Level I through Level V employee in any department or agency of the executive branch, or appear before or communicate with any employee in DOT, on behalf of any other person in connection with any matter on which the former Secretary seeks government action. This restriction does not prohibit a former Secretary of Transportation from providing “behind-the-scenes” aid and advice.

D. Restrictions Applicable to Employees who Work on Procurement Matters.

The Procurement Integrity Act, at 41 U.S.C. § 2101, also contains post employment restrictions. Under these restrictions, certain former employees are prohibited from accepting compensation from a contractor for serving as an employee, officer, director, or consultant of that contractor for one year after:

- having served, at the time of selection of the contractor or the award of a contract to that contractor, as a procuring officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team on a contract over \$10,000,000 awarded to that contractor;

- having served as the program manager, deputy program manager, or administrative contracting officer for a contract over \$10,000,000 awarded to that contractor; or
- having personally made the agency decision to:
 - award a contract, subcontract, modification, task order, or delivery order worth over \$10,000,000 to that contractor;
 - establish overhead or other rates valued over \$10,000,000 for that contractor;
 - issue contract payments over \$10,000,000; or
 - pay or settle a claim over \$10,000,000 with that contractor.

The Procurement Integrity Act also prohibits a former employee who had access to contractor bid and proposal information, or to source selection information, from knowingly disclosing that information before the award of a government contract to which the information relates.

EXAMPLE: Jerry is a former DOT Contracting Officer who now works for ABC Contractor. While at DOT, Jerry had access to source selection information for Contract X, including ABC's bid on Contract X. Jerry cannot disclose that source selection information to ABC Contractor before the award of Contract X.

E. Restrictions Applicable to Former Employees who Testify in Court in Matters Involving DOT

The DOT regulations (49 CFR Part 9) limit, and in some instances prohibit, former DOT employees from providing testimony in legal proceedings. This regulation describes procedures that must be followed when a former employee is served with any request or subpoena, or who voluntarily decides to provide testimony in legal proceedings concerning matters that these individuals worked on while they were employed by DOT.

Any former employee in this situation should immediately contact the Chief Counsel's Office in the operating administration where he or she worked, or in the case of former employees in OST, the former employee should contact the Office of the General Counsel, Assistant General Counsel for Litigation.

F. Restriction Applicable to Employees Engaged in Trade and Treaty Negotiations

Employees who personally and substantially participate in ongoing trade or treaty negotiations on behalf of the United States within one year before leaving Federal service, and who have access to information which by law cannot be disclosed, may not for one year after leaving Federal service, represent, aid or advise any other person concerning those negotiations using that information. This restriction includes a one-year prohibition against providing "behind-the-scenes" aid and advice.

G. Restrictions Applicable to Employees Leaving Federal Service to Work for Foreign Entities

Federal law and regulations impose additional detailed restrictions that prohibit certain former senior employees, for one year, from representing or advising foreign governments and certain other foreign entities in certain matters involving the Federal Government. Employees to whom these restrictions might apply are strongly encouraged to consult with an Ethics Official. This restriction includes a one-year prohibition against providing “behind-the-scenes” aid and advice.

H. Sanctions Applicable to Violations of Post Employment Restrictions

Pursuant to 18 U.S.C. § 207, a former DOT employee who violates the OGE Regulations’ post employment restrictions (contained in 5 CFR Part 2641) could be subject to a \$50,000 fine, five years of imprisonment, or both. Violations of the post employment restrictions may also result in injunctions and prohibitions on future representations to DOT.

Pursuant to Executive Order 13490, appointees of the Obama Administration who violate the terms of the Ethics Pledge could be subject to government sanction, which could include debarment, the initiation of civil judicial proceedings, and the pursuit of declaratory, injunctive or monetary relief.

Pursuant to the Procurement Integrity Act (41 U.S.C. § 2101), a DOT employee who violates the restrictions laid out in the Act could be subject to a fine, five years of imprisonment, and/or administrative penalties, including debarment.

PART II: Negotiating For A New Job After Federal Service

This Part explains how to comply with a restriction in 18 U.S.C. § 208 relating to negotiating for future employment. This restriction prohibits an employee from working on particular matters affecting a potential employer with whom the employee is negotiating for future employment.

A. Negotiations

Negotiating for future employment generally begins when someone outside of the Federal government suggests the possibility of specific job with his or her organization and a DOT employee does not reject the possibility. Negotiating for future employment could also begin when a DOT employee makes unsolicited inquiries to potential employers concerning possible employment if those inquiries are targeted at transportation interests or other prohibited sources. However, the mere act of sending out an unsolicited, untargeted resume or resumes, absent a response, generally does not constitute the beginning of employment negotiations. Negotiating for future employment does not end unless the employee or the prospective employer affirmatively rejects the possibility of employment or unless two months have passed from sending an unsolicited resume and no answer has been received.

B. General Restriction

Pursuant to 18 U.S.C. § 208, a DOT employee, when negotiating for future employment, must cease involvement in any official matters that could affect the prospective employer's financial interests. An employee who continues to work on such matters could be subject to a \$50,000 fine, five years of imprisonment, or both.

C. Recusal and Screening Arrangement

When negotiating for future employment begins, an employee must execute a written recusal and screening arrangement to be recused from participation in those matters affecting the potential employer. Written recusals, signed by the employee and developed with the help of an Agency Ethics Official, are essential for all employees. All PAS must develop and file their recusals with the Designated Agency Ethics Official (Lindy Knapp).

A sample Recusal and Screening Arrangement-Negotiating for Employment is attached to this Guidance as Attachment 1. The sample asks employees to select a screener (Option A) or, if screeners are not designated, to consult with an Agency Ethics Official in making alternate arrangements (Option B). This process is important to ensure that employees do not work on matters involving a prospective employer.

