



United States Department of State

Washington, D.C. 20520

January 29, 2018

MEMORANDUM

TO: All Employees

FROM: L/EFD

SUBJECT: Seeking Employment and Post-Government Restrictions

This is a summary of the ethics rules that you need to know during your job search and after you leave U.S. Government service. It is divided into two sections: (1) restrictions that apply before you leave Government; and (2) restrictions that apply after you leave Government.

**1. Before You Leave Government**

**Basic Rule:** If you are seeking a job with a non-federal employer, you cannot work on particular matters that affect that employer. Federal law prohibits you from working on particular matters<sup>1</sup> that will directly affect your financial interests or the financial interests of a non-federal employer with whom you are “seeking employment.” This rule applies to “seeking employment” with any non-federal employer, whether a private company, an NGO, an international organization, etc.

***When does it begin?***

The restriction begins when you start “seeking employment” with a non-federal 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, are contacted by a potential employer about employment and respond in any way other

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<sup>1</sup> A “particular matter” is a matter that is focused on the interests of specific persons or a discrete and identifiable class of persons. For example, it would include a contract, visa, grant, license, permit, or other matter that is narrowly focused on the rights and responsibilities of specific parties. Legislation and policy-making that is narrowly focused on the interests of a discrete and identifiable industry or class of persons can also be a particular matter. A policy decision is **not** a particular matter if it is directed to the interests of a large and diverse group of persons.

than a rejection, or have any other employment-related contact with a potential employer (other than to request an application).

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

Most employees do not need to file anything when they start to seek employment. You are only required to file a notice if you submit an annual OGE 278 (or 278e) financial disclosure report (*see* STOCK Act guidance below, p.11) or if you work in procurement. However, it is generally prudent to inform your supervisor about potential recusals; and you should inform your supervisor if there are any duties from which you must, or are likely to have to, recuse yourself. The best practice is to save a memo or email showing that your supervisor and any other relevant parties were informed of the conflict.

### ***What do procurement officials need to file?***

There are additional restrictions for procurement officials. If you are participating “personally and substantially” in an acquisition for a contract that is worth more than the simplified acquisition threshold (generally \$150,000, see FAR 2.101(b)(2)),<sup>2</sup> you must promptly report any contact you have with a bidder or offeror (or its intermediary) on that acquisition regarding possible employment. This rule applies regardless of whether the bidder/offeror reached out to you or you reached out to the bidder/offeror (e.g., by sending in a resume or requesting an interview). You should file a written report (“contact report”) about that contact with (1) your supervisor, and (2) L/EFD. You need to submit this report even if you immediately tell the bidder/offeror that you are not interested in the job or the bidder/offeror immediately rejects you.

If you do not reject the bidder/offeror’s overture or if you otherwise continue seeking employment with a bidder/offeror, then you may not work personally and substantially on the procurement until you are authorized to do so by the Department. In addition to filing the contact report, you must file a written disqualification memorandum with (1) the contracting officer, (2) the source selection authority (if other than the contracting officer), and (3) your immediate supervisor. The disqualification memorandum must, at a minimum (1) identify the procurement, (2) describe the nature of and approximate dates of your participation

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<sup>2</sup> Such participation includes: drafting, reviewing, or approving the specification or statement of work; preparing/developing the solicitation; evaluating bids/proposals; selecting a source, negotiating price terms and conditions; and reviewing or approving the award.

in the procurement, and (3) identify the bidder/offeror and its interest in the procurement.

Even after any employment discussions come to an end, you must remain disqualified from personal and substantial work on the procurement until the head of the contracting activity (HCA) *specifically authorizes* you to once again work on it. The HCA may authorize you to once again work on the procurement if all discussions with the bidder/offeror about possible employment have terminated without any arrangement for employment or if the contractor is no longer a bidder/offeror in the procurement. After consulting with L/EFD, the HCA will decide whether you may immediately resume participating in the procurement or whether an additional period of disqualification is necessary to protect the integrity of the procurement process.

***Can I get a waiver of my recusal obligations?***

Waivers are available only in very limited circumstances. For example, if you are seeking employment with an international organization and the U.S. Government officially supports you for the position, the Office of the Legal Adviser may determine that your interest in obtaining the job is not likely to affect the performance of your official duties and may grant a waiver allowing you to seek the position in your official capacity (that is, as part of your job, using official time, resources, etc.), or do certain other types of limited work concerning the prospective employer.<sup>3</sup> For more information on waivers, please contact L/EFD. Before a waiver can be granted, the Department of State is required to consult with the Office of Government Ethics, a separate Government agency. Please ensure that you allow ample time for this lengthy process.

