

ETHICS GUIDE: SEEKING AND POST-GOVERNMENT EMPLOYMENT

Office of Legal Counsel, Office of the Solicitor
United States Department of Labor

Overview

This guide addresses two subjects:

1. [The rules that you must follow when searching for a non-Federal job while still an employee.](#)
2. [The ethical restrictions that apply to you after you have stopped working for the Federal Government.](#)

We recommend reviewing this guide when you are considering leaving the Department of Labor (Department or DOL). Additionally, you are strongly encouraged to contact the SOL ethics office whenever you have any questions or concerns about ethics-related matters. Some of the Federal ethics rules covered by this guide are criminal statutes, and our office is here to help you navigate them. You also may also seek advice from SOL ethics attorneys even after you have left the Department.

This document is designed to be a basic, user-friendly summary of the ethics requirements. It is not an independent regulation and does not supersede any of the legal authorities described below. This summary is meant solely to familiarize you with the relevant ethics rules and help you recognize and deal with potential pitfalls.

Employee Categories

To determine what rules apply to you, consider the below questions. Some rules apply to all Department employees, while others apply only to the specific subsets of employees listed below:

Are you a [**Public Financial Disclosure Filer**](#)? Public filers are those required to file the form OGE-278e—in other words, all Department political appointees, career Senior Executive Service (SES) employees, and administrative law judges.

Are you a [**Senior Employee**](#)? For CY 2020, senior employees are those whose base salary (before a location adjustment) is more than \$170,665 per year. The term also includes private-sector information technology employees assigned to work for the Department under 5 U.S.C. §

3702, and those whose pay rates are set by the Executive Schedule.

Are you an [Ethics Pledge Signer](#)? This category refers to a subset of employees who were politically appointed by the Trump administration and have signed the White House's Ethics Pledge. These individuals are subject to additional restrictions. Please note that these rules do not apply to all politically appointed individuals, but only those that signed the pledge.

Are you a [Very Senior Employee](#)? At the Department of Labor, only the Secretary qualifies as a "very senior employee."

Are you a [Procurement Official](#)? Broadly speaking, procurement officials are employees who have access to contractor bid or proposal information, or to source selection information.

If none of the categories above apply to you, please read below about the restrictions on your job search and post-employment activities that apply to all Federal employees.

Summary of Seeking Employment and Post-Government Employment Rules

All Employees

Limits on seeking employment:

You must disqualify yourself from particular matters that could affect a party with whom you are seeking employment.

Limits on activities after leaving DOL:

Lifetime ban on communicating with or appearing before any agency or court with the intent to influence in connection with any particular matter in which you participated personally and substantially and that involved specific parties. This includes agencies other than the Department of Labor and its components. The ban is limited to the lifetime of the particular matter. Particular matters include matters such as grants, enforcement actions and litigation.

Two-year ban on communicating with or appearing before any agency or court with the intent to influence in connection with particular matters that were under your official responsibility during your last year of service and that involve specific parties. This includes agencies other than the Department of Labor and its components.

If personally involved in trade or treaty negotiations, you may never use nonpublic information to represent, advise, or assist other parties in negotiations.

Public Financial Disclosure Filers

Limits on seeking employment:

Same as all employees **plus**:

Pursuant to the STOCK Act, three (3) business days after beginning negotiations with a prospective employer, you must submit a specific recusal form (available on LaborNet) to the Department's Ethics Office.

Limits on Post Employment:

Depends on the type of employee. See the "Senior Employees," "Ethics Pledge Signer," "Very Senior Employee," and "Procurement Official" categories below.

Senior Employees

Limits on seeking employment:

Same as all employees.

Limits on activities after leaving DOL:

Same as all employees **plus**:

One-year ban on communicating with or appearing before the Department or your employing component agency with the intent to influence on any party's behalf regarding any matter, regardless of whether or not you were involved with that matter. One-year ban on representing, aiding, or advising foreign entities in any matter with the intent to influence U.S. Government officials.

Ethics Pledge Signer

Limits on seeking employment:

Same as all employees.

Limits on activities after leaving DOL:

Same as all employees **plus**:

You may not lobby certain senior executive officials in the White House or any executive agency for the remainder of the Administration in which you served. You may not lobby the agency in which you served as an appointee for a period of 5 years after the termination of your appointment. If you are a **senior employee**, as defined above, the restrictions that apply to senior employees also apply to you.

