Summary of the Ethics Rules for Seeking Employment and Post-Government 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. §§ 203, 207, or 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 278e. If you are required to file an OGE Form 278e in your current position, you must file a termination OGE Form 278e not earlier than 15 days before your termination date but not later than the 30th day after you leave Government service.1 If you file your OGE Form 278e 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


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.

1 An employee filing before his or her termination date must agree to update the termination report in the event there are changes to reportable information before or on the employee’s termination date.
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 may participate in a particular matter affecting a prospective employer when: (1) your only communication with the prospective employer in connection with the employment search is the submission of an unsolicited resume or other employment proposal; (2) the prospective employer has not responded to the unsolicited communication with a response indicating interest in employment discussions; and (3) the matter does not involve specific parties.

**Example.** A DOI employee is working on a regulation that will affect surface mining operations. The employee sends a resume to a mining company that would, like all mining companies, be affected by the regulation. The mining company has not responded to the employee’s resume submission. Because the regulation is not a specific party matter (it applies to all mining companies), the employee may continue to work on the regulation until he or she receives some response from the prospective employer indicating an interest in discussing prospective employment. A letter from the mining company acknowledging receipt of the resume is not considered a response indicating an interest in employment discussions.
You have not begun seeking employment if:

- a search firm or other intermediary is involved, unless the intermediary identifies the prospective employer to you;
- you list your job duties and experience in a profile on an online, business oriented social networking service, without targeting a specific prospective employer, because the posting of such a profile or resume is not a communication with any prospective employer;
- you learn that a prospective employer has viewed your profile online; or
- you receive emails from various companies in response to the online profile posting, but do not respond.

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.
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 Form 278e Filers - The Stop Trading on Congressional Knowledge (STOCK) Act

Public Law 112-105; 5 C.F.R. § 2635.607

Any employee who is a public financial disclosure report (OGE Form 278e) 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 2635.607). 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

NOTIFICATION OF POST-GOVERNMENT EMPLOYMENT
OR COMPENSATION NEGOTIATION OR AGREEMENT

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<td>Disclose each non-federal entity with which you are negotiating for, or have an agreement of, future employment or compensation.</td>
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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.

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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 278e) 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 278e 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


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 $250,000, 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.
Post-Government Employment Restrictions

18 U.S.C. § 207

NONE OF THE PROVISIONS OF 18 U.S.C. § 207 BAR ANY FEDERAL EMPLOYEE, REGARDLESS OF RANK OR POSITION, FROM ACCEPTING EMPLOYMENT WITH ANY PRIVATE OR PUBLIC SECTOR EMPLOYER. THEY MAY, HOWEVER, RESTRICT CERTAIN COMMUNICATIONS THAT FORMER EMPLOYEES MAY MAKE AS A REPRESENTATIVE OF A THIRD PARTY BACK TO THE FEDERAL GOVERNMENT AND CERTAIN ASSISTANCE THEY MAY PROVIDE TO THIRD PARTIES.

Your annual rate of pay, your pay schedule, and whether or not you were assigned to DOI from a private sector organization under the Information Technology Exchange Program (5 U.S.C., chapter 37) determine exactly which of the statute’s provisions will apply to you. Specifically, when you leave Federal service:

If your annual rate of basic pay (excluding locality pay or additional pay such as bonuses, awards, and various allowances) is less than 86.5% of the annual rate of basic pay for Executive Schedule Level II (that is, less than $164,004.00 effective January 7, 2018), you may be subject to three provisions -- 18 U.S.C. §§ 207(a)(1), (a)(2), and (b).

If you are in a position included in Levels II through V of the Executive Schedule, or your annual rate of basic pay (excluding locality pay or additional pay such as bonuses, awards, and various allowances) is at or above 86.5% of the annual rate of basic pay for Executive Schedule Level II (that is, at or above $164,004.00 effective January 7, 2018), you may be subject to five provisions -- 18 U.S.C. §§ 207(a)(1), (a)(2), (b), (c), and (f).

Executive Schedule Level I employees (Very Senior Employees) who terminate from Federal service may be subject to the five following post-employment provisions -- 18 U.S.C. §§ 207(a)(1), (a)(2), (b), (d), and (f).

Finally, if you are assigned from a private sector organization to DOI under the Information Technology Exchange Program (5 U.S.C., chapter 37), you will also be subject to the prohibition contained in 18 U.S.C. § 207(l).
The post-employment prohibitions are explained as follows:

18 U.S.C. § 207(a)(1). “Lifetime” ban on making a communication or appearance involving particular matters involving a specific party or parties. “Lifetime” refers to the lifetime of the matter, not the lifetime of the former employee.

Prohibits all former Government employees from knowingly making, with the intent to influence, any communication to or appearance before an employee of any department, agency, or court of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties in which the former employee participated personally and substantially as a Government employee, and in which the United States is a party or has a direct and substantial interest. This restriction also applies to former special Government employees. This provision does not prohibit behind-the-scenes assistance.

IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” is assistance provided to another that does not involve the former employee making a communication to or appearance before an employee of the United States. However, if the former employee intends that a communication, made by someone else to an employee of the United States, be attributed to the former employee, this is considered a communication by the former employee and does not constitute “behind-the-scenes assistance.”

"Communication to or appearance before" means representational appearances and communications before a Federal Government department, agency, or court, made in an attempt to influence the Federal Government concerning a particular matter in which the former employee was personally and substantially involved.

A "particular matter involving specific parties" typically involves a proceeding affecting the rights of the parties or an isolatable transaction or related set of transactions between identified parties, and the United States must be a party to OR have a direct and substantial interest in the matter.

Note: The term "particular matter involving specific parties" includes any investigation, application, request for a ruling or determination, rulemaking that applies to specific parties, contract, cooperative agreement, partnership agreement, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. It does not include general rulemaking, general legislation, or general policy issues.
"Personal and substantial participation" means direct participation as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. It includes the participation of a subordinate when that subordinate was actually directed by the former employee in the matter. The participation must be of significance to the matter or form a basis for a reasonable appearance of such significance. Involvement on a peripheral issue may not be enough. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort.

