

## Department Ethics Office: Job Seeking and Post-Employment Restrictions

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This is a summary of the restrictions that apply to all employees leaving the Department of State. It is divided into two sections: (1) restrictions that apply before you leave government; and (2) restrictions that apply after you leave government.

### **Before You Leave Government**

**Basic Rule: If you are seeking a job with a particular employer, you cannot work on matters that affect that employer.** Federal law prohibits you from working on particular matters that will affect the financial interests of an employer with which you are “seeking employment.”

#### **Q: *When does it begin?***

**A:** The restriction begins when you start “seeking employment” with an employer. You begin “seeking employment” the moment you send a resume to an employer, receive a job offer, ask to be considered for a job, or have any employment-related contact with a potential employer (other than to request an application).

#### **Q: *When does it end?***

**A:** You stop “seeking employment” if you are rejected for the job, turn down a job offer, or two months have passed since you submitted your application materials and you have received no response.

#### **Q: *What do I need to file?***

**A:** Most employees do not need to file anything. You are only required to file a notice if you submit an annual OGE 278 or 278e disclosure report. However, you should inform your supervisor if there are potential conflicts. The best practice is to save a memo or email showing that your supervisor was informed of the conflict.

#### **Q: *Can I get a waiver?***

**A:** Waivers are available in very limited circumstances. For more information on waivers, please contact L/EFD. Before a waiver can be granted, the Department of State is required to seek review of the proposed waiver from a separate government agency called the Office of Government Ethics. Please ensure that you allow ample time for this lengthy process.

### **After You Leave Government**

There are four main sources of post-government restrictions: (1) a federal statute concerning post-Government restrictions; (2) the Obama Administration’s Ethics Pledge; (3) the Procurement Integrity Act; and (4) a federal statute that forbids you from sharing in certain types of compensation.

#### **1. 18 U.S.C. 207 (Post-Government Restrictions)**

Section 207 contains three restrictions that apply to all employees. The first two restrictions are only triggered if, after leaving U.S. Government service, you are representing an entity before the U.S. Government (“representing” means communicating with or appearing before the U.S. Government) with the intent to influence a U.S. Government employee. Note that “intent to influence” is interpreted broadly.

- **Lifetime Ban** – If you were personally and substantially involved in a matter where there were identified parties, then you cannot ever represent anyone, other than the U.S., on that same particular matter when seeking official action from a U.S. department, agency, or court.
- **Two Year Ban** – If a matter where there were identified parties was under your official responsibility during your last year of government service, you cannot represent anyone, other than the U.S., on that same particular matter when seeking official action from a U.S. department, agency, or court. This prohibition lasts for two years from the day you leave government service.

The third prohibition in 207 concerns privileged information you learned through trade or treaty negotiations.

- **One Year Ban (Treaties)** – If you were personally and substantially involved in ongoing trade or treaty negotiations during your last year of government service, and you had access to privileged material, you may not use that information to represent, aid, or advise any person (other than the U.S.) concerning those negotiations. This restriction applies even if you are not acting as someone's agent in communications with government officials. Rather, it applies to representations, aid, **and** mere advice that is aimed at helping anyone, other than the U.S., in ongoing trade or treaty negotiations.

There are two other restrictions that apply only to former "senior employees." As of January 11, 2016, a senior employee is generally any employee with a base salary higher than \$160,111.50 (this threshold changes each year -- the threshold between January 12, 2015 and January 11, 2016 was \$158,554.50).

- **One Year Ban (Foreign Governments)** – For the first year after you cease to be a senior employee, you may not represent, aid, or advise a foreign government or foreign political party with the intent to influence a decision of an employee of a U.S. department or agency. Additionally, there is a one year ban on representing foreign governments or political parties with the intent to influence members of Congress. A foreign company is generally not considered to be part of a foreign government unless it is exercising the functions of a sovereign.
- **One or Two Year Cooling-Off Period** – All former senior officials have a one-year cooling-off period. Obama Pledge signors have agreed to extend this cooling-off period to two years. During your cooling-off period, you may not make any communication to or appearance before a Department official (or an official of any other agency you worked for in the year before leaving Government service) to seek official action on behalf of any other person. This restriction is very broad. It covers any contact that is on behalf of another when you are seeking official action. It does not apply to purely social contacts or contact concerning your own personal business. It also does not apply if you are acting as an employee on behalf of a state or local government, an accredited institution of higher education, or a section 501(c)(3) non-profit hospital or medical research organization. The cooling-off period also does not apply to communications or appearances on behalf of candidates for federal or state office or for an authorized campaign committee or political party.

**Q: *Can the Post-Government restrictions be waived?***

**A:** You may seek a waiver if you are leaving the U.S. government to work for an international organization in which the U.S. is a member. In order to obtain a waiver, the Secretary of State must certify that the activity is in the interests of the United States.

