

# Summary of the Ethics Rules for Seeking Employment

---

Please note that reliance on the oral or written advice of an agency ethics official or the Office of Government Ethics cannot ensure that a former employee will not be prosecuted for a violation of 18 U.S.C. § 208 . However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. In the case in which the Office of Government Ethics issues a formal advisory opinion in accordance with subpart C of 5 C.F.R. part 2638, the Department of Justice will not prosecute an individual who acted in good faith in accordance with that opinion. Additionally, ethics officials represent the Government and the provision of advice by an ethics official does not create an attorney-client relationship or any other confidential relationship. Accordingly, a current or former employee who discloses information to an agency ethics official, to a Government attorney, or to an employee of the Office of Government Ethics does not personally enjoy an attorney-client privilege with respect to such communication.

## FINANCIAL DISCLOSURE REPORTING REQUIREMENT

**OGE Form 278.** If you are required to file an OGE Form 278 in your current position, you must file a termination OGE Form 278 on or before the 30<sup>th</sup> day after you leave Government service. If you file your OGE Form 278 more than 30 days after the due date or more than 30 days after the last day of an extension, whichever occurs later, you must pay the United States a \$200 late filing fee.

## SEEKING NON-FEDERAL EMPLOYMENT

### 5 C.F.R. §§ 2635.601 to 2635.606; 18 U.S.C. § 208

In general, you are free to seek post-Government employment, but you may need to be disqualified from working on some Government matters while doing so.

An executive branch-wide regulation prohibits you from participating personally and substantially in a particular matter that will have a direct and predictable effect on the financial interests of a prospective employer with whom you are “seeking employment,” even if your job search has not progressed to actual negotiations.

## Definitions

You have begun “seeking employment” if:

- a prospective employer has contacted you about possible employment and you make a response other than rejection;
- you have contacted a prospective employer about possible employment, unless the sole purpose of the contact is to request a job application (generally, you are seeking employment with any person to whom you send an unsolicited resume, regardless of how many resumes you send to other employers at the same time); or
- you are engaged in actual negotiations for employment. (“Negotiation” begins when you enter into a discussion or communication with another person, or such person’s agent or intermediary, which is mutually conducted with a view toward reaching an agreement regarding possible employment or compensation with that person. This term is not limited to discussions of specific terms and conditions of employment in a specific position.)

You have not begun seeking employment if:

- a search firm or other intermediary is involved, unless the intermediary identifies the prospective employer to you; or
- you submit a resume or other employment proposal to a person or organization that is affected by the performance or nonperformance of your duties only as part of an industry or other discrete class, unless you receive a response from the prospective employer indicating an interest in discussions.

Example: Ann is writing a regulation affecting all oil companies. ExxonMobil will be affected by this regulation, but only as a member of the discrete class of oil companies. Ann sends a resume to ExxonMobil. Since this is the only duty of Ann’s that will affect ExxonMobil, and since it only affects ExxonMobil as part of a discrete class (oil companies), Ann is not seeking employment and may continue writing the regulation. If, however, she receives a response from ExxonMobil indicating an interest in employment discussions, she has begun seeking employment and must recuse (disqualify) herself from participation in writing the regulation.

You are no longer seeking employment if:

- two months have elapsed since your dispatch of an unsolicited resume and you have received no expression of interest from the prospective employer; or
- either you or the prospective employer rejects the possibility of employment and all discussions of possible employment have ended. A response that merely defers discussion until the foreseeable future does not constitute rejection.

Example 1: An employee of the Bureau of Land Management (BLM) is working on a rulemaking that will affect the financial interests of a number of companies. A representative of one of the affected companies compliments the employee on her work and asks her to call if she is ever interested in leaving Federal service. The employee explains to the representative that she is very happy with her job at BLM and is not planning on leaving Government service in the foreseeable future. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on the rulemaking but would like to discuss employment when the rulemaking is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has not rejected the possibility of employment and has begun seeking employment with the company.