“With the intent to influence” – A communication or appearance is made with the intent to influence when made for the purpose of:

a. Seeking a Government ruling, benefit, approval, or other discretionary Government action; or

b. Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

Example 1: A former employee of the National Park Service (NPS) signs a grant application and submits it to NPS on behalf of a nonprofit organization for which she now works. She has made a communication with the intent to influence an employee of the United States because her communication was made for the purpose of seeking a Government benefit.

Example 2: A former Government employee calls an agency official to complain about the auditing methods being used by the agency in connection with an audit of a Government contractor for which the former employee serves as a consultant. The former employee has made a communication with the intent to influence because his call was made for the purpose of seeking Government action in connection with an issue involving an appreciable element of dispute.

Change in circumstances. If, at any time during the course of a communication or appearance, it becomes apparent that circumstances have changed which would indicate that any further communication or appearance would be made with the intent to influence, the former employee must refrain from such further communication or appearance.

Example: A former Government employee accompanies another employee of a contractor to a routine meeting with agency officials to deliver technical data called for under a Government contract. This would not constitute a communication or appearance made with the intent to influence. During the course of the meeting, however, an unexpected dispute arises concerning certain terms of the contract.
The former employee may not participate in any discussion of this issue because this would be a communication made with the intent to influence an employee of her former agency. Moreover, if the circumstances clearly indicate that even her continued presence during this subsequent discussion would be an appearance made with the intent to influence, she should excuse herself from the meeting.

**Mere physical presence intended to influence.** Under some circumstances, a former employee's mere physical presence, without any communication by the employee concerning any material issue or otherwise, may constitute an appearance with the intent to influence an employee of the United States.

Example: A former Regional Director of the U.S. Fish and Wildlife Service (USFWS) becomes a consultant for a company seeking an incidental take permit. She is hired by the company to coordinate and assist in the permit application process. She accompanies company officers to an informal meeting with USFWS employees that is held for the purpose of allowing company officials to explain to the USFWS why they believe the company’s application meets the permit application requirements. The former employee is introduced at the meeting as the company's adviser, but she does not make any statements during the meeting concerning the application. She is paid a fee for attending this meeting. She has made an appearance with the intent to influence.

Purely social contacts do not constitute communications to and appearances before employees of the United States with the intent to influence.

Example: A BLM employee participated in a proceeding to review the renewal of a right of way for a power company. After terminating Government service, he is hired by the company that holds the right of way. At a cocktail party, the former employee meets his former supervisor who is still employed by BLM and has a social conversation. This would not be a communication made with the intent to influence. The former employee then begins to discuss the specifics of the right of way renewal case with him. The former employee is directing his communication to a BLM employee in his capacity as an employee of the BLM. Moreover, as the conversation concerns the right of way renewal matter, it is not a purely social contact and is therefore made with the intent to influence the Government.

“On behalf of any other person” –

1. “On behalf of” –

   a. A former employee makes a communication or appearance on behalf of another person if the former employee is acting as the other person’s agent or attorney OR if:
(1) The former employee is acting with the consent of the other person, whether express or implied; and

(2) The former employee is acting subject to some degree of control or direction by the other person in relation to the communication or appearance.

b. A former employee does not act on behalf of another merely because his communication or appearance is consistent with the interests of the other person, is in support of the other person, or may cause the other person to derive a benefit as a consequence of the former employee's activity.

2. “Any other person” – “Person” includes an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization, institution, or entity, including any officer, employee, or agent of such person or entity. Unless otherwise indicated, the term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State and local governments. While the term includes the United States, there is a limited exception that applies to all of the provisions of 18 U.S.C. § 207 for a former employee engaged in activities on behalf of the United States. (See 5 C.F.R. § 2641.301(a)(1).) Note that merely acting pursuant to a contract with the United States does not necessarily avail a former employee of this exception. For purposes of this paragraph, the term “person” excludes the former employee himself or any sole proprietorship owned by the former employee.

Example 1: An employee of the Bureau of Land Management (BLM) participated in the decision to grant a private company the right to explore for minerals on certain Federal lands. After retiring from Federal service to pursue her hobbies, the former employee becomes concerned that BLM is misinterpreting a particular provision of the lease. The former employee may contact a current BLM employee on her own behalf in order to argue that her interpretation is correct.

Example 2: The former BLM employee from the previous example later joins an environmental organization as an uncompensated volunteer. The leadership of the organization authorizes the former employee to engage in any activity that she believes will advance the interests of the organization. She makes a communication on behalf of the organization when, pursuant to this authority, she writes to BLM on the organization's letterhead in order to present an additional argument concerning the interpretation of the lease provision. Although the organization did not direct her to send the specific communication to BLM, the circumstances establish that she made the communication with the consent of the organization and subject to a degree of control or direction by the organization.
Example 3: An employee of the U.S. Fish and Wildlife Service wrote the statement of work for a cooperative agreement to be issued to study wildlife conservation strategies. After terminating Government service, the former employee joins a nonprofit group formed to promote conservation. He is asked by his former agency to attend a meeting in order to offer his recommendations concerning the ranking of the grant applications he had reviewed while still a Government employee. The management of the nonprofit group agrees to permit him to take leave to attend the meeting in order to present his personal views concerning the ranking of the applications. Although the former employee is a salaried employee of the non-profit group and his recommendations may be consistent with the group's interests, the circumstances establish that he did not make the communication subject to the control of the group.

Example 4: The Assistant Secretary for Policy, Management and Budget participated in a meeting at which a contractor pressed DOI officials to continue funding the contractor's sole source contract to develop the prototype of a specialized computer software program. After terminating Government service, the former Assistant Secretary approaches the contractor and suggests that she can convince her former DOI colleagues to pursue development of the prototype program. The contractor agrees that the former Assistant Secretary's proposed efforts could be useful and asks her to set up a meeting with key DOI officials for the following week. Although the former Assistant Secretary is not an employee of the contractor, the circumstances establish that she is acting with the consent of and subject to some degree of control or direction by the contractor.