EXAMPLE: Bob is interested in a position as a Risk Management Analyst for Delta Airlines. Currently, he works in DOT's Office of the Assistant Secretary for Aviation and International Affairs. While Bob is interviewing with Delta, he may not work on Delta matters and must coordinate with an Ethics Official to execute a written recusal and screening arrangement.

D. Restrictions Applicable to Employees who Work on Procurement Matters

The Procurement Integrity Act, at 41 U.S.C. § 2101, also contains a restriction concerning negotiations for future employment. Any employee who personally and substantially participates in an agency procurement over \$150,000 must report in writing to his or her supervisor, and to the Designated Agency Ethics Official (Lindy Knapp) or the appropriate Ethics Official in the operating administration, any contacts with or by a bidder or offeror regarding possible non-Federal employment. (See Attachment 2 for a list of DOT Ethics Officials). The employee making the report must either reject the possibility of non-Federal employment, or recuse himself or herself from further personal and substantial participation in the procurement until the agency authorizes the employee to resume participation. (See Attachment 1).

**U.S. DEPARTMENT OF TRANSPORTATION SAMPLE RECUSAL AND
SCREENING ARRANGEMENT - NEGOTIATING FOR EMPLOYMENT**

Instructions for Filling Out This Form:

Upon a determination that a conflict of interest exists, an Agency Ethics Official shall execute this arrangement with the employee and, if selected, a screener. Once executed, the Agency Ethics Official shall distribute copies of this arrangement to the employee and, if Option A is selected, to the screener, immediately after execution.

FROM: [Name of Employee] DATE: [mm/dd/year]

TO: [Agency Ethics Official]
[Screener(s) – If Option A is selected]

This is to affirm that I am currently discussing prospective employment with _____, and that pending completion of any further discussion concerning prospective employment with that organization, I am recused from personal and substantial participation in any particular matter that would have a direct and predictable effect upon the financial interests of that organization. I will seek the assistance of an Agency Ethics Official if I am ever uncertain whether or not I may participate in a matter.

[Choose Option A or Option B.]

[Option A: For the purpose of this recusal, _____ has been advised to screen incoming matters to ensure that such matters relating to the above listed organization are not brought to my attention, and to refer such matters to _____ for action or reassignment].

[Option B: I have not designated a screener. I have consulted with an Agency Ethics Official and made alternate arrangements in the event that any matter in which I am recused from comes to my attention.]

/s/ _____
Signature of Employee

/s/ _____
Signature of Agency Ethics Official

/s/ _____
Signature of Screener [optional]

Attachment 2

DOT ETHICS OFFICIALS

FAA	Deputy Ethics Official:	Marc Warren	marc.warren@faa.gov	x73222
	Contacts:	Lisa Baccus	lisa.baccus@faa.gov	x58250
		Ken Johnson	ken.e.johnson@faa.gov	x58667
FHWA	Deputy Ethics Official:	Thomas Holian	thomas.holian@dot.gov	x60764
	Contacts:	Grace Reidy	grace.reidy@dot.gov	x66226
		Adam Sleeter	adam.sleeter@dot.gov	x68839
FMCSA	Deputy Ethics Official:	David Tochen	david.tochen@dot.gov	x30349
	Contacts:	Ann Gawalt	ann.gawalt@dot.gov	x62928
		Kirk Foster	kirk.foster@dot.gov	x62013
FRA	Deputy Ethics Official:	Michael Haley	michael.haley@dot.gov	x60767
	Contacts:	Gareth Rosenau	gareth.rosenau@dot.gov	x36054
		Betty Sorrells	betty.sorrells@dot.gov	x36057
FTA	Deputy Ethics Official:	Scott Biehl	scott.biehl@dot.gov	x64063
	Contacts:	Elizabeth Martineau	elizabeth.martineau@dot.gov	x63908
		Kerry Miller	kerry.miller@dot.gov	x60942
MARAD	Deputy Ethics Official:	Rand Pixa	rand.pixa@dot.gov	x65711
	Contacts:	Christine Gurland	christine.gurland@dot.gov	x65157
		Jodi George	jodi.george@dot.gov	x65175
NHTSA	Deputy Ethics Official:	John Donaldson	john.donaldson@dot.gov	x69511
	Contact:	Dana Sade	dana.sade@dot.gov	x65251
OST	Designated Agency Ethics Official (DAEO):			
		Lindy Knapp	lindy.knapp@dot.gov	x64713
	Alternate DAEO:	Judy Kaleta	judy.kaleta@dot.gov	x30992
	Deputy Ethics Official:	Bill Register	bill.register@dot.gov	x69303
	Contacts:	Kim Moore	kimberly.moore@dot.gov	x64781
		Jason Dreifuss	jason.dreifuss@dot.gov	x69153
	Hector Huezo	hector.o.huezo@dot.gov	x67613	

PHMSA	Deputy Ethics Official:	Sherri Pappas	sherri.pappas@dot.gov	x64400
	Contact:	May Chiranand	may.chiranand@dot.gov	x64401
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RITA	Deputy Ethics Official:	Gregory Winfree	gregory.winfree@dot.gov	x64412
	Contacts – RITA:	Robert Monniere	robert.monniere@dot.gov	x65498
		Robert Kern	robert.kern@dot.gov	x64367
Contacts – Volpe:	Katie Kelly	katie.kelly@dot.gov	(617) 494-2731	
	Wendell Mah	wendell.mah@dot.gov	(617) 494-2987	
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SLSDC	Deputy Ethics Official:	Craig Middlebrook	craig.middlebrook@dot.gov	x60105
	Contact:	Carrie Lavigne	carrie.lavigne@dot.gov	(315) 764-3231