Example 3: A geologist employed by the U.S. Geological Survey has been working as a member of a team preparing the Government's case in an action brought by the Government against six oil companies. The geologist sends her resume to an oil company that is a named defendant in the action. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.

Particular matter. Includes only matters that involve deliberation, decision, or action that is focused on the interests of:

- a specific person or persons or
- a discrete and identifiable class of persons.

A matter that focuses on the interests of a large and diverse group of persons is not a particular matter. For example, deliberations, decisions, or actions focused on the public

as a whole are not particular matters. Consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons are not particular matters.

Person. The term "person" includes an individual, corporation, association, firm, partnership, or any other organization or institution. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia.

Financial interest. A prospective employer has a financial interest if there is the potential for gain or loss to the prospective employer. The magnitude of the potential gain or loss need not be known and the dollar amount of the gain or loss is immaterial.

Personal and substantial participation. To participate "personally" means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate "substantially" means that the employee's involvement is of significance to the matter. Participation may be substantial even though it does not determine the outcome of a particular matter. However, it 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 the 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. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter.

Example: An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns \$20,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered "substantial."

Direct and predictable effect. A particular matter will have a "direct" effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest

only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part.

A particular matter will have a "predictable" effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Note: An employee violates the regulation and, if negotiating, the statute we will address below if he participates in a particular matter that has a direct and predictable effect on his prospective employer's financial interest even if the employee's specific work on the particular matter does not have a direct and predictable effect on the financial interest of the prospective employer.

Example: John is seeking employment with The Nature Conservancy. John and his colleague, Carol, are assigned to evaluate eight grant applications and send the four best applications to a panel. The panel decides which one organization receives the grant. The Nature Conservancy is one of the eight organizations to submit a grant application. John and Carol decide to split up the work, and each will evaluate four applications. Carol agrees to evaluate The Nature Conservancy's application. Under these circumstances, John will violate the regulation (and the statute if he has begun negotiations with The Nature Conservancy), even though he does not personally evaluate The Nature Conservancy's application.

#### 18 U.S.C. § 208

In addition to the regulation discussed above, a Federal criminal conflict of interest statute prohibits you from participating in any matter that would have a direct and predictable effect on your own financial interests or on the financial interests of a person or organization with whom your job search has progressed to actual negotiations or an arrangement concerning prospective employment. "Negotiation" begins when you enter into a discussion or communication with another person, or such person's agent or intermediary, which is mutually conducted with a view toward reaching an agreement regarding possible employment or compensation with that person. This term is not limited to discussions of specific terms and conditions of employment in a specific position. This is not a high threshold.

Example: An employee of the U.S. Fish and Wildlife Service (USFWS) is responsible for oversight of a USFWS grant to a university. While discussing the grant with a university administrator, the administrator tells the USFWS employee that his division is thinking about hiring another grant specialist and asks whether the USFWS employee might be interested in leaving USFWS. The USFWS employee says he is interested in knowing what kind of work would be involved. They discuss the duties of

the position the university would like to fill and the USFWS employee's qualifications for the position. They do not discuss salary. The administrator explains that he has not yet received authorization to fill the particular position and will get back to the USFWS employee when he obtains the necessary approval for additional staffing. The USFWS employee has begun seeking employment with the university and, in fact, has actually engaged in negotiations regarding possible employment.

This same conflict of interest statute prohibits you from participating in an official action that will affect your own financial interests. Recent cases have come to light in which employees have participated, prior to leaving Government service, in defining requirements or preparing the statement of work for a contract that they anticipated being involved in after leaving Government service. One such case resulted in the employee's criminal conviction under the statute, on the theory that the employee had taken official actions that affected his own financial interest.

#### Potential Remedies for Seeking Employment Situations:

- Recusal
- Reassignment or Transfer
- Annual Leave
- Leave without Pay
- Impartiality Authorization (5 C.F.R. § 2635.605(b) – note that this won't protect an employee who begins negotiating for employment)
- 18 U.S.C. § 208 Waiver (for negotiations)
- Defer Job Search

Recusal simply means you do not participate in a given matter. A recusal is the most common remedy for job search conflicts. It is the default remedy required by 18 U.S.C. § 208 and the regulation, unless and until another remedy resolves the conflict or appearance problem. The ultimate responsibility for recusal rests with you.