Example 1: A Program Analyst in the Fish and Wildlife Service works on a lawsuit involving Q Company. After leaving Federal service, the former employee accepts a job with a consulting firm that has Q Company as a client. She is asked by the consulting firm to represent it before the Environmental Protection Agency in connection with that same lawsuit.

- She may not do so. For the lifetime of this litigation, she may only represent the United States before an Executive Branch or Judicial Branch agency on this matter.

Example 2: A Government employee, who participated in oversight of a contract awarded to Q Company for the design of certain ground water testing programs, joins Q Company and does work under the contract. He is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when he provides the information to his former agency. Communications which do not include “intent to influence” are not prohibited. During
the meeting, however, a dispute arises as to some terms of the contract, and he is called upon to support Q Company's position.

- He may not do so. If he had reason to believe that the contractual dispute would be the subject of the meeting, he should not have attended.

### Key Elements for 18 U.S.C. § 207(a)(1)

- Knowingly Make
- Appearance or Communication
- Intent to Influence
- To or Before an Employee
- On Behalf of Any Other Person
- U.S. is a Party or Has a Direct and Substantial Interest
- Particular Matter Involving Specific Parties
- Same Particular Matter
- Where Participated Personally and Substantially

### 18 U.S.C § 207(a)(2). Two-year restriction on particular matters involving a specific party or parties where the matters were under your official responsibility

Prohibits all former Government employees from knowingly making, within two years after terminating Government service, with the intent to influence, any communication to or appearance before an employee of any department, agency, or court of the United States on behalf of any other person (except the United States) 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, when the former employee knows or reasonably should know that the matter was actually pending under his or her official responsibility during his or her last year of Government service. This provision does not prohibit behind-the-scenes assistance.

**IMPORTANT DEFINITIONS:**

“Behind-the-scenes assistance” – is defined the same way as for 18 U.S.C. § 207(a)(1).
"Communication to or appearance before" - is defined the same way as for 18 U.S.C. § 207(a)(1).

"Particular matter involving specific parties" - is defined the same way as for 18 U.S.C. § 207(a)(1).

"With the intent to influence" – is defined the same way as for 18 U.S.C. § 207(a)(1).

"On behalf of any other person" – is defined the same way as for 18 U.S.C. § 207(a)(1).

"Official Responsibility" - means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. Official responsibility is usually defined by statute, regulations, written delegation of authority, or job description. AN EMPLOYEE’S RECUSAL FROM OR OTHER NON-PARTICIPATION IN A MATTER DOES NOT REMOVE IT FROM HIS OR HER OFFICIAL RESPONSIBILITY. When facts suggest that a particular matter involving specific parties could have been actually pending under his official responsibility, a former employee should seek guidance from an agency ethics official to clarify his role in the matter.

"Actually pending" - means the matter was in fact referred to or under consideration by persons within the former employee’s area of responsibility.

"Last Year of Service" - means this two-year prohibition only applies to matters that were under the employee’s official responsibility during his or her last year of service.

Example 1: During his tenure as Division head, an employee’s subordinates undertook major changes in agency general enforcement standards. Eighteen months after terminating Government employment, he is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the Division head terminated his employment.

- He may represent Z Company because "general enforcement standards," like general rulemaking and policy making, are not considered particular matters for purposes of the prohibitions under 18 U.S.C. § 207. In addition, the matter (general enforcement standards) pending under the former Division head's official responsibility was not a particular matter involving "a specific party."
**Example 2:** Within two years after terminating, a bureau's former Budget Officer is asked to represent Q Company in a dispute arising under a contract which was in effect during her time in office. The dispute concerns an accounting formula under the contract, a matter on which a subordinate of the former officer was consulted.

- She may not represent Q Company on this matter. Even though the subordinate was not the decision maker, the involvement of that person in making a recommendation on the matter was under the "official responsibility" of the former Budget Officer during her last year in office.

**Key Elements for 18 U.S.C. § 207(a)(2)**

- Knowingly Make
- Appearance or Communication
- Intent to Influence
- To or Before an Employee Within Two Years After Leaving Government Service
- On Behalf of Any Other Person
- U.S. is a Party or Has a Direct and Substantial Interest
- Particular Matter Involving Specific Parties
- Same Particular Matter
- Pending Under Official Responsibility During Last Year of Government Service

**18 U.S.C. § 207(b). One-year restriction on aiding and advising with regard to a trade or treaty negotiation.**

For one year after Government service terminates, no former employee may knowingly REPRESENT, AID, OR ADVISE, on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his or her last year of Government service, he or she participated personally and substantially as an employee. **Unlike the lifetime and two-year bans, this restriction prohibits behind-the-scenes assistance to anyone other than the United States in connection with the particular trade or treaty negotiation.**
IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” – is defined the same way as for 18 U.S.C. § 207(a)(1).

"Trade negotiation" - means negotiations which the President determines to undertake to enter into a trade agreement pursuant to 19 U.S.C. § 2902, and does not include any action taken before that determination is made.

"Treaty" - means an international agreement made by the President that requires the advice and consent of the Senate.

"Covered information" - means agency records which were accessible to the employee that he or she knew or should have known were designated as exempt from disclosure under the Freedom of Information Act and which concern a negotiation in which the employee participated personally and substantially during his or her last year of Government service.

Example: A former employee attends a hearing on a treaty in which she had participated while in her last year of Government service. She speaks with the representative of a private party during the hearing. If, during that conversation, the former employee lends assistance to the representative, a violation occurs.

ADDITIONAL RESTRICTION THAT APPLIES ONLY TO FORMER "SENIOR EMPLOYEES"

Senior Employee means all positions included in Levels II through V of the Executive Schedule and those employees whose annual rate of basic pay (excluding locality pay or additional pay such as bonuses, awards, and various allowances) is at or above 86.5% of the annual rate of basic pay for Executive Schedule Level II (that is, at or above $164,004.00 effective January 7, 2018).

