

## Department Ethics Office: Post Employment Restrictions

Department of State and other Government employees may be affected by the Federal ethics laws even after they terminate Government service. While some post-Government employment restrictions are unique to former high-level officials, certain of the restrictions may potentially affect any former employee. This memorandum highlights the most important of these "post-employment" restrictions. Moreover, it briefly summarizes employee obligations to avoid actual or apparent conflicts of interest that may arise in connection with seeking and accepting offers of post-Government employment, and highlights the requirement that certain employees complete a termination financial disclosure report. This memorandum highlights the most important areas of general concern; it is not an exhaustive statement of relevant law.

### Before You Leave Government – Possible Disqualification from Duties

Under the relevant conflict of interest law, [18 U.S.C. 208](#), you are generally prohibited from working "personally and substantially" in your official capacity on any "particular matter" that you know would affect the financial interests of a person or organization with whom you are "negotiating" for employment or with whom you have any "arrangement" concerning employment. A related Executive branch-wide ethics regulation, at Subpart F of [5 CFR Part 2635](#) (2635.601-606), generally prohibits you from working on an assignment when you are "seeking employment" with a person or organization affected by the assignment, even though your job search has not yet progressed to actual negotiations. Thus, while you may generally pursue employment opportunities with prospective employers who have business before the Department, you may be precluded from working on certain assignments while doing so. You should err on the side of caution and ensure that your disqualification is broad enough to shield you from all official matters that a reasonable person could conclude may affect the financial interests of your prospective employer. In limited circumstances, an exception, authorization, or waiver may permit you to continue to work on assignments affecting a prospective employer.

### After You Leave Government – 18 U.S.C. 207

[Section 207 of Title 18](#) sets forth several prohibitions restricting the activities of individuals who leave Government service or who terminate service in certain high-level positions in the executive branch. Three restrictions, commencing upon one's termination of Government service, are applicable under Section 207 to all former employees:

- A lifetime ban on representing any other person before any U.S. department, agency, or court in any particular matter involving specific parties (e.g., a contract, procurement, claim, litigation, investigation or negotiation) in which the employee participated personally and substantially as a Government employee and in which the United States is a party or has a direct and substantial interest (18 U.S.C. §207(a)(1)).
- A two-year ban on representing any other person before any U.S. department, agency, or court in any particular matter involving specific parties which was actually pending under the employee's "official responsibility" (e.g., a contract handled by a subordinate without the employee's direct involvement) during the employee's last year of Government service and in which the United States is a party or has a direct and substantial interest (18 U.S.C. § 207(a)(2)).
- A one-year ban on representing, aiding, or advising any other person on the basis of certain privileged material about an ongoing trade or treaty negotiation in which the employee participated personally and substantially during the employee's last year of Government service. Only trade negotiations conducted under Section 1102 ("fast track" authority) of the Omnibus Trade and Competitiveness Act of 1988 are covered by this prohibition. Only negotiations of international agreements that will be sent to the Senate for its advice and consent are considered treaties for purpose of the restriction. In either case, the negotiations must have been "ongoing" both at the time of the former employee's participation and at the time of the post-employment

action. Privileged material is material that is classified or otherwise exempt from disclosure under the Freedom of Information Act (18 U.S.C. § 207(b)).

Two additional restrictions under section 207 apply only to former "senior employees," generally defined as anyone who either terminated from an Executive Schedule position or from a position for which the rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule. The dollar threshold is \$155,440.50 for employees terminating service on or after January 1, 2010. The restrictions for former "senior employees" are measured from the date on which the employee ceases to be a senior employee.

- A one-year ban on representing, aiding, or advising a foreign government or foreign political party with the intent to influence a decision of an employee of a U.S. department or agency. Generally, representation of, or aid or advice to, a foreign commercial corporation is not barred (18 U.S.C. § 207(f)).
- A one-year ban on any communication to or appearance before a Department official on any matter on which official action is sought on behalf of any other person, regardless of the former employee's prior involvement in the matter. This restriction, the so-called "one-year cooling-off period," broadly restricts contacts with the former agency, including contacts relating to policy, legislation, personnel decisions, or any other official matter (18 U.S.C. § 207(c)). (As specified in 18 U.S.C. 207(d), a cooling-off restriction applies more broadly to a former Secretary of State and to any other former "very senior employee" who was employed in a position at a rate of pay payable for level I of the Executive Schedule.)

There are certain exceptions to section 207. For example, former senior employees are exempted from the one-year cooling-off period if they are employed by and acting on behalf of state or local governments, accredited institutions of higher education, or certain non-profit hospitals or medical research organizations. The one-year cooling-off period also does not apply to communications or appearances by former senior employees on behalf of candidates for federal or state office or for an authorized campaign committee or political party. In addition, none of the restrictions outlined above limit former employees from representing, aiding or advising an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the U.S.

Several points merit emphasis. First, the lifetime and two-year restrictions are focused on "particular matters involving specific parties." These restrictions are aimed at discrete transactions with identifiable parties, in which U.S. departments or agencies are involved, and would likely cover transactions such as a contract for word processing equipment or security services, an employee grievance, an application for a munitions control license, a private claim against a foreign government, and a visa application. These restrictions are not usually aimed at involvement in broad policy issues directed to a large and diverse group of individuals or entities, such as U.S. foreign policy in Africa or foreign aid legislation. (Note that treaty negotiations may sometimes be treated as particular matters involving specific parties. If you were involved in treaty negotiations, you should consult with L/EMP/Ethics about the potential impact on your post-employment restrictions.)