Generally, when you are no longer seeking employment with a prospective employer, you no longer have to recuse yourself from work that will affect the prospective employer. Sometimes, however, an offer may have been rejected or not made after negotiations that may present an impartiality concern that you may be biased in favor of or against a person or organization because you were not offered a job. In this situation, an ethics official may make a determination that a reasonable person may question the integrity of the agency's decision-making process, and this concern outweighs the Government's interest in your participation in a particular matter. The agency can then require you to remain recused. The length of time for recusal is up to the agency.

## **Notification and Documentation Requirements**

### **For OGE 278 Filers - The Stop Trading on Congressional Knowledge (STOCK) Act**

#### **Public Law 112-105**

Any employee who is a public financial disclosure report (OGE Form 278) filer must file a signed notification statement with the Designated Agency Ethics Official within three business days after commencing negotiations or entering into an agreement with a non-Federal entity to accept post-Government employment or compensation. Remember, “negotiation” begins when you enter into a discussion or communication with another person, or such person’s agent or intermediary, which is mutually conducted with a view toward reaching an agreement regarding possible employment or compensation with that person. This term is not limited to discussions of specific terms and conditions of employment in a specific position. This is not a high threshold. An example of what constitutes negotiations can be found just above in the section on 18 U.S.C. § 208.

The statement must identify the entity and specify the date the negotiations or agreement commenced. A public filer must also document his or her disqualification from any particular matter that would have a direct and predictable effect on the financial interests of the entity and submit that signed disqualification document to the Designated Agency Ethics Official.

The notification statement and written disqualification may be combined in a single submission. Note, however, that the employee must disqualify himself or herself from official matters affecting a prospective employer as soon as he or she begins seeking employment with that prospective employer (see previous section on 18 U.S.C. § 208 and 5 C.F.R. §§ 2635.601 to 2635.606). The written notification of the employee’s disqualification, required by the STOCK Act, simply documents that existing disqualification for the record.

If an employee has filed a notification statement indicating that he or she is negotiating for employment with a given entity, and later enters into an arrangement for employment with that entity, the employee need not file an additional notification statement to document the arrangement for employment.

Employees should deliver their notification statements and/or written disqualifications to their servicing ethics official, who will forward them to the Designated Agency Ethics Official.

The form on the following page may be used to satisfy this requirement.

**NOTIFICATION OF POST-GOVERNMENT EMPLOYMENT  
OR COMPENSATION NEGOTIATION OR AGREEMENT  
AND RECUSAL STATEMENT**

Section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) requires certain employees to file 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. An employee who files a notification statement also must file with the agency's ethics official a recusal statement whenever there is a conflict of interest or appearance of a conflict of interest with the entity, unless the employee obtains a written waiver as discussed in 5 C.F.R. § 2635.402(d), obtains an authorization as discussed in 5 C.F.R. § 2635.502(d), or qualifies for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

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

|  |  |
|--|--|
| <b>Name of Employee</b>  |  |
| <b>Agency/Office</b>   |  |
| <b>Date Negotiation or Agreement Commenced</b>   |  |
| <b>Name(s) of Non-Federal Entity or Entities</b><br><br>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 comply with all applicable recusal obligations under 5 C.F.R. part 2635 and, where applicable, 18 U.S.C. § 208. I understand that it is my responsibility to consult an agency ethics official if I have questions regarding these recusal obligations.

|   |                       |
|---|-----------------------|
| <b>Employee Signature</b>               | <b>Date Submitted</b> |
|   |                       |
| <b>Agency Ethics Official Signature</b> | <b>Date Received</b>  |
|   |                       |

## **For All Employees - 5 C.F.R. § 2635.604**

Notification. An employee who becomes aware of the need to disqualify himself or herself from participation in a particular matter to which he or she has been assigned should notify the person responsible for his or her assignment. An employee who is responsible for his or her own assignment should take whatever steps are necessary to ensure that he or she does not participate in the matter from which he or she is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he or she is disqualified.