18 U.S.C. § 207(c). One-year restriction on communications with one's former agency.

For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of an agency (see discussion on separate agency components in “Important Factors” section below) in which he or she served in any capacity during the one-year period prior to termination from "senior" service, if the communication or appearance is made on behalf of any other person (except the United States), in
connection with **any matter** on which the former senior employee seeks official action by any employee of such agency. This provision does not prohibit behind-the-scenes assistance.

**IMPORTANT DEFINITIONS:**

“Behind-the-scenes assistance” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“Communication to or appearance before” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“With the intent to influence” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“On behalf of any other person” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“Matter on which former senior employee seeks official action”

“Seeks official action” – A former senior employee seeks official action when the circumstances establish that he or she is making his communication or appearance for the purpose of inducing a current employee of his or her former agency to make a decision or to otherwise act in his official capacity.

“Matter” – The term “matter” is virtually all-encompassing with respect to the work of the Government. Accordingly, **the prohibition on seeking official action applies with respect to virtually any work of the Government**, including but not limited to:

- any "particular matter involving a specific party or parties";
- a matter that focuses on the interests of a discrete and identifiable class of persons;
- the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons;
- a new matter that was not previously pending at or of interest to the former senior employee's former agency; and
- a matter pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch.
For example, 18 U.S.C. § 207(c) would prohibit a former senior employee from asking a current employee of his former agency to attend or speak at a conference in the current employee’s official capacity, if the former employee is asking on behalf of the conference planner.

IMPORTANT FACTORS:

1. Unlike the lifetime ban under 18 U.S.C. § 207(a)(1), the two-year ban under 18 U.S.C. § 207(a)(2), and the one-year ban under 18 U.S.C. § 207(b), this one-year "cooling off" ban does not require that the former senior employee have ever been in any way involved in the matter that is the subject of the communication or appearance.

2. This ban only prohibits communications to or appearances before employees of any department or agency in which the former senior employee formerly served in any capacity during the one-year period prior to his or her termination from senior service. However, it does not prohibit “behind-the-scenes” assistance.

3. Separate agency components

   a. For purposes of 18 U.S.C. § 207(c) and its implementing regulation 5 C.F.R. § 2641.204 only, the Director of the Office of Government Ethics may designate agency “components” that are distinct and separate from the “parent” agency and from each other. An eligible former “senior” employee who served in the parent agency is not barred by section 207(c) from making communications to or appearances before any employee of any designated component of the parent, but is barred as to any employee of the parent or of any agency or bureau of the parent that has not been designated as a separate component. An eligible former “senior” employee who served in a designated component of the parent agency is barred from communicating to or making an appearance before any employee of that designated component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated as a separate component.

   b. The Director of the Office of Government Ethics has designated the following seven (7) bureaus as separate and distinct agency components within the parent agency Department of the Interior (DOI):

      Bureau of Indian Affairs;

      Bureau of Land Management;
Bureau of Reclamation;

National Park Service;

Office of Surface Mining Reclamation and Enforcement;

U.S. Fish and Wildlife Service; and


Note that all designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary. Thus, a senior employee serving on the immediate staff of an Assistant Secretary is barred from communicating to or making an appearance before any employee of the parent Department of the Interior, as well as all designated components under the jurisdiction of that Assistant Secretary.

Note also that the Bureau of Ocean and Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) are NOT designated as separate components.

c. For example, the one-year restriction under 18 U.S.C. § 207(c) only prohibits eligible former senior employees of the National Park Service from making communications to or appearances before employees of the National Park Service; it does not prohibit the eligible former senior employee of the National Park Service from contacting any employee of the parent organization, such as an employee of the Office of the Secretary, or any employee of one of the other designated components, such as an employee of the U.S. Geological Survey.

d. On the other hand, an eligible former senior employee of the parent Department of the Interior, including but not limited to the Office of the Secretary, Office of the Solicitor, Office of Inspector General, BOEM, BSEE, or ONRR, may not communicate to or appear before any of those offices, or any other portion of the Department that is not one of the seven designated components above, but may communicate to or appear before any designated component, such as the Bureau of Reclamation. Such former senior employees should be cautious, however, in that Office of the Solicitor attorneys often participate in various matters alongside employees of the designated component they serve. For example, a former senior employee of the Office of the Secretary may be restricted in her abilities to represent a client in a lawsuit against the National Park Service, as Office of the Solicitor attorneys are likely to represent the National Park Service in the matter.
4. Individuals who have served as Deputy Secretary, Solicitor, Inspector General, as any of the five Assistant Secretaries, as a Bureau Head (other than the Directors of the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement), or as the Chair or an Associate Commissioner of NIGC are not considered eligible former senior employees and, therefore, do not benefit from the designation of separate agency components because they serve in a position for which the rate of pay is specified in or fixed according to the Executive Schedule. (5 CFR § 2641.201(e)(2)(i)). These individuals are prohibited from communicating to or appearing before any employee of the entire Department of the Interior.

5. The matters covered by this ban are broader than those covered by 18 U.S.C. §§ 207(a)(1) or (a)(2). They include virtually any work of the Government.

Example 1: Eleven months after leaving the Department, a former senior employee of the Office of the Secretary wishes to contact a current employee of the Office of the Solicitor, on behalf of a conference planner, to request that the current employee consider speaking in his official capacity at the conference planner’s upcoming conference.

- He may not do so. A request that an employee speak at an event is considered a particular matter involving a specific party or parties, in which the event sponsor is a party. And in this instance, the former senior employee would be making his communication or appearance, on behalf of the conference planner, for the purpose of inducing a current employee of his or her former agency to make a decision or to otherwise act in his official capacity in this matter.

Example 2: A senior employee of the Bureau of Reclamation leaves Government employment for private practice and shortly thereafter telephones a former associate urging that the Bureau (a) adopt a new procedure to put a ceiling on costs of grants; (b) not adopt a particular rule proposed for drug testing of Federal employees; (c) oppose a bill pending in Congress relating to Bureau of Reclamation programs.

