



Seeking Non-Federal Employment

Purpose and Application: This document summarizes the Government ethics rules applicable to the U.S. Department of Commerce (DOC) officers and employees while seeking non-federal employment.

Legal Notice: This information summarizes statutes and regulations that restrict or otherwise affect activities of DOC personnel while seeking non-federal employment – as secondary employment or in anticipation of departure from federal service. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, you should contact an [ethics official](#) to discuss your particular situation.

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 DHS ethics official are not protected by attorney-client privilege.

I. RESTRICTIONS WHILE SEEKING NON-FEDERAL EMPLOYMENT¹

SIMPLIFIED RULE: Once you begin seeking employment with a prospective employer, you may not take any official action that will affect the financial interest of that prospective employer.

RULE: An officer or employee may not participate personally and substantially in a particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of a prospective employer with whom the employee is seeking employment. 5 C.F.R. § 2635.604.

Definitions:

- *Seeking Employment:* You are “seeking employment” when you in/directly:
 - make an unsolicited communication regarding potential future employment, or
 - engage in negotiations for employment, or
 - provide any response to an unsolicited communication regarding possible employment, other than an outright rejection of the offer for employment.
 - You are no longer seeking employment when:
 - you or the prospective employer reject the possibility of employment and discussions terminate, or
 - two months have transpired since you sent a resume without the prospective employer's indication of interest.
- * Requesting a job application is not seeking employment, but forwarding a resume is seeking employment.
- *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. Participation may be substantial even though it is not determinative of the outcome of a

¹ These rules apply whether you are considering leaving federal service or are exploring secondary employment.

particular matter. However, substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. For example, approving a statement of work or a contract modification would be substantial participation. Providing advice as a subject matter expert on a particular matter could be substantial. If you are unsure whether your involvement on a matter would be considered substantial, please seek the advice of your ethics counsel.

- *Particular Matters* involve deliberation, decision, or action that is focused on the interests of specific persons or a discrete and identifiable class of persons. These 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* could even include legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable group of parties or organizations, e.g., DOC policy affecting only aircraft manufacturers.
- *Direct and Predictable Effect*: There must be a close, causal link between any action taken on the matter and an expected effect on a specific financial interest. An effect may be direct even though it does not occur immediately. A particular matter that has an effect on the financial interest only because of its effects on the general economy is not a direct effect. There must also be a real, not speculative, possibility that the matter will affect the financial interest, but the size of the gain or loss is not relevant.

5 C.F.R. § 2635.603 and 2635.402(b).

DISQUALIFICATION: If you are asked to participate in a particular matter that could affect the interests of a non-federal entities with whom you are seeking non-federal employment, you must **disqualify** yourself from participation, unless your supervisor authorizes your participation, after consultation with an appropriate ethics official. Disqualification means stopping all work the matter.

Procurement-Related Disqualification: If you work in a procurement capacity, please refer to the PROCUREMENT INTEGRITY RESTRICTIONS RELATED TO SEEKING EMPLOYMENT AND POST-GOVERNMENT EMPLOYMENT handout for specific disqualification requirement applicable to you.

Withdrawal of Disqualification: When you are no longer seeking employment, because either you or the prospective employer have rejected the possibility of employment or because two months have passed without a response from the prospective employer, you should withdraw any formal disqualification (e.g., written notice to your supervisor and an ethics official).

II. RESTRICTIONS WHILE NEGOTIATING NON-FEDERAL EMPLOYMENT

SIMPLIFIED RULE: Once you have started negotiating with a prospective employer, you may not take any official action that will affect the financial interests of that prospective employer.

RULE: An officer or employee may not personally and substantially participate in a particular matter involving a prospective employer that will have a direct and predictable effect on

the financial interest of that prospective employer. An employee or officer's arrangement or negotiation for prospective employment is considered a financial interest in that prospective employer/company. 18 U.S.C. § 208; 5 C.F.R. § 2635.606.

Definitions:

- *Negotiating*: An employment “negotiation” is any discussion or communication with an organization, or its agent or intermediary (such as a “headhunter”), with the mutual view of reaching an agreement regarding possible employment.
- See the preceding section for definitions of *particular matter*, *personal and substantial participation*, and *direct and predictable effect*.

5 C.F.R. § 2635.603(b) and (d).

DISQUALIFICATION: You must disqualify yourself from official participation in particular matters that may affect the interests of any non-federal entities with whom you are negotiating or have arrangements for non-federal employment, even if your supervisor has previously authorized your participation in the matter while “seeking” employment. Failure to disqualify may result in a violation of a criminal statute.

STOCK Act Notification Requirement: If you are a Public Financial Disclosure Report (OGE 278) filer, you are required to file an employment negotiation notice ([STOCK Act Notice](#)) with this office within three (3) business days of beginning employment negotiations, receiving payment, or having an arrangement for future employment with a non-federal entity.

III. MISCELLANEOUS MATTERS

ETHICS GUIDANCE MAY BE ADVISABLE. If you are considering secondary employment or departure from federal service, it may be advisable to seek ethics guidance related to the rules both while seeking and negotiating to understand how the conflict of interest rules apply while you remain a federal employee and to ensure your post-government employment restrictions will not impact your non-federal position. 18 U.S.C. §§ 207 and 208; see also 5 C.F.R. Part 26345, Subpart F and Part 2641.

REPRESENTING TO THE GOVERNMENT. While in Government service, including while on leave, you are prohibited from representing someone else, with or without compensation, before any Federal agency or court regarding particular matters in which the United States is a party or has a direct and substantial interest. 18 U.S.C. §§ 203 and 205.

INTERVIEW EXPENSES. While the general prohibition on acceptance of gifts from outside sources would generally not permit acceptance, you may accept travel expenses (meals, lodging, transportation) from a prospective employer if these benefits are customarily provided to all prospective employees in connection with *bona fide* employment discussions. If the performance of your official duties could affect the prospective employer, you must first be disqualified from acting on those matters. 5 C.F.R. § 2635.204(e)(3). If the value of the travel expenses exceeds \$480 (aggregating gifts valued in excess of \$192) and you file a financial disclosure report, remember you must report this gift on your report.

MILITARY MEMBERS.

Holding Civil Office in State or Local Government. While on active duty, including terminal leave, military officers are prohibited from holding a civil office with a state or local government. 10 U.S.C. § 973(b).

Accepting a Federal Civilian Position. Military personnel on terminal leave are authorized to accept a civilian position in the U.S. Government and receive the pay and allowances of that position as well as their military pay and allowances. 5 U.S.C. § 5534(a).

Questions? Please contact the Commerce [ethics office](#) for specific guidance regarding the restrictions applicable to your seeking non-federal employment activities.

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.