Documentation. An employee who is required to file a public financial disclosure report (OGE Form 278) is required by the STOCK Act to file a written disqualification statement with the Designated Agency Ethics Official if he or she enters into negotiations concerning prospective employment (see above).

An employee who is not required to file an OGE Form 278 need not file a written disqualification statement unless he or she:

1. Is required by 5 CFR part 2634 to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or
2. Is asked by an agency ethics official or the person responsible for his or her assignment to file a written disqualification statement.

However, any employee may elect to create a record of his or her actions by providing written notice to a supervisor or other appropriate official.

## **Procurement Integrity Act**

### **41 U.S.C. § 2102; 48 C.F.R. §§ 3.104-1 to 3.104-9**

An employee may not disclose “contractor bid or proposal information” or “source selection information,” before the award of a Federal agency procurement contract to which the information relates, other than as provided for by law. (Release of information by an employee, both before and after the award, may be prohibited by the Trade Secrets Act (18 U.S.C. § 1905).)

Under the Procurement Integrity Act, if an employee, participating personally and substantially in a procurement for a contract in excess of \$150,000, contacts or is contacted by an offeror in that procurement regarding possible non-Federal employment,

the employee must promptly report the contact in writing to his or her supervisor and to the agency ethics official.

## **PENALTIES AND INJUNCTIONS FOR VIOLATION OF**

### **18 U.S.C. § 208**

(a) Whoever engages in conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in Title 18 of the United States Code, or both.

(b) Whoever **WILLFULLY** engages in conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in Title 18 of the United States Code, or both.

(c) The Attorney General may bring a civil action in the appropriate U.S. District Court against any person who engages in conduct constituting an offense under 18 U.S.C. § 208 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$55,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of such a civil penalty does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available to the U.S. or any other person.

(d) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under 18 U.S.C. § 208, the Attorney General may petition an appropriate U.S. district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of such a petition does not preclude any other remedy which is available by law to the United States or any other person.

These penalties can be found in 18 U.S.C. § 216 (as modified by 28 C.F.R. § 85.3).

## POINTS OF CONTACT

- **DEPARTMENTAL ETHICS OFFICE**  
202-208-7960
- **BUREAU OF INDIAN AFFAIRS (BIA)**  
406-247-1295
- **BUREAU OF RECLAMATION (USBR)**  
303-445-2727
- **BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM)**  
703-787-1648
- **BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT (BSEE)**  
703-787-1417
- **OFFICE OF NATURAL RESOURCES REVENUE (ONRR)**  
202-513-0344
- **NATIONAL PARK SERVICE (NPS)**  
202-354-1981
- **OFFICE OF THE INSPECTOR GENERAL (OIG)**  
703-487-5439
- **OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE)**  
202-208-2704
- **U.S. FISH AND WILDLIFE SERVICE (USFWS)**  
503-326-2008 or 703-358-2534
- **U.S. GEOLOGICAL SURVEY (USGS)**  
703-648-7422, 7439, and 7474
- **BUREAU OF LAND MANAGEMENT (BLM)**  
202-912-7486
- **NATIONAL INDIAN GAMING COMMISSION (NIGC)**  
202-606-0113 or 202-379-6972

- **OFFICE OF THE SPECIAL TRUSTEE (OST)**  
505-816-1400

THIS DOCUMENT PROVIDES ONLY A SUMMARY OF THE SEEKING EMPLOYMENT RESTRICTIONS. IF YOU HAVE ANY QUESTIONS REGARDING ANY OF THESE RESTRICTIONS, YOU SHOULD SEEK THE ADVICE OF YOUR SERVICING ETHICS COUNSELOR OR THE DEPARTMENTAL ETHICS OFFICE AT:

U.S. DEPARTMENT OF THE INTERIOR  
DEPARTMENTAL ETHICS OFFICE  
1849 C ST. NW – MS 7346  
WASHINGTON, D.C. 20240  
(202) 208-7960