- These contacts are all prohibited by the one-year ban. The first, not yet pending, is of interest to the Bureau; the second is pending in the Bureau; and the third is pending elsewhere, and is of interest to the Bureau. The former senior employee may communicate his or her views to Congress, other bureaus, other agencies, the public or the press.
- This one-year ban is not limited to "particular matters involving a specific party or parties." It covers general regulations, general legislation, and general policy issues.

Example 3: Eight months after he leaves, a former senior employee of the National Park Service is asked by his employer Z Company to represent them in a new matter pending before the Park Service. The former employee had no prior involvement in the
matter and the matter was not previously pending before the Park Service when the employee worked there.

- He may not do so. This one-year ban covers all matters that come up in the employee's former bureau or office within one year after the senior employee leaves. The fact that the matter was not pending when the former senior employee worked in the Park Service is not relevant since this ban covers all matters including those that come up after a senior employee leaves.

Example 4: Eight months after he leaves, a former senior employee serving on the immediate staff of the Office of the Assistant Secretary for Fish and Wildlife and Parks is asked by his employer Z Company to represent Z Company on separate matters pending before the Fish and Wildlife Service and the Bureau of Land Management.

- The former senior employee may appear before the Bureau of Land Management but not before the Fish and Wildlife Service. The Assistant Secretary for Fish and Wildlife and Parks has jurisdiction over the National Park Service (NPS) and the Fish and Wildlife Service (FWS). Therefore, under the component rule above, the former senior employee is barred from contacting the parent Department of the Interior, the NPS, and the FWS. He is not barred from contacting any other designated component of the Department on any of these matters.

Example 5: After leaving the Department, a former Assistant Secretary for Land and Minerals Management becomes a consultant. Six months after leaving his position as Assistant Secretary, he wishes to contact a National Park Service employee on behalf of his client, requesting that the National Park Service employee meet with his client regarding a potential collaborative effort between his client and the National Park Service.

- He may not do so. As a former Assistant Secretary, he is not an eligible senior employee and therefore does not benefit from the designation of separate agency components. In other words, the former Assistant Secretary is banned, for one year after leaving his position, from knowingly making, with the intent to influence, any communication to or appearance before any employee of the Department of the Interior, if the communication or appearance is made on behalf of any other person (except the United States), in connection with any matter on which the former senior employee seeks official action by any employee of the Department. The communication would be made with the intent to influence because it would be seeking a discretionary Government action— a decision whether to meet with the former Assistant Secretary’s client. Because the former Assistant Secretary would be making his communication on behalf of his client, the communication is prohibited.
**Key Elements for 18 U.S.C. § 207(c)**

- Knowingly Make
- Appearance or Communication
- Intent to Influence
- To or Before an Employee of Former Agency Where Served Within One Year of Leaving Senior Service
- On Behalf of Any Other Person
- In Connection with Any Matter Where Seeking Official Action

**ADDITIONAL RESTRICTION THAT APPLIES ONLY TO FORMER "VERY SENIOR" EMPLOYEES**

Very Senior Employee means an Executive Schedule Level I employee. The only “Very Senior Employee” in the Department of the Interior is the Secretary.

**Former Very Senior Employees are subject to all of the provisions that apply to Former Senior Employees, except that 18 U.S.C. § 207(d) applies to them instead of 18 U.S.C. § 207(c).**

**18 U.S.C. 207(d). Two-year restriction on communications with one's former agency and with any individual in an Executive Level position.**

For two years after service in a “very senior” position terminates, no former “very senior” employee may knowingly make, with the intent to influence, any communication to or appearance before:

1. Any individual appointed to an Executive Schedule position or,

2. Any employee of an agency in which the former “very senior” employee served during the one-year period prior to termination from a “very senior” employee position

if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter on which the former “very senior” employee seeks official action by any official or employee. This provision does not prohibit behind-the-scenes assistance.
IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“Communication to or appearance before” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“With the intent to influence” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“On behalf of any other person” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“Matter on which former very senior employee seeks official action”

“Seeks official action” – A former very senior employee seeks official action when the circumstances establish that he or she is making a communication or appearance for the purpose of inducing a current employee of his or her former agency to make a decision or to otherwise act in the current employee’s official capacity.

“Matter” – The term “matter” is virtually all-encompassing with respect to the work of the Government. Accordingly, the prohibition on seeking official action applies with respect to virtually any work of the Government, including but not limited to:

- any "particular matter involving a specific party or parties";
- a matter that focuses on the interests of a discrete and identifiable class of persons;
- the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons;
- a new matter that was not previously pending at or of interest to the former senior employee's former agency; and
- a matter pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch.

IMPORTANT FACTOR:

1. Unlike the lifetime ban under 18 U.S.C. § 207(a)(1), the two-year ban under 18 U.S.C. § 207(a)(2), and the one-year ban under 18 U.S.C. § 207(b), this two-year
"cooling off" ban does not require that the former very senior employee have ever been in any way involved in the matter that is the subject of the communication or appearance.

Example 1: The former Attorney General may not contact the Assistant Attorney General of the Antitrust Division on behalf of a professional sports league in support of a proposed exemption from certain laws, nor may he contact the Secretary of Labor. He may, however, speak directly to the President or Vice President concerning the issue.

Example 2: The former Director of the Office of Management and Budget (OMB) is now the Chief Executive Officer of a major computer firm and wishes to convince the new Administration to change its new policy concerning computer chips. The former OMB Director may contact an employee of the Department of Commerce who, although paid at a level fixed according to level III of the Executive Schedule, does not occupy a position actually listed in 5 U.S.C. 5312-5316.

Example 3: The former Secretary of the Department of Labor may not represent another person in a meeting with the current Secretary of Transportation to discuss a proposed regulation on highway safety standards.