Second, the restrictions other than the trade or treaty or foreign entity restrictions limit representational contacts with the U.S. Government. Representational contacts include not only outright lobbying, but also formal and informal appearances and written or oral communications intended to influence Government actions.

Third, with the exception of the one-year cooling-off period, the restrictions cover representational activities before any department or agency of the United States. The one-year cooling-off period goes only to contacts with the Department of State and at its diplomatic missions and its employees (including those detailed to other agencies) and to any other department or agency in which the former employee served within the one-year period prior to terminating from the senior position.

## **After You Leave Government - 41 U.S.C. 423**

[Section 423\(d\) of title 41](#) bars a former Government employee from accepting compensation from a contractor if the employee served in a specified Government position which involved the approval or award of more than \$10 million to that contractor, or made certain contract decisions involving more than \$10 million to that contractor. More specifically, it prohibits a former Government employee from accepting compensation from a Government contractor within a period of one year after the former employee:

- Served, at the time of selection of the contractor or the award of a contract to that contractor, as a member of a source selection evaluation board, the procuring contracting officer, the source selection authority, 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 \$10,000,000;
- Served as the administrative contracting officer, deputy program manager, or program manager for a contract in excess of \$10,000,000 awarded to that contractor; or
- Personally made for the Government a decision to: (1) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor; (2) establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000; (3) approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or (4) pay or settle a claim in excess of \$10,000,000 with that contractor.
- This provision does not prohibit a former Government employee from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar services or products as the entity of the contractor that is responsible for the contract at issue.

## **After You Leave Government - 18 U.S.C. 203**

[Section 203 of title 18](#) prohibits a former Government employee from sharing in compensation for representational services performed by someone else, such as a business partner, in connection with a particular matter in which the U.S. was a party or had a direct and substantial interest, if those services were provided at a time when the individual was still a Government employee. Thus, for example, an employee who leaves Government service to join a law firm with a Federal practice may not accept any partnership share, bonus, or other payment that is calculated, in any part, based on fees received for representational services before the Government that had been performed by the firm while that individual was still a Government employee.

A former Government employee is prohibited from receiving compensation tied to the profitability or success of an organization's dealings with the agencies and other Government entities specified in the statute only where the compensation is derived from "representational services" provided to third parties. Where an organization has not provided representational services to third parties, but has simply dealt with the Government in order to obtain Federal funding or approval for its own business purposes, the statute does not prohibit a former Government employee from receiving compensation resulting from those dealings. Note also that this provision does not prohibit an employee from accepting a "fixed" salary even though the salary would come from firm revenues that included revenues generated from representations before the Government at a time when the employee was still in Government service.

## **After You Leave Government - Additional Considerations**

You may not disclose to future employers or the public any classified or other non-public information acquired in the course of your official duties, without the specific prior authorization of the Department. In particular, if you have had access to certain sensitive procurement information, [41 U.S.C. 423\(a\)](#) prohibits you from disclosing that information before the award of the contract to which the information relates (unless permitted by some other law). You are not required to purge your mind of the experience and

general knowledge gained during your time with the Government, but must take care not to communicate confidential information to subsequent employers or colleagues.

If you are a retired member of the uniformed services, you may not accept employment with a foreign government unless you first obtain the approval of the Assistant Secretary for Political-Military Affairs. The procedures for obtaining approval are outlined in [22 CFR Part 3a](#).

Finally, you must ensure that your future activities are in compliance with other requirements that may apply to you without regard to your prior employment by the Government. Thus, for example, if you are an attorney or other licensed professional, you should consult your local bar rules or similar professional code concerning any special ethics obligations. And, if you will serve as the agent of a foreign principal, you must ensure that you comply with the [Foreign Agents Registration Act \(FARA\)](#). FARA requires every agent of a foreign principal, not otherwise exempt, to register with the Department of Justice and to file forms outlining agreements with, income from, and expenditures on behalf of the foreign principal.

### **Termination Financial Disclosure Report**

If you have been required to file a Public Financial Disclosure Report (SF 278), you must file a "[termination](#)" report within 30 days after leaving Government. Your Management Office should provide you with a form and related guidance. You should submit your completed report directly to the Financial Disclosure Division, Office of the Assistant Legal Adviser for Employment Law (L/EMP/FD).

In general, you should sign and date your termination report no earlier than your last day of service in the position. However, you may sign and date your form up to two weeks before your termination date if you include the following commitment in the "comments" block at the bottom of the cover page:

"If I make any reportable changes to any financial holdings or accept any reportable gifts prior to the date I terminate my position, I will amend my report."

If you anticipate leaving your position within 90 days after the May 15 deadline for filing your "incumbent" (annual) SF 278, you may submit a combined incumbent/termination report if you request and receive the necessary extensions of the May 15 incumbent report filing deadline.

Learn more about "[Public Financial Disclosure](#)."

\* This discussion is only a summary of the laws and regulations. If you have any questions concerning ethics considerations in relation to post-employment restrictions, consult the cited legal authorities or contact the Department's Ethics Office. The Ethics Office can be reached by e-mail at [Ethics Attorney Mailbox](#), by telephone at (202) 663-3770, or by fax at (202) 663-3339.