Very Senior Employee

Limits on seeking employment:

Same as all employees.

Limits on activities after leaving DOL:

Same as an Ethics Pledge signer **plus**:

Two-year ban on communicating with a Departmental employee or any executive schedule

employee in any agency to influence any matter.

Procurement Official

Limits on seeking employment:

Same as all employees **plus**:

If working on contracts worth more than \$150,000, you must report if bidders or contractors contact you about employment, and you must reject the offer or else recuse yourself.

Limits on activities after leaving DOL:

Same as all employees **plus**:

You may not accept compensation from a winning contractor on a contract worth over \$10 million for one year after leaving the Department if you worked on the procurement or managed the contract.

You may never disclose confidential procurement information prior to the award of the contract in question.

Limits on Seeking Employment

Limits for All Employees

The rules below apply to **all employees**, whether seeking post-government employment or seeking outside employment while with the government. If you do not follow them, you may be subject to **criminal liability**. **Public financial disclosure filers** and **procurement officials** face additional restrictions, discussed below.

Recusal from particular matters involving specific parties

When seeking employment from a non-Federal employer, Department employees **may not** participate *personally and substantially* in **any particular matter involving specific parties** that could affect that prospective employer's financial interests. If you find yourself in this situation, you must *recuse yourself* from any duties that might violate this rule. In rare circumstances, you may seek a waiver of the conflict from an agency designee.¹

What does it mean to participate personally and substantially in a matter?

It means to participate directly by, for example, making a decision, issuing an approval or disapproval, making a recommendation, rendering advice to a decision-maker, or conducting an investigation. The term "substantially" varies based on your level of responsibility within the Department, and can range from providing assistance to a colleague to simply reading a document for an Assistant Secretary. Consult the Ethics Office if you have questions.

What are particular matters involving a specific party?

¹ 18 U.S.C. § 208(a); 5 C.F.R. §§ 2635.601–.606.

These include cases, court proceedings, applications, investigations, contracts, grants, claims, and arrests. They **do not** include *particular matters of general applicability* such as policy decisions, legislation, and regulatory matters that affect a specific industry or another discrete class of persons or businesses. They also do not include broad policy initiatives or regulations (such as a minimum wage or safety standard that applies to *all* employers, regardless of industry).

NOTE: The rules related to when employees must recuse themselves from *particular matters of general applicability* are discussed in the section titled “[r]ecusal from particular matters of general applicability” below.

What does it mean to be seeking employment?

The term “seeking employment” is broad and reaches many job-seeking activities. In general, you are considered to be seeking employment if you *have communicated with a specific prospective employer* that is *considering you for employment*.

For example, you are “seeking employment” if you have:

- Started negotiations with a prospective employer about a job offer;
- Submitted an online or paper job application to an outside business in response to a job opening;
- Submitted an application to work as a volunteer, full-time employee for a nonprofit organization (unpaid employment may still count as prospective employment);
- Submitted an application to a recruiting agency, AND the recruiting agency has subsequently notified you that a specific prospective employer is interested in/considering your application;
- Reached out to a former colleague on Facebook to ask if they have any openings available at their company;
- Received an oral offer from a friend over dinner or coffee to come work for his/her business, and either said nothing or told them that you will consider the offer; or
- Had dinner or coffee with a friend employed by an outside company who asked if you would be interested in working for his/her business, and you have indicated that you might be interested.

On the other hand, you are **not** considered to be seeking employment if you have *only* taken the following actions:

- Posted your résumé on LinkedIn or a similar professional networking site (although many different employers may be looking at your résumé, you do not know the identities of *specific* employers that might be considering you for a position);
- Posted your résumé with a recruiting agency that sends your résumé out to many different prospective employers;
- Asked a potential future employer for a job application, but have not yet submitted the

job application to the employer;

- Received an email from a friend employed by an outside company asking if you would be interested in a job there, but you have not responded; or
- Offered to volunteer a few times a month at a local food shelter (this type of volunteer service does not rise to the level of “employment”).