Example 4: In the previous example, the former Secretary of the Department of Labor would like to meet instead with the special assistant to the Secretary of Transportation. The former Secretary of the Department of Labor knows that the special assistant has a close working relationship with the Secretary of Transportation. The former Secretary of the Department of Labor expects that the special assistant would brief the Secretary of Transportation about any discussions at the proposed meeting and refer specifically to him. Because the circumstances indicate that the former Secretary of the Department of Labor intends that the information provided at the meeting would be conveyed by the assistant directly to the Secretary of Transportation and attributed to him, he may not meet with the assistant.

Example 5: Eleven months after leaving the Department of the Interior, the former Secretary wishes to contact a current employee of the Office of the Solicitor, on behalf of a conference planner, to request that the current employee consider speaking in his official capacity at the conference planner’s upcoming conference.

- He may not do so. A request that an employee speak at an event is considered a particular matter involving a specific party or parties, in which the event sponsor is a party. And in this instance, the former Secretary would be making his communication or appearance, on behalf of the conference planner, for the
purpose of inducing a current employee of his former agency to make a decision or to otherwise act in his official capacity in this matter.

Example 6: The Secretary of the Interior leaves Government employment for private practice and shortly thereafter telephones a former associate urging that the Bureau of Reclamation (a) adopt a new procedure to put a ceiling on costs of grants; (b) not adopt a particular rule proposed for drug testing of Federal employees; (c) oppose a bill pending in Congress relating to Bureau of Reclamation programs.

- These contacts are all prohibited by the two-year ban. The first, not yet pending, is of interest to the Bureau; the second is pending in the Bureau; and the third is pending elsewhere, and is of interest to the Bureau. The former Secretary may communicate her views to non-Executive Schedule employees of other agencies, Congress, the public, or the press.
- This two-year ban is not limited to "particular matters involving a specific party or parties." It covers general regulations, general legislation, and general policy issues.

Example 7: Eighteen months after he leaves the Department of the Interior, the former Secretary is asked by his employer Z Company to represent them in a new matter pending before the National Park Service. The former Secretary had no prior personal involvement in the matter and the matter was not previously pending before the Department when the former Secretary worked there.

- He may not do so. This two-year ban covers all matters that come up in the Department within two years after the Secretary leaves. The fact that the matter was not pending when the former Secretary worked in the Department is not relevant since this ban covers all matters including those that come up after a Secretary leaves.

Key Elements for 18 U.S.C. § 207(d)

- Knowingly Make
- Appearance or Communication
- Intent to Influence
- To or Before:
  - Any Executive Schedule employee
  - An Employee of Former Agency Where Served Within One Year of Leaving Very Senior Service
- On Behalf of Any Other Person
- In Connection with Any Matter Where Seeking Official Action
ADDITIONAL RESTRICTION THAT APPLIES ONLY TO FORMER “SENIOR” AND "VERY SENIOR EMPLOYEES"


For one year after service in a Senior Employee or Very Senior Employee position terminates, no former Senior Employee or former Very Senior Employee shall knowingly represent a foreign government or foreign political party before an officer or employee of an agency or department of the United States, or aid or advise such a foreign entity, with the intent to influence a decision of such officer or employee. For the purposes of this section, the phrase “officer or employee” includes the President, the Vice President, and Members of Congress, and the term “department” includes the legislative branch. This provision prohibits behind-the-scenes assistance.

IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” is defined the same way as for 18 U.S.C. § 207(a)(1).

"Foreign Entity" - means a foreign government or political party as those two terms are defined in the Foreign Agents Registration Act.

Please note, this is another prohibition that not only prohibits direct representational activity by the former Senior Employee, but also prohibits aiding or advising others in their representation before federal entities.

ADDITIONAL RESTRICTION THAT APPLIES ONLY TO THOSE ASSIGNED TO DOI FROM A PRIVATE SECTOR ORGANIZATION UNDER THE INFORMATION TECHNOLOGY EXCHANGE PROGRAM

18 U.S.C. § 207(l). One-year ban on representing, aiding, counseling, or assisting.

For one year after the termination of his or her assignment from a private sector organization to an agency under the Information Technology Exchange Program (5 U.S.C., chapter 37), no former assignee may knowingly represent, aid, counsel, or assist in representing any other person (other than the United States) in connection with any contract with that agency. This provision prohibits behind-the-scenes assistance.
“Behind-the-scenes assistance” is defined the same way as for 18 U.S.C. § 207(a)(1).

OTHER IMPORTANT FEATURES OF 18 U.S.C. § 207

1. For the one-year prohibitions of 18 U.S.C. §§ 207 (c) and (f) and the two-year prohibition of 18 U.S.C. § 207(d), the period is measured from the date when an employee ceases to be a Senior or Very Senior Employee, not from the termination of Government service, unless the two occur simultaneously.

2. An exception is provided to all of the prohibitions of 18 U.S.C. § 207 when the post-employment activities are performed:

   (a) in carrying out official duties on behalf of the United States, or

   (b) in carrying out official duties as an elected official of a state or local Government.

3. Exceptions are provided to former Senior or Very Senior Employees for the one-year bans of 18 U.S.C. § 207 (c) and the two-year ban of 18 U.S.C. § 207(d) when the communication or appearance is made in carrying out official duties as an employee of and is made on behalf of:

   (a) an agency or instrumentality of a State or local Government,

   (b) an accredited degree-granting institution of higher education as defined in 20 U.S.C. § 1001, or

   (c) a hospital or medical research organization exempted and defined under 26 U.S.C. § 501(c)(3).

4. An exception is provided to all of the prohibitions of 18 U.S.C. § 207 for a former employee who is carrying out official duties as an employee or as an elected or appointed official of a tribal organization or inter-tribal consortium when communicating or appearing on behalf of such tribal organization or inter-tribal consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest. In order for this exception to apply, the former employee must advise, in writing, the head of the department, agency, court, or commission with which he or she is dealing or before which he or she is appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement he or she may have had as an officer or
employee of the United States in connection with the matter involved. (See 25 U.S.C. § 5323(j).) Contact your ethics official if you think this exception may apply to you.

