



Non-Senior Employee Post-Government Employment Restrictions

Purpose: This document summarizes the Government ethics rules which may impose restrictions on your employment after your departure from the Department of Commerce (DOC).

Application: These rules apply to non-senior employees. **Non-Senior** employees are:

- Civilian (non/career) personnel whose rate of base pay is below 86.5% of the rate for Executive Schedule Level II (\$191,944 as of January 14, 2024); and
- Active duty commissioned officers of the uniformed services with a pay grade of O-6 or below.

Notice: This information summarizes statutes and regulations that restrict or otherwise affect the activities of DOC employees after leaving Federal Government (Government) service. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, please contact your [ethics official](#)¹ to discuss your situation. Ethics officials are available to provide advice both before and after you leave Government service.

You may always consult with a personal representative. Ethics officials are acting on behalf of the United States Government and not as your personal representative. Advice from an ethics official with respect to these matters is provided under 5 C.F.R. § 2635.107(b). For that reason, disclosures made to a DOC ethics official are not protected by attorney-client privilege.

I. REPRESENTATIONAL RESTRICTIONS AFTER LEAVING DOC (18 U.S.C. § 207)

A. Personal Participation: Lifetime Representational Ban

SIMPLIFIED RULE: After leaving Government service, you may not represent someone else to the Government regarding *particular matters* you worked on while in Government service.

RULE: A former Government officer or employee may not knowingly, with the intent to influence, make any communication to, or appearance before, an employee of the Executive or Judicial branches of the U.S. Government, on behalf of another person or entity in connection with a particular matter involving a specific party or parties, in which the officer or employee participated personally and substantially while employed 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). This does not bar behind-the-scenes assistance not involving communication to, or appearance before, concerned employees of the Executive or Judicial branches.

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Definitions:

- *Particular Matters* involve deliberation, decision, or action focused on the interests of specific persons or a discrete and identifiable class of persons. Such matters may include a contract, claim, application, judicial or other proceeding, request for a ruling or other determination, controversy, investigation, or charge. A *particular matter* may even include legislation or policymaking narrowly focused on the interests of a discrete and identifiable group of parties or organizations, e.g., DOC policy affecting only aircraft manufacturers.
- *Specific Parties*: For this statute, particular matters must also involve *specific parties*. This means that identifiable parties exist. For example, a procurement may be a particular matter, but it might not become one involving “specific parties” until the first bid is received. Likewise, investigations, applications, or judicial proceedings involve specific parties.
- *Personal* participation means that you are directly participating in the matter or that one or more of your subordinates, whom you are directing, is participating.
- *Substantial* participation means your participation is of significance to the matter, which may be based on the amount and importance of your effort. One act, such as approving a critical step, may be substantial. Likewise, if you review and approve a certain step, and work would stop if you did not approve, then your participation is substantial, even though it may have seemed like a paperwork exercise to you. On the other hand, an entire series of peripheral acts might not be considered substantial.

If you merely have knowledge of the matter, routine or superficial involvement, or involvement on a peripheral or administrative issue, you may not be substantially involved. If you are not involved in the substantive merits, you may not be substantially involved, even though you put a lot of time into the matter. If you are merely responsible for reviewing the matter for compliance with administrative or budgetary considerations, you also may not be substantially involved.

This ban remains for the lifetime of the *particular matter*. This does not bar behind-the-scenes or in-house assistance.

B. Official Responsibility: Two Year Representational Ban

SIMPLIFIED RULE: For *two years* after leaving Government service, you may not represent someone else to the Government regarding particular matters that you did not work on yourself but were pending under your responsibility during your last year of Government service.

RULE: For two years after the termination of Government service, a former Government officer or employee may not knowingly, with the intent to influence, make any communication to or appearance before an employee of the Executive or Judicial branches of the U.S. Government, on behalf of another person or entity in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which the officer or employee knows or reasonably should know was actually pending under his or her official responsibility within their last year of

Government service. 18 U.S.C. § 207(a)(2). This does not bar behind-the-scenes assistance not involving communication to, or appearance before, concerned employees of the Executive or Judicial branches.

Definition: *Official Responsibility* means direct administrative or operating authority to approve, disapprove, or otherwise direct, Government actions. It includes a supervisor at any level with responsibility for the actions of a subordinate employee who actually participates in a matter.

Although you may have been disqualified from personally acting on a particular matter during your last year in the Government, this section of the statute will still apply to you if the particular matter was still under your official responsibility during that period.

Example: Because you owned stock in IBM, you were disqualified from reviewing a particular contract with IBM, which was reviewed by one of your subordinates during your last year in the Government. Under this statute, because the particular matter was under your responsibility during your last year of service, you are prohibited from representing others regarding that contract.

C. Trade or Treaty Assistance: One-Year Representational Ban

SIMPLIFIED RULE: For *one year* after leaving Government service, you may not aid, advise, or represent someone else regarding trade or treaty negotiations that you worked on during your last year of Government service.