**Q: Do these restrictions apply only to my contact with State? Or, do they apply to contact with other federal entities?**

**A:** The life-time and two-year restrictions on representation apply to representation before any U.S. department, agency, or court (and the President and Vice-President). The one-year ban concerning treaties applies to representations, aid, or behind-the-scenes advice to anyone. The cooling-off period for senior employees applies only to contact with the Department of State (and other agencies you worked for in the past year). The one-year ban related to foreign governments/political parties applies to representations, aid, or behind-the-scenes advice with the intent to influence any U.S. department or agency (and the President and Vice-President). The ban on representing, aiding, or advising foreign governments/political parties also applies to work that is intended to influence members of Congress and Congressional employees.

## **2. Ethics Pledge (Lobbying Ban)**

Some political appointees were asked to sign an ethics pledge when they joined the Department of State. If you were asked to sign the pledge, then there are two provisions you should consider. First, if you were a senior employee, then your cooling-off period will be extended to two years. Second, under Paragraph 5 of the ethics pledge, pledge signors have agreed that they will not lobby the President, the Vice President, any official in the Executive Office of the President, any Executive Schedule official (EL I-V), any uniformed officer at pay grade 0-7 or above, any Schedule C employee, or any non-career SES member. This prohibition lasts for the duration of all terms of the current Administration. "Lobby" means to act in a manner that would require registration under the Lobbying Disclosure Act

## **3. Procurement Integrity Act (PIA)**

The PIA only applies if you were involved in certain procurement decisions on a contract worth **more than \$10 million**. For the first year after you held a covered position or took a covered action on such a contract, you may not accept any compensation from a contractor involved in that contract.

**Covered Positions** – You held a covered position on a contract if:

At the time the contractor was selected or the contract was awarded, you served as (1) a member of the source selection evaluation board, (2) the procuring contracting officer, (3) the source selection authority, or (4) the chief of a financial or technical evaluation team; or

You served as (1) the administrative contracting officer, (2) the deputy program manager, or (3) the program manager (e.g., COR).

**Covered actions** – You are similarly barred if you 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 million 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 million; (3) approve issuance of a contract payment or payments in excess of \$10 million to that contractor; or (4) pay or settle a claim in excess of \$10 million with that contractor.

### ***Is there an exception?***

There is an exception that applies if the division/affiliate of the contractor offering you compensation is not the same division/affiliate that is connected to your procurement work. As long as the

division/affiliate does not produce the same or similar products or services as the division/affiliate that was involved in the contract at issue, you may accept compensation from that division/affiliate.

#### **4. 18 U.S.C. 203 (Shared Compensation)**

Section 203 of title 18 prohibits you from sharing in certain types of compensation. Specifically, you cannot share in compensation from representational services that (1) are connected to a matter in which the U.S. was a party or had a direct and substantial interest, and (2) were provided when you were still a Government employee. For example, an employee who leaves Government service to join a law firm 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 were performed while that individual was still a Government employee.

This statute does not prohibit an employee from accepting a fixed salary. It only applies to shared compensation that reflects representational services. Also, this restriction will not apply if the company interacted with the government on its own behalf, rather than while representing another.

Attorneys who are planning to enter into private practice should also consult the bar rules where they are admitted and where they will practice, as there may be additional restrictions for shared compensation and representational activity.

#### **Additional Considerations**

##### **1. Classified / Non-public Information**

You may not disclose any classified or non-public information you acquired in government service. Also, if you have had access to sensitive procurement information, federal law prohibits you from disclosing that information before the award of the contract to which the information relates.

##### **2. Uniformed Services**

If you are retired member of the uniformed services, you may not accept employment with a foreign government unless you first obtain the approval of the Secretary of your former service. You must also receive approval from the Assistant Secretary for Political and Military Affairs. The procedures for obtaining approval are outlined in 22 CFR Part 3a.

##### **3. Other Requirements**

Finally, you must ensure that your future activities are in compliance with other legal requirements. For example, if you will serve as the agent of a foreign principal, you must ensure that you comply with the Foreign Agents Registration Act (FARA).

##### **4. Termination Financial Disclosure Report**

If you have filed a Public Financial Disclosure Report (OGE 278 or 278e), you must file a “termination” report on FDM within 30 days of leaving Government, or up to 15 days before leaving the Department. Please contact L/EFD in order to file your “termination report before you leave.

If you anticipate leaving your position within 90 days after the May 15 deadline for filing your “incumbent” (annual) report, you may submit a combined incumbent/termination report if you request and receive the necessary extensions of the May 15 incumbent report filing deadline. Please contact L/EFD with questions.

**Employees who file the Confidential Financial Disclosure Report (OGE Form 450) are not required to file a termination report.**

\* 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 [ethicsattorneymailbox@state.gov](mailto:ethicsattorneymailbox@state.gov), by telephone at (202) 663-3770, or by fax at (202) 663-3339.