***Can I accept interview expenses from a prospective employer while still employed at the Department of State?***

Assuming that, as described above, you are recusing as necessary from particular matters affecting the interests of a prospective employer, you may generally accept from that prospective employer expenses customarily provided in connection with bona fide employment discussions (e.g., reasonable travel and lodging for an interview). You may generally not accept such expenses if the prospective employer is a foreign government or an international organization of which a foreign government is a member, and you should consult L/EFD on whether certain exceptions apply.

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<sup>3</sup> You may still have to recuse from other matters affecting the interests of the organization though.

## **2. After You Leave the Federal Government**

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

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

#### ***All employees:***

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<sup>4</sup> an entity before the U.S. Government with the intent to influence a U.S. Government employee.

- **Lifetime Ban** – If, as a U.S. Government employee, you were personally and substantially involved in a particular matter involving specific 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 (as well as the President and Vice-President).
- **Two Year Ban** – If a particular matter involving specific parties was under your official responsibility<sup>5</sup> 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 (as well as the President and Vice-President). This prohibition lasts for two years from the day you leave Government service.

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<sup>4</sup> “Representation” includes formal and informal appearances and written or oral communications intended to influence U.S. Government actions. However, these restrictions do not apply to purely “behind-the-scenes” work where you render advice without interacting with the Government (and no communications are attributed to you by others interacting with the Government).

<sup>5</sup> “Ordinarily, the scope of an employee’s official responsibility is determined by those functions assigned by statute, regulation, Executive order, job description, or delegation of authority.” However, “[a]uthority to direct Government action concerning only ancillary or nonsubstantive aspects of a matter, such as budgeting, equal employment, scheduling, or format requirements does not, ordinarily, constitute official responsibility for the whole of the matter.” 5 C.F.R. § 2641.201.

The third prohibition in 207 concerns privileged<sup>6</sup> information you learned through trade or treaty negotiations.

- **One Year Ban (Treaties)** – If you were personally and substantially involved in ongoing<sup>7</sup> trade or treaty negotiations during your last year of Government service, and you had access to privileged information, you may not, on the basis of that information, represent, aid, or advise any person (other than the U.S.) concerning those negotiations. Unlike the other restrictions in 207, this restriction applies even if you are not acting as someone’s representative interacting with Government officials. Rather, it applies to representations, aid, **and** mere behind-the-scenes advice aimed at helping anyone, other than the U.S., with regard to ongoing trade or treaty negotiations.

***“Senior employees”:***

There are two additional restrictions in Section 207 that apply only to former “senior employees.” A senior employee is any employee with a *base salary* higher than \$164,004<sup>8</sup> **or** who holds a position for which the pay is specified in or fixed according to the Executive Schedule.<sup>9</sup> (Base salary *does not include* locality-based pay, bonuses, awards, and other similar adjustments.) If you are a Special Government Employee, you are “senior” if you worked more than 60 days during the past 365 days and your hourly or daily rate translates into an annual salary above the threshold. If you are a detailee to the Department under the Intergovernmental Personnel Act, you are “senior” if your total pay from Federal and non-Federal sources exceeds the threshold and certain other criteria are met.

- **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

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<sup>6</sup> Privileged information includes agency records that are classified or otherwise exempt from disclosure under the Freedom of Information Act (18 U.S.C. § 207(b)).

<sup>7</sup> The restriction applies only if the negotiations were “ongoing” both at the time of your participation and at the time of the post-employment action.

<sup>8</sup> This threshold changes each year. The \$164,004 threshold is effective January 7, 2018. The threshold between January 8, 2017 and January 6, 2018 was \$161,755.00. The threshold between January 10, 2016 and January 7, 2017 was \$160,111.50. The threshold between January 11, 2015 and January 9, 2016 was \$158,554.50. The threshold between January 12, 2014 and January 10, 2015 was \$156,997.50. For the most recent threshold, see [www.oge.gov](http://www.oge.gov).

<sup>9</sup> Including Chiefs of Mission paid at an FA-13 or FA-14 level.

government<sup>10</sup> or foreign political party with the intent to influence a decision of an employee of a U.S. department or agency (as well as the President and Vice-President). Additionally, there is a one-year ban on representing, aiding, or advising foreign governments or political parties with the intent to influence members of Congress and Congressional employees. A foreign company is generally not considered to be part of a foreign government unless it is controlled by a foreign government and exercises the functions of a sovereign.