In addition, you are *no longer* considered to be seeking employment (and no longer need to recuse yourself) if:

- You have **unambiguously** rejected an offer of employment;
 - Unambiguous rejection: “I cannot consider employment with your organization while I am working on your case/grant/contract, so I am declining your offer.”
 - Ambiguous rejection: “I may be interested in a position, though I’m working for the government and I can’t discuss your offer right now.”
- You have **unambiguously** withdrawn your application;
- The prospective employer has notified you that your application has been rejected; or
- Two months have passed since you submitted your application, and you have not heard back from the prospective employer.²

What steps do I need to take to recuse myself?

You must notify your supervisor that you cannot participate in the matter related to your prospective employer. It is *not required* that the notice be in writing, though it is *recommended* to provide notice in writing to be able to prove that you recused yourself. Remember, it is your responsibility to take *whatever steps necessary* to ensure that you do *not* participate in the matter.³

An example of an effective recusal notice would be a letter or email to your supervisor that clearly identifies the prospective employer on whose matter(s) you may not work, who may handle the matter(s) in your absence, and the expected end date(s) for the recusal—in other words, the date you estimate that you will know if your job application has been accepted or rejected. If you don't know when that date will be, you could let your supervisor *both* the date you think it most likely you will receive an answer on your application *and* the latest possible date you could receive an answer.

When and how should I withdraw my recusal?

You should withdraw your recusal when you are no longer seeking employment—specifically, if you have rejected a prospective employer’s offer, they have rejected your application, you have withdrawn your application, or two months have elapsed since you have submitted your

² See 5 C.F.R. § 2635.603(b).

³ 5 C.F.R. § 2635.604(b)-(c).

application and you have heard no response.

To withdraw your recusal, you must notify your supervisor that you no longer need to recuse yourself from matters affecting that prospective employer. If your recusal was in writing, the withdrawal of the recusal *must also* be in writing.

Recusal from particular matters of general applicability

Particular matters of general applicability are policy, regulatory, and legislative actions that affect a *discrete class of persons or businesses*—for example, a regulation that covers a specific sector, such as the banking, mining, or ride-sharing industry. They do not include policy, regulatory, or legislative matters of very broad applicability, such as a workplace safety regulation that affects all employers. If you have *any doubt* as to whether a matter you are working on is a particular matter of general applicability, it is best to err on the side of caution and contact the Ethics Office.

Unlike with particular matters involving specific parties, discussed above, Department employees do **not** have to recuse themselves from particular matters of general applicability that could affect the financial interests of a prospective employer if the following is true:

1. The employee’s *only* communication with the prospective employer was an *unsolicited* employment proposal *from* the employee *to* the employer; **AND**
2. The prospective employer has not yet responded to the communication in a way that indicates they might be interested in hiring you.

Under this rule, you do NOT need to recuse yourself from working on particular matters of general applicability likely to affect the financial interests of your prospective employer if, for example:

- You are working on a regulation governing the construction industry, and you have submitted your résumé to a construction company, but you have received no response;⁴ or
- You are working on a minimum wage rule that affects nonprofits that offer job readiness programs, you have left a voicemail with a friend who works at a job readiness nonprofit asking if you could fill a vacant position at the nonprofit, and you haven’t heard back.

However, you must still recuse yourself (see “[w]hat steps do I need to take to recuse myself?” above) from working on particular matters of general applicability likely to affect the financial interests of your prospective employer if:

- You are working on a regulation targeted at construction companies, you have submitted your résumé to a prospective employer in the construction industry, and they have emailed you back indicating they would like to interview you for a job;
- Over lunch, you (an employee working on a legislative initiative affecting career services

⁴ If the only response you have received is a simple message acknowledging receipt of your application, you still do not need to recuse yourself.

nonprofits) asked a friend who works at a career services nonprofit to help you get a job at their organization and the friend told you that they would do their best to help you find a position; or

- You are an MSHA employee working on a guidance policy for safety standards in the mining industry, and you responded with interest to an email from a mining company inviting you to apply for a job. (If, on the other hand, you responded declining the offer, you do **not** need to recuse yourself.)

The same rules regarding how to recuse yourself and/or withdraw your recusal discussed earlier in the section on particular matters affecting specific parties apply to this type of matter, as well.

