



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 senior employees. **Senior** employees are:

- Civilian (non/career) personnel whose rate of base pay is equal to or greater than 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-7 or above.

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. One Year Cooling-Off Period: Department Representational Ban

SIMPLIFIED RULE: For one year after leaving a senior position, you may not represent someone else, with intent to influence, before your former agency regarding official action.

RULE: For a period of one year after leaving a senior position, former senior officials may not make any communication or appearance on behalf of any other person, with intent to influence, before any officer or employee of the agency in which the individual served within the one year prior to leaving the senior position, in connection with any matter on which official action is sought by such individual. 18 U.S.C. § 207(c). This does not bar behind-the-scenes or in-house assistance (e.g., advising but not participating in any representation or communication). However, behind-the-scenes support may not include disclosure of protected nonpublic information.

Definitions:

- *Representation* must be a communication or appearance, on behalf of someone else, with the intent to influence.

¹ 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.

- A *communication* occurs when you impart or transmit information of any kind – including facts, opinions, ideas, questions or direction – to government employees, whether verbally, in written correspondence, by electronic media, or by any other means. This includes those communications in which you intend that the information conveyed will be attributed to you, although it is not necessary that any government employee actually recognize you as the source of information.
- An *appearance* occurs when you physically present yourself before government employees, in either a formal or informal setting. Mere presence in a meeting may be an appearance, even without communication, if your presence is intended to influence the present government employees.
- *Intent to influence* includes any representations that may be interpreted as an attempt to persuade government employees to take action, such as for the purpose of seeking a discretionary government meeting, ruling, benefit, approval, or other action. It may include representations made for the purpose of influencing government action in connection with a matter that is in dispute – for example, if a former employee called to complain about the methodology the agency is utilizing to audit the former employee’s client. There is “no intent to influence” for representations involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.
- *On behalf of someone else* does not include representing yourself but would include representing a business organization that has a separate legal identity, even if owned exclusively by you.
- *Agency* is defined as the separate agencies (or operating units) of the department, except for Presidential Appointees confirmed by the Senate for whom the restriction applies across the entire department. Currently, the designated separate agencies are:
 - Bureau of the Census
 - Bureau of Economic Analysis (effective June 26, 2020)
 - Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992)
 - Economic Development Administration
 - International Trade Administration
 - Minority Business Development Agency (formerly listed as Minority Business Development Administration)
 - National Institute of Standards and Technology (effective March 6, 2008)
 - National Oceanic and Atmospheric Administration
 - National Technical Information Service (effective March 6, 2008)
 - National Telecommunications and Information Administration
 - United States Patent and Trademark Office (formerly Patent and Trademark Office)

B. 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.

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 military 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 in 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. For example, if you were performing team lead responsibilities, checking that another’s assigned work as being completed, without comment on the merits, this would not be substantial involvement.

This ban remains for the lifetime of the *particular matter*. This does not bar behind-the-scenes or in-house assistance. However, behind-the-scenes support may not include disclosure of protected nonpublic information.

C. 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.

D. 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.

E. Assistance to a Foreign Government: One-Year Advice Ban

SIMPLIFIED RULE: For *one year* after leaving a senior position, you may not aid, advise, or represent a foreign government or foreign political party with the intent to influence the U.S. Government.

RULE: For a period of one year after leaving a senior position, former *senior employees* may not knowingly aid, advise, or represent a foreign government or foreign political party, with the intent to influence any officer or employee of any Federal department, agency, or Member of Congress. Unlike most other representational bans, this one *does not permit* behind-the-scenes assistance to a foreign government or political party, *and* the representation prohibition applies to all branches of the Federal Government. 18 U.S.C. § 207(f)

F. Exceptions to Representational Bans

There are exceptions to the restrictions of 18 U.S.C. § 207.

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:

You are generally not restricted from giving testimony under oath or from making statements required to be made under penalty of perjury, subject to a special rule with respect to expert opinion testimony. Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the United States (or the Congress) if he is subject to the lifetime prohibition contained in section 207(a)(1) relating to that matter.

Before relying on an exception to the representational bans, we recommend you consult an ethics

attorney for guidance.

G. 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.

H. USPTO Supplement

Individuals who practice in patent matters before the USPTO must be authorized under 37 CFR § 11.10(a). This means that administratively inactive registered practitioners must comply with 37 CFR § 11.11(c) and (f)(2) to be reactivated after leaving USPTO employment. It also means that former USPTO employees must sign [Form PTO-275](#), Undertaking Under 37 CFR § 11.10(b), before practicing (or applying for registration to practice) in patent matters before the USPTO. *See* [37 C.F.R. § 11.10\(b\)](#). This form must be submitted to the [Office of Enrollment and Discipline](#) (OED). For questions about these requirements, please contact OED at OED@uspto.gov or (571) 272-4097.

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. RESTRICTIONS FOR OUTGOING POLITICAL APPOINTEES

If you are a political appointee, you signed President Biden's Ethics Pledge, pursuant to Executive Order 13989) and agreed to abide by certain additional post-government employment restrictions. Pledge para. 4-6.

RULE: Two-Year Cooling-Off Period. For two years after leaving a senior position, you may not make any communication or appearance on behalf of any other person, with intent to influence, before any officer or employee of DOC, including all components, in which you served within the one year prior to leaving the senior position or before any *senior White House staff*, in connection with any matter on which official action is sought. In other words, you are subject to an extension and expansion of the cooling-off period in 18 U.S.C. § 207(c) discussed above. Pledge para. 4.

Definition:

- *Senior White House staff* means any person appointed by the President under 3 U.S.C. § 105(a)(2)(A)-(B), or the Vice President under 3 U.S.C. § 106(a)(1)(A)-(B). Such appointees traditionally serve as personal staff of advisors or assistants.

RULE: One-Year Ban. For one year after leaving a senior position, you may not *materially assist* others in making communications that you are prohibited from undertaking by: (a) holding yourself out as being available to engage in *lobbying activities* in support of any such communications or appearances; or (b) engaging in any such lobbying activities. Pledge para. 5.

Definitions:

- *Materially assist* means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual's subject matter expertise, nor any conduct or assistance permitted under 18 U.S.C. § 207(j).
- *Lobbying activities* are lobbying contacts and any efforts in support of such contacts, including preparation or planning activities, research, and other background work that is intended, at time of preparation, for use in contacts and coordination with lobbying activities of others.

RULE: Lobbying Ban. Once you leave Government service, you may not lobby (act as a registered lobbyist) back to any Flag/General officer or political appointee in the Federal Government or engage in any registrable activity under the Foreign Agents Registration Act 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

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.

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.

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