- **Cooling-Off Period** – All former senior employees have a one-year cooling-off period.<sup>11</sup> During your cooling-off period, you may not make any communication to or appearance before a Department official to seek official action on behalf of any other person. Such communications and appearances are also prohibited if made to officials of other agencies for which you worked during the one year before you ceased to be a “senior employee.” This restriction is very broad. It covers any contact that is on behalf of another when you are seeking official action. However, it does not apply to purely social contacts or contact concerning your own personal activities. 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 certain communications or appearances on behalf of candidates for federal or state office or for an authorized campaign committee or political party.

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

You may seek a waiver if you are leaving the U.S. Government to work for an international organization of 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. Contact L/EFD or IO/MPR for more information.

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

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<sup>10</sup> For these purposes, “foreign government” includes factions, bodies of insurgents, tribal groups, and any other entity falling under the definition of “government of a foreign country” under section 1(e) of the Foreign Agent Registration Act.

<sup>11</sup> A former Secretary of State, as a “very senior employee,” is subject to a two-year, somewhat broader cooling off period.

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.

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

Some political appointees were asked to sign an ethics pledge by the Trump Administration when they joined the Department of State.<sup>12</sup> If you were asked to sign the pledge, then there are three provisions you should consider. First, pledge signors have agreed not to engage in any “lobbying activities” with respect to the State Department (or any executive agency to which they were detailed for more than sixty days in a calendar year, or any other agency to which they were appointed) for a period of five years after they leave service as an appointee or detailee in that agency.<sup>13</sup> Second, pledge signors have agreed not to engage in any “lobbying activities” with respect to 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 for the remainder of the current Administration.<sup>14</sup> Third, pledge signors have agreed that they will not, at any time after they leave government service, engage in any activity on behalf of any foreign government or

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<sup>12</sup> See Executive Order 13770. Former employees who signed the Obama Administration’s ethics pledge should consult L/EFD for advice about how those obligations may continue to apply.

<sup>13</sup> “Lobbying activities” has the same meaning as that term has in the Lobbying Disclosure Act, 2 U.S.C. § 1601, except that the term does not include communicating or appearing with regard to: a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act, 5 U.S.C. § 551.

<sup>14</sup> “Lobbying activities” has the same meaning in this context as it does for the five-year restriction on lobbying an appointee’s former agency.

foreign political party that would require registration under the Foreign Agents Registration Act (FARA).<sup>15</sup>

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

The PIA's post-Government restriction only applies if you were involved in certain procurement decisions or held certain positions with respect to 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 program manager (such as the COR), or (3) the deputy program manager (such as the Deputy COR).

**Covered actions** – You are similarly barred if you personally made for the U.S. 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

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<sup>15</sup> “Foreign government” and “foreign political party,” are defined under the FARA , 22 U.S.C. § 611(e), (f). Only your post-Government employer or outside counsel can provide definitive advice on whether your activities require registration under FARA.

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.

#### **D. 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 both (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 U.S. 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 U.S. Government that were performed while that individual was still a U.S. 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.

### **3. Additional Considerations**

#### **A. 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.

#### **B. Uniformed Services**

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 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.

#### **C. Other Requirements**

Finally, you must ensure that your future activities are in compliance with other legal requirements. For example, if you are an attorney, you should consult your local bar rules concerning your ethical obligations. If you will serve as the agent of a foreign principal, you must ensure that you comply with the Foreign Agents Registration Act (FARA).

#### **D. Termination Financial Disclosure Report**

If you are a Public Financial Disclosure Report (OGE- 278 or 278e) filer, you must file a “termination” report within 30 days of leaving the U.S. Government. The only authorized methods of filing are online through FDM at <https://www.fdm.army.mil> or, for some senior officials, <http://www.integrity.gov>. These sites can be accessed through any computer; you do not need access to OpenNet. The advantage to using FDM or Integrity is that, if you are already a filer, you may pre-populate your termination report with data from a previous filing and simply update that information. Your report will be reviewed by your initial reviewer prior to being forwarded to our office for certification.

In general, you should sign and date your termination report no earlier than your last day of service. 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” section:

“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.”

Contact the L/EFD Financial Staff ([lemfpdfinancial@state.gov](mailto:lemfpdfinancial@state.gov)) prior to starting your termination report in FDM or Integrity. We will assist you in determining the correct due date to use if you plan on filing before your actual departure.