Seeking Employment Special Restrictions for Public Financial Disclosure Filers

If you are a public filer, within **3 business days** after seeking employment with a prospective employer, you *must* submit a written notification to the Department’s Ethics Office. The “Notification of Post-Government Employment or Compensation Negotiation or Agreement and Recusal Statement,” is available on the SOL ethics page on LaborNet.

Remember, as discussed in the “[l]imits for all employees” section above, you will be required to notify your supervisor of the need for recusal if and when you end up working on a particular matter related to the prospective employers on your notification form. You may wish to (but are not required to) share the notification form with your supervisors in advance to give them a heads-up that you may need to recuse yourself from matters related to those employers.

Seeking Employment Special Restrictions for Procurement Officials

If you are working on a procurement contract worth more than \$150,000 and you are contacted by the offeror regarding possible post-Federal employment, you must report the contact to your supervisor and the Ethics Office in writing—even if you immediately reject the offer, or if you do not intend to follow-up or pursue employment with that offeror.

You must also do one of the following in order to continue:

- reject the possibility of non-Federal employment; or
- cease working on the procurement until and unless you obtain agency authorization.⁵

The difference between this rule and the seeking employment rules for all Federal employees is that it has a mandatory reporting requirement.

Post-Employment Restrictions

Restrictions for All Employees

Your ethical obligations do not end when you leave the Department. The following three rules

⁵ 41 U.S.C. § 2103; 48 C.F.R. § 3.104-3(c).

must be observed when you begin working in a new non-Federal position. Again, these rules apply to **all employees** and are extremely important; failure to follow them could subject you to **criminal liability**. These rules do not limit who you can work for after you leave the Federal Government.

Lifetime Ban on Communications Concerning Matters You Worked On

You may **never** make a **communication or appearance** before a United States entity under the following conditions:

- The communication or appearance is about any **particular matter involving a specific party** in which you **participated personally and substantially**⁶ and in which the United States is a party or has a direct and substantial interest, and
- Your communication or appearance is on behalf of another person with the intent to influence the government entity.⁷

What are communications and appearances?

Anything involving direct contact, orally or in writing, with the Federal entity. This can include attending a meeting, joining a phone call, representing a client in Federal court, or sending an email/letter.

What is “an intent to influence”?

A communication or appearance has an intent to influence if it is made for the purpose of seeking a discretionary ruling, benefit, approval, or other action from the Federal Government, or is made for the purpose of influencing Federal Government action in a matter with an appreciable element of dispute. A communication or appearance involving purely social contacts, a request for publicly available documents, or a request for purely factual information would be permissible absent an intent to influence. **However, you should be cautious as communications and appearances can quickly turn into actions that are prohibited by statute.** For example, “behind the scenes” work for your new employer is **not** prohibited and you can write memos for your employer, prepare talking points, and do internal briefings on matters that may involve the Federal Government. That being said, if you author a report that is submitted to the Federal Government and the circumstances indicate that you expected it to be attributed to you, although your name is not actually on the report, that would be impermissible under the rules.⁸

NOTE: Every situation is fact specific and you should contact the Ethics Office if you need more specific guidance. Also, some professions have restrictions on the disclosure of information obtained during the course of a fiduciary relationship. You should check the

⁶ These terms—“particular matter involving a specific party” and “personally and substantially”—have the same meaning whenever used throughout this document. They are defined in the section above on the “seeking employment” rules.

⁷ 18 U.S.C. § 207(a)(1); 5 C.F.R. § 2641.201.

⁸ See 5 C.F.R. § 2641.201, example 5 to paragraph (d).

appropriate licensing authority to determine whether these disclosure limitations are applicable to you.

Two-Year Ban on Involvement with Matters in Your Area of Official Responsibility

You are banned from making a communication or appearance before a United States entity for two years after your termination of service under the following conditions:

- Your communication or appearance relates to any particular matter involving a specific party that was pending **under your official responsibility** during your last year of service, and in which the United States is a party or has a direct and substantial interest; and
- Your communication or appearance is on behalf of another person with the intent to influence the government entity.⁹

This rule is similar to the lifetime ban discussed above, but it has some important differences. The “participate personally and substantially” aspect is replaced by an “official responsibility” requirement, which applies only to particular matters pending during your last year of service. Additionally, the ban lasts only two years, instead of indefinitely. The definitions for “communications,” and “appearances” are the same as in the first rule.