5. The restrictions of 18 U.S.C. §§ 207(a)(1), (a)(2), (c), and (d) do not apply to communications made solely for the purpose of furnishing scientific or technological information pursuant to agency procedures.

6. Public Commentary. The post-Government employment restrictions permit certain public communications and appearances that would otherwise violate the statute, if they meet the requisite criteria outlined below.

   a. For the purposes of the lifetime ban of 18 U.S.C. § 207(a)(1) and the 2-year ban of 18 U.S.C. § 207(a)(2), the following applies (See 5 C.F.R. §§ 2641.201(f)(3) and 2641.202(f)):

      (i) A former employee who addresses a public gathering or a conference, seminar, or similar forum as a speaker or panel participant will not be considered to be making a prohibited communication or appearance if the forum:

          (A) Is not sponsored or co-sponsored by a Federal agency (including a Government corporation); an independent agency in the executive, legislative, or judicial branch; a Federal court; or a court-martial;

          (B) Is attended by a large number of people; and

          (C) A significant proportion of those attending are not employees of the United States.

      (ii) In the circumstances described in paragraph 6(a)(i) above, a former employee may engage in exchanges with any other speaker or with any member of the audience.

      (iii) A former employee also may permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely available publication.

      Example 1: A Federal Trade Commission economist participated in her agency's review of a proposed merger between two companies. After terminating Government service, she goes to work for a trade association that is interested in the proposed merger. She would like to speak about the proposed merger at a conference sponsored by the trade association. The conference is attended by 100 individuals, 50 of whom are employees of entities specified in paragraph 6(a)(i)(A) above. The former employee may speak at the conference and may engage in a
discussion of the merits of the proposed merger in response to a question posed by a Department of Justice employee in attendance.

**Example 2:** The former employee in the previous example may, on behalf of her employer, write and permit publication of an op-ed piece in a metropolitan newspaper in support of a particular resolution of the merger proposal.

b. For purposes of the 1-year cooling-off period of 18 U.S.C. § 207(c), and the 2-year cooling-off period of 18 U.S.C. § 207(d), the following similar provision applies (See 5 C.F.R. §§ 2641.204(g)(4) and 2641.205(g)):

(i) A former senior employee who addresses a public gathering or a conference, seminar, or similar forum as a speaker or panel participant will not be considered to make a prohibited communication or appearance if the forum:

(A) Is not sponsored or co-sponsored by the former senior employee's former agency;

(B) Is attended by a large number of people; and

(C) A significant proportion of those attending are not employees of the former senior employee's former agency.

(ii) In the circumstances described in paragraph 6(b)(i) above, a former senior employee may engage in exchanges with any other speaker or with any member of the audience.

(iii) A former senior employee also may permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely-available publication.

Please note, however, that other appearances or communications that take place at an event described above, such as during breaks or meals, would not meet these criteria and would therefore be subject to the restrictions.

The Office of Government Ethics has clarified that, for the purpose of these provisions:

- a conference is sponsored by an agency if the agency organizes the conference for its own employees and might incidentally open the conference to the public; and

- an agency co-sponsors a conference if, for instance, the agency in conjunction with a university whose facilities and planning services are used, "co-sponsors" a
conference for agency employees, university personnel, students, and incidentally the public.

Thus, an agency's provision of some financial assistance to a group which organizes and manages a conference, such as through a grant of a portion of the funds used for the conference, does not, alone, constitute agency sponsorship or co-sponsorship of the conference.

7. The restrictions of 18 U.S.C. §§ 207(c) and (d) do not prevent a former Senior or Very Senior Employee from making or providing a statement, which is based on the former employee’s own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received. A “statement,” for purposes of this exception, is a communication of facts observed by the former employee. Compensation includes any form of remuneration or income that is given in consideration, in whole or in part, for the statement. It does not include the payment of actual or necessary expenses incurred in connection with making the statement.

8. The restrictions of 18 U.S.C. §§ 207(c) and (d) do not apply to certain communications or appearances by former Senior or Very Senior Employees made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party. For this exception to apply, the former Senior or Very Senior Employee may not be employed by anyone other than the candidate, one of the specified political organizations, or a person or entity who exclusively represents or advises such candidates or political organizations.

9. Contacts with and appearances before Congress are not prohibited by 18 U.S.C. §§ 207(a)(1), (a)(2), (c), and (d).

10. Subject to certain limitations concerning expert witness testimony, a former employee is not prohibited by any of the prohibitions of 18 U.S.C. § 207 from giving testimony under oath or making a statement required to be made under penalty of perjury.

18 U.S.C. § 203

Prohibition Against Receiving Compensation for "Representational Services"

18 U.S.C. § 203 prohibits a former employee from receiving any compensation for "representational services" in connection with a particular matter in which the United States is a party or has a direct and substantial interest, if the covered representational services were provided at a time when the individual was a Government employee, and
regardless of whether or not the individual personally provided those representational services.

"Representational services" means communications to or appearances before Federal entities with the intent to influence the Government on behalf of a third party. This includes legal and consulting services.

The prohibition applies equally to representational services rendered by the former employee personally or by another if the employee shares in the compensation.

Accordingly, a former employee may not share in compensation received by his or her new employer for representational services it provided to a third party, in connection with a particular matter in which the United States is a party or has a direct and substantial interest, at the time the former employee worked for the Government.

PENALTIES AND INJUNCTIONS FOR VIOLATION OF

18 U.S.C. §§ 203, 207, and 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. §§ 203, 207 or 208 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty up to the amount specified in 28 C.F.R. part 85 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. §§ 203, 207, or 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.

PROCUREMENT INTEGRITY ACT


You may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after you—

1. Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10 million;

2. Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10 million awarded to that contractor; or

3. Personally made for the Federal agency a decision to—
   a. 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;
   b. Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10 million;
   c. Approve issuance of a contract payment or payments in excess of $10 million to that contractor; or
   d. Pay or settle a claim in excess of $10 million with that contractor.