If you anticipate leaving your position within 90 days after the May 15 deadline for filing your “incumbent” (annual) OGE-278 or 278e, you may submit a combined incumbent/termination report if you request and receive the necessary extensions of the May 15 incumbent report filing deadline. The maximum number of days for an extension is 90. Our office **is not authorized** to grant any extensions beyond 90 days.

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

## **STOCK Act – New Notification Requirement**

**The following guide is intended only for employees who file an OGE 278 or 278e Public Financial Disclosure Report.** Under the STOCK Act, all public filers must file a Negotiation Notice and Recusal Statement when entering into agreements or negotiations for post-Government employment or compensation with a non-federal entity. The following information is provided to help you understand this requirement. A sample Negotiation Notice and Recusal statement follows on page 13, and can also be found on MyData as DS-0278-A.

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***Q: When and where do I file the Notice?***

*A: File the Notice within 3 business days of starting negotiations or making an agreement for future employment or compensation. If you have already given notice of your negotiations with an entity, you do not need to file a Notice of the later agreement. Send the attached form to NegotiationNotice@state.gov.*

***Q: What is a “negotiation?”***

*A: A “negotiation” begins when there is a two-way communication between you and a prospective employer that is aimed at reaching an agreement about employment.*

***Q: I remember from my ethics training that I have to recuse when I am seeking employment with an outside entity. Even if I simply send an unsolicited resume, it will constitute “seeking employment.” Do I have to submit a Notice when I am “seeking employment,” but we have not yet started the two-way communication aimed at reaching an agreement?***

*A: Good memory. While you do have to recuse with respect to an entity when seeking employment, you do not need to file this Notice until a two-way communication begins.*

### **In these examples, you must recuse and file the Notice:**

1. You have a conversation with a representative from Company Y. You discuss the duties of a position and your qualifications. She explains that she has not

yet received authorization to hire a new person. However, she says that she will get back to you when she obtains the necessary approvals.

2. The CEO of a company states that he would like to look for a position for you within his company after you leave Government. You say you are interested. You discuss some general employment terms without nailing down specifics.
3. You receive a job offer from University X. The University asks you to start whenever you leave your current position. You agree.
4. You receive a job offer from Company Y. You agree on some details of the job without ironing out other details like stock options, leave, or the job title.

**In these examples, you must recuse, but you do not need to file a Notice:**

1. You send fifty unsolicited resumes to fifty different companies. You need to recuse from matters directly involving every company.
2. The CEO of a company states that he would like to look for a position for you in his company. You respond that you would like to think about it before talking further.
3. A friend offers you a job. You say, “No thanks, I am not looking right now. Ask me again in 6 months.”

**In these examples, you do not have a filing or a recusal duty:**

1. You update your resume.
2. You draft a cover letter for a job application. However, you do not send it.
3. You meet with a friend who works at Company Y. You ask him what the job climate is like there. You do not imply that you are looking for a job.
4. You review online notices of job openings.
5. A representative from Company Y offers you a job. You decline the offer.
6. You add your personal email address to a database so that you can be notified about openings at a specific company.
7. The CEO of a company offers you a position. You say, “Thank you, I am not interested in a new job. I will remember your interest if I ever decide to leave the Government.”

The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) requires all OGE 278 filers to submit a statement notifying their agency ethics official of any negotiation for or agreement of future employment or compensation with a non-federal entity within three business days after commencement of the negotiation or agreement. Employees who file this notification statement also must file a recusal statement. This form may be used for both statements. It may be sent to NegotiationNotice@State.gov or via myData (form DS-0278-A).

**NOTIFICATION OF POST-EMPLOYMENT NEGOTIATION OR AGREEMENT**

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|--|-----------------------|
| <b>Name of Employee</b>  |                       |
| <b>Agency/Office</b>   | Department of State / |
| <b>Date Negotiation or Agreement Commenced</b>   |                       |
| <b>Name(s) of Non-Federal Entity or Entities</b>   |                       |
| Disclose each non-federal entity with which you are negotiating for or have an agreement of future employment or compensation. |                       |

**RECUSAL STATEMENT**

For as long as I am negotiating for or have an agreement of employment or compensation with any entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of that entity, unless I first obtain a written waiver or an authorization consistent with 5 C.F.R. § 2635.605.

|                           |                       |
|---------------------------|-----------------------|
| <b>Employee Signature</b> | <b>Date Submitted</b> |
|                           |                       |