What does it mean for a matter to be under your official responsibility?

It means that you had direct, formal, or actual authority to approve, disapprove, or otherwise direct the Department’s actions—in short, that a matter was “on your watch.” Generally, this situation arises when someone you supervised worked on a matter. You cannot communicate with or appear before the Department for two years with respect to any particular matter in which you had such responsibility, even if you were not personally and substantially involved with the particular matter in question.

Ban on Use of Nonpublic Information for Trade or Treaty Negotiations

If you personally and substantially participated in ongoing trade or treaty negotiations in your last year of service, you may **never** use **nonpublic information** to represent, advise, or assist someone in those negotiations.¹⁰

What does nonpublic information mean?

It includes any information held by the Department or any other agency concerning the trade or treaty negotiation you were involved in that would be exempt from disclosure under the Freedom of Information Act. You may **never** use such information to assist another party to the trade or treaty negotiations in question.

⁹ 18 U.S.C. § 207(a)(2); 5 C.F.R. § 2641.202.

¹⁰ 18 U.S.C. § 207(b); 5 C.F.R. § 2641.203.

Exceptions

There are five exceptions to the above post-employment rules. The post-employment rules **do not apply** if:

- you are carrying out official duties of the United States;
- the Secretary of State certifies that your service to an international organization is in the United States' interest;
- your communications are approved by your former agency as a means of providing scientific or technological information;
- you are providing either factual testimony under oath or expert testimony under court order (see section below on “Touhy Regulations”); or
- you obtain a presidential waiver to work for a Government-owned, contractor-operated entity.¹¹

Touhy Regulations

The DOL, like most Federal agencies, has its own rules (also known as *Touhy* rules) governing the use of agency information and personnel in private litigation. If you are served with a subpoena, order, or other demand of a court or other authority that appears to be seeking DOL information in connection with a proceeding to which DOL is not a party, you must notify the appropriate national or regional SOL office and follow that office's instructions. In addition, if a private attorney contacts you to discuss a DOL matter you were involved in, either before or after issuing you a subpoena or demand, you should refer that attorney to the appropriate SOL office and not discuss anything substantive about the matter with the attorney. In cases where it is not clear whether the subpoena or demand is seeking official or personal information, you should consult with the appropriate SOL office before responding.

For questions regarding these regulations, please contact Joe Plick, FOIA and Information Law Counsel, at (202) 693-5527 or plick.joseph@dol.gov. The Ethics Office has created specific guidance for employees serving as an expert witness, which is available on LaborNet.

Post-Employment Restrictions on Senior Employees

The rules governing job-seeking activities for senior employees are the same as those that apply to all employees. However, additional post-employment restrictions apply to all senior employees (including political appointees who signed the Ethics Pledge and “very senior” employees).

One-Year Ban on Communications with the Department

For one year after leaving the Department, you may not make a communication to or an appearance before the **Department** on behalf of another person with the intent to exert influence

¹¹ 5 C.F.R. §§ 2641.201(b), .202(b), .203(b).

on **any matter**.¹² The definitions of “communication” and “appearance” are the same as discussed above.

The term “**any matter**” includes matters that the senior employee was not personally and substantially involved in and over which the senior employee did not have official responsibility. As a result, this prohibition is much broader than those that apply to all employees.

Under this specific regulation, the term “**Department**” may not mean all of DOL. For senior employees in program-focused component agencies, the ban may apply only to communications to or appearances before that particular agency. Consult with the Ethics Office for more information.

One-Year Ban on Assisting Foreign Entities

For one year, you may not represent, aid, or advise foreign entities with the intent to influence **any** government officials.¹³

Exceptions to the One-Year Ban for Senior Employees

The five exceptions to the post-employment rules for all employees are also exceptions to the ban on communicating to or appearing before the Department in “any matter.” In addition, the “any matter” ban does not apply if:

- you are an employee of a state or local government;
- you are an employee of an accredited degree-granting institution of higher education, or a hospital or medical research organization; or
- you are representing political candidates or certain political organizations.¹⁴

Post-Employment Restrictions on Ethics Pledge Signers

During the Trump Administration, political appointees have also been required to sign the White House’s Ethics Pledge.¹⁵ In addition to the restrictions listed above, pledge signers are further restricted in the following ways discussed below.