Additionally, you 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.

You should consult your ethics counselor if you require additional information on the Procurement Integrity Act.

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ETHICS PLEDGE PROVISIONS FOR POLITICAL APPOINTEES

Political Appointee. The term “political appointee” includes every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency.

Revolving Door Ban: Appointees Leaving Government.

1. A political appointee who is subject to the post-employment restrictions of 18 U.S.C. § 207(c) (see above) must abide by those restrictions following the end of his or her appointment.

2. A political appointee may not, at any time after termination of employment in the U.S. Government, engage in any activity on behalf of any foreign government or foreign political party, which if undertaken on January 20, 2017, would require registration under the Foreign Agents Registration Act of 1938.

Revolving Door Ban: Appointees Leaving Government to Lobby.

1. A political appointee may not, within five years after termination of his or her employment as an appointee, engage in lobbying activities with respect to the agency to which he or she was appointed to serve.

2 “Lobbying activities” has the same meaning as that term has in the Lobbying Disclosure Act, 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 Procedures Act, as amended. For purposes of this portion of Executive Order 13770, (Section 1, Paragraph 1), “lobbying activities” are deemed to be carried out with respect to an agency only to the extent that they involve: (a) any oral or written communication to a covered executive branch official of that agency or (b) efforts that are intended, at the time of performance, to support a covered lobbying contact to a covered executive branch official of that agency.

3 For purposes of this portion of Executive Order 13770, (Section 1, Paragraph 1), “agency” means the entire agency for political appointees confirmed by the Senate. Other political appointees are eligible to take advantage of the separate component designations authorized in 18 U.S.C. § 207(h). For the Department of the Interior, the following have been designated as separate components: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, Office of Surface Mining Reclamation and Enforcement, U.S. Fish and Wildlife Service, and U.S. Geological Survey. All designated components under the jurisdiction of a particular Assistant secretary shall be considered a single component as applied to appointees serving on the immediate staff of that Assistant Secretary.
2. A political appointee is prohibited, upon leaving Government service, from lobbying any of the following individuals for the remainder of the Administration:

   a. the President;
   b. the Vice President;
   c. any official in the Executive Office of the President;
   d. any Executive Schedule official (EL I-V);
   e. any uniformed officer at pay grade O-7 or above;
   f. any Schedule C employee; and
   g. any non-career SES member.

OUTER CONTINENTAL SHELF LANDS ACT RESTRICTIONS

43 U.S.C. § 1355

No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under the Outer Continental Shelf Lands Act, and who was at any time during the 12 months preceding the termination of his or her employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS-16 of the General Schedule shall--

   (1) within 2 years after his or her employment with the Department has ceased--

      (A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

      (B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

      (C) knowingly aid or assist (including behind-the-scenes assistance) in representing any other person (except the United States) in any formal or informal appearance before,
any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his or her official responsibility as an officer or employee within a period of 1 year prior to the termination of such responsibility or in which he or she participated personally and substantially as an officer or employee; or

(2) within one year after his or her employment with the Department has ceased--

   (A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

   (B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to,

the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.

Summary of 43 U.S.C. § 1355

• If:
  – You directly or indirectly discharged duties or responsibilities under OCSLA and
  – You were SES/SL/ST or above (“above” includes Executive Schedule and other PAS officials) at any time during your final 12 months of service

• Then you are subject to a 2-year ban on representations to Executive and Judicial Branches in party matters
  • In which you were personally and substantially involved OR
• Which were under your official responsibility during your final year of service

– Also prohibits behind-the-scenes representational assistance for formal or informal appearances

• Another’s physical presence before U.S. in formal or informal setting OR

• Conveyance of material to U.S. in connection with a formal proceeding or application

– Doesn’t prohibit behind-the-scenes representational assistance for communications, e.g., correspondence or telephone call, if not conveying material to U.S. in connection with a formal proceeding or application AND there is no intention that the communication be attributed to you

– Doesn’t prohibit managerial assistance – e.g., making or approving decisions and suggestions as to how, and on what terms, any of the physical or human resources of your organization will be utilized in its performance under a current or proposed Government contract or grant

• 1-year ban on representations to DOI in any particular matter that is pending before DOI or in which DOI has a direct and substantial interest (doesn’t include broad policies that don’t involve specific parties or focus on the interests of a discreet and identifiable class of persons)

– Element of controversy or influence is required

• Actual or potential dispute or an application or submission to obtain Government rulings, benefits, or approvals

– Unlike 1-year ban under 18 U.S.C. § 207(c):

• You only have to have been an SES/SL/ST or above, not required to have had basic pay ≥ $164,004.00 and

• There are no component breakdowns. I.e., regardless of which component of the Department you work for, you are prohibited from representing anyone to any component of the Department.
• Doesn’t apply to broad policies that don’t involve specific parties or focus on the interests of a discreet and identifiable class of persons.

  – Doesn’t prohibit uncompensated statements based on former employee’s own special knowledge in the particular area that is the subject matter of the statement

• Prohibitions are not limited to OCSLA matters

• Exceptions and waivers available under 18 U.S.C. § 207 are not available under OCSLA. (See, e.g., 5 C.F.R. §§ 2641.301(b) through (k) and 18 U.S.C. §§ 207(j) and (k))

ADDITIONAL CONSIDERATIONS FOR ATTORNEYS

**Attorney Professional Responsibility.** Attorneys are generally subject to the professional responsibility rules of the jurisdiction(s) in which they are licensed. These rules are separate and distinct from the Federal Government ethics statutes and regulations. For example, Rule 1.11 of the American Bar Association Model Rules of Professional Conduct contains special conflicts of interest provisions for former and current Government officers and employees. Accordingly, attorneys should check with their licensing jurisdiction(s) to determine whether any professional responsibility rules may impact their post-Government employment plans.
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 AND POST-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 5311
WASHINGTON, D.C. 20240
(202) 208-7960