RULE: For a period of one year after leaving Government service, former employees or officers may not knowingly represent, aid, or advise someone else on the basis of *covered information*, concerning any ongoing *trade or treaty negotiation* in which the employee participated personally and substantially in his or her last year of Government service. 18 U.S.C. § 207(b).

Definitions:

- *Trade negotiations* are those undertaken pursuant to the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2902). Treaties are international agreements that require the advice and consent of the Senate.
- *Covered information* means agency records accessible to the employee but exempt from disclosure under the Freedom of Information Act.

D. Exceptions to Representational Bans

There are exceptions to the restrictions of 18 U.S.C. § 207. Before relying on an exception to the representational bans, we recommend you consult an ethics attorney for guidance.

Common exceptions include:

- Acting on behalf of yourself, not another.
- Acting on behalf of the U.S. Government.
- Aiding, advising, and representing certain international organizations with prior Secretary of State certification.
- Making statements based on special knowledge, if unpaid.
- Representing state or local governments, hospitals, medical research organizations, or degree-granting institutions of higher learning, when making representations on those institutions' behalf.
- The lifetime representational ban does not apply to communications that furnish scientific or technological information with prior, published certification by the Secretary of Homeland Security.
- There are special rules regarding testimony under oath.

E. Penalties and Injunctions

A violation of the representational restrictions may subject individuals to imprisonment for not more than five years, a criminal or civil fine, and a court order prohibiting you from engaging in the conduct in the future.

II. PROHIBITED COMPENSATION

RULE: After you leave Government service, you may not accept compensation for representational services, which were provided by anyone while you were a government employee, before a Federal agency or court regarding particular matters in which the Government was a party or had a substantial interest.

This prohibition may affect employees who leave the Government and share in the proceeds of the partnership or business for representational services that occurred before the employee terminated Federal service. (Examples: lobbying, consulting, and law firms). 18 U.S.C. § 203. This is separate and distinct from the procurement-related compensation restrictions.

III. LOBBYING BAN FOR OUTGOING POLITICAL APPOINTEES

If you are a political appointee, you signed President Biden's Ethics Pledge, pursuant to Executive Order 13989, and agreed once you leave Government service, you would not *lobby* (act as a registered lobbyist) back to any Flag/General officer or political appointee in the Government or engage in any registrable activity under the Foreign Agents Registration Act (FARA) for the duration of President Biden's Administration or for two years following the end of your appointment, whichever is later. Pledge para. 6.

For more Lobbying Disclosure Act guidance about what is lobbying and what requires registration, contact the Secretary of the U.S. Senate or the Clerk of the U.S. House of Representatives. See e.g., <https://lobbyingdisclosure.house.gov/ldguidance.pdf> and https://www.senate.gov/legislative/Public_Disclosure/FAQs.htm. For additional information

about FARA, please see <https://www.justice.gov/nsd-fara>.

IV. RESTRICTIONS FOR RETIRED MILITARY PERSONNEL AND RESERVISTS

SIMPLIFIED RULE: Without prior authorization from the appropriate Service Secretary and the Secretary of State, you must forfeit your military pay during the time you perform services for a *foreign government*.

RULE: The Emoluments Clause of the U.S. Constitution prohibits retired military personnel and reservists from receiving pay from *foreign governments* without Congressional authorization. This may extend to receipt of pay from a U.S. contractor or subcontractor for providing services to a *foreign government* and profit sharing at any commercial firm or business. In 37 U.S.C. § 908, Congress authorized the Secretary of State and Secretary of the appropriate Military Department to approve such receipt of pay. Each Military Service has implementing procedures for the approval process. The penalty for violating the Emoluments Clause is suspension of retired military pay during the period of the violation.

Foreign governments may include educational and commercial entities that are substantially owned or controlled by foreign governments.

V. ADMINISTRATIVE REMINDERS

A. Financial Disclosure Report: If you are a Public Financial Disclosure Report (OGE 278) filer, you are required to file a termination OGE 278 no later than 30 days after your departure. If you file more than 30 days late, you are subject to a \$200 late filing fee. In addition, knowing and willful failure to file this report or provide required information will result in referral to the Attorney General for civil action including possible substantial civil penalties. Contact your [ethics office](#) for assignment of this final OGE 278 filing requirement.

Confidential Financial Disclosure Report (OGE 450) filers do not have this requirement but should notify an [ethics office](#) of their departure.

B. Use of Nonpublic Information: Even after leaving Government service, you may not use nonpublic information to further your own private interests, or those of another, including your subsequent employer. Nonpublic information includes classified information, source selection data, information protected by the Privacy Act, proprietary information, information protected by the Trade Secrets Act, and other information that has not been made available to the public and is exempt from disclosure.

Questions? Please contact your component's [ethics office](#) for specific guidance regarding the restrictions applicable to your post-DOC employment, even *after* you leave.

This handout is for information purposes only and is not a substitute for advice from an [ethics official](#). Please check our [website](#) for additional ethics guidance and materials.