Lobbying During the Administration

You may not lobby the following executive officials regarding **any matter** for the remainder of **the Administration** in which you served: the President, the Vice President, any official in the Executive Office of the President, any Executive Schedule official (EL I-V), any uniformed officer at pay grade 0-7 or above, any Schedule C employee, or any non-career SES member.

The term “**Administration**” refers to all terms of the President in office when you were

¹² 18 U.S.C. § 207(c); 5 C.F.R. § 2641.204.

¹³ 18 U.S.C. § 207(f); 5 C.F.R. § 2641.206.

¹⁴ 5 C.F.R. § 2641.204(b).

¹⁵ Exec. Order No. 13770, 82 Fed. Reg. 9333 (Jan. 28, 2017).

appointed to your position.

The term “**lobby**” means act as a registered lobbyist.

This prohibition applies regardless of whether the matter in question is pending before the Department of Labor or another Federal agency. The lobbying ban has no exceptions.

Five-Year Post-Employment Lobbying Restriction

You may not lobby the agency to which you had been appointed for five years following your termination of service to that agency.

Post-Employment Restrictions on Very Senior Employees

The only “very senior employee” at the Department is the Secretary of Labor. Thus, in addition to all of the post-employment restrictions that apply to Ethics Pledge signers and senior employees, the restriction discussed in this section applies to the Secretary.

For two years after leaving the Department, a very senior employee may not make any communication to or appearance before a Department employee or an executive schedule employee anywhere in the Executive Branch with the intent to influence such individual(s) on any matter.¹⁶

The definitions of “communication,” “appearance,” and “any matter” are the same as used above. The exceptions that apply to the “any matter” restriction for senior employees and political employees who took the Ethics Pledge apply to very senior employees as well.

Special Restrictions on Procurement Officials

Two additional post-employment rules apply to procurement officials, both of which could subject an employee to **criminal liability**.

Post-Employment Rule on Procurement Information

You may not disclose confidential procurement information prior to the award of the procurement contract to which the information relates.¹⁷ “**Confidential procurement information**” includes bid or proposal information, as well as source selection criteria.

Post-Employment Rule on Compensation

If you have a **specific procurement position** and work on a contract worth over \$10 million, you may not accept any compensation from the contractor on that contract for **one year**.¹⁸

This is the only post-employment rule that limits *who you can be employed by* after leaving the

¹⁶ 8 U.S.C. § 207(d); 5 C.F.R. § 2641.205.

¹⁷ 41 U.S.C. § 2102; 48 C.F.R. § 2.101.

¹⁸ 41 U.S.C. § 2104; 48 C.F.R. § 3.104-3(d).

Federal Government. As a result, the rule is limited to the following **specific procurement positions**:¹⁹

- Employees who served as a:
 - Procuring contracting officer,
 - Source selection authority,
 - Member of a source selection evaluation board,
 - Chief of a financial or technical evaluation team,
 - Program manager,
 - Deputy program manager, or
 - Administrative contracting officer.

- Employees who personally made any of the following decisions:
 - Awarded a contract, subcontract, modification of a contract/sub, or task order or delivery order over \$10 million;
 - Established overhead or other rates for a contractor on a contract(s) valued over \$10 million;
 - Approved a contract payment or payments over \$10 million; or
 - Paid or settled a claim over \$10 million.

Ethics Contacts

Designated Agency Ethics Official:

Kate S. O'Scannlain, Solicitor of Labor
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(202) 693-5265

Alternate Designated Agency Ethics Official:

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Office of Legal Counsel

For advice about ethics laws and regulations and post-employment restrictions, please contact:

- Peter J. Constantine, Associate Solicitor for Legal Counsel at Constantine.Peter.J@dol.gov, (202) 674-4285 or (202) 693-5505
- Sabrina Gray, Counsel for Ethics, at Gray.Sabrina.A@dol.gov or (202) 674-4896
- Zach Mancher, Senior Attorney, at Mancher.Zachary.D@dol.gov or (202) 693-5694
- Vanessa Myers, Ethics Attorney, at Myers.Vanessa.J@dol.gov or (202) 693-5702
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¹⁹ 41 U.S.C. § 2104(a).