Summary of Federal Conflict of Interest and Ethics Laws


Since the enactment of the “Ethics in Government Act” in 1962, government officials have been restricted in their post-government employment. At the time, there was a growing concern that public confidence in the government had been “weakened by a widespread conviction that government officials use their office for personal gain, particularly after leaving the government. There is a sense that a ‘revolving door’ exists between industry and government.”

Effective January 1, 1991, post-government employment restrictions were expanded to include substantive prohibitions for employees in the Executive Branch, Members of Congress, senior congressional staffers, and others. Post-government employment restrictions range from a lifetime ban to a one-year “cooling off” period. Those restrictions, however, mostly ban “representational activities” by former government employees. Simply stated, former government officials are not limited in going to work for a private contractor, but are limited in the type of work they can perform for them. For example, a former government employee may not represent a client involving “particular matters” on which they worked during their...

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4 18 U.S.C. § 207(a)-(b) (apply to former officers or employees of the executive branch), (c) (applies to former “senior personnel”), (d) (applies to former “very senior personnel”), Pub. L. No. 101-280 (1990), Pub. L. No. 101-194 (1989).

5 18 U.S.C. § 207(e).

6 18 U.S.C. § 207(f)-(h).

government employment. Such representation may provide the appearance that the former government official was making unfair use of their employment or personnel connections with their former government agency, department, or office. Alternatively, conflict of interest laws do not apply to former government employees who are employed by a contractor in management or technical positions, which are non-representational in nature. Consequently, those former government officials can influence public officials.

The “cooling off” period is imposed to prevent favoritism and undue influence when a former government employee contacts their former agency or department regarding issues on which they worked during their government service. The restrictions depend on the former government employee's responsibilities and involvement in government matters and the level of their executive pay schedule. Conflict of interest restrictions include:

(1) A former government employee has a lifetime ban from representing someone else before the government in a matter that the government holds a substantial interest in and that the government employee handled “personally and substantially.” This ban, however, does not prohibit former government officials from providing behind-the-scenes assistance to a new employer;

(2) Trade representatives have a lifetime ban from helping foreign entities;

(3) For two years after government service, a former government employee cannot represent another entity regarding matters that they did not work on, but that were “actually pending” under their official responsibility during their last year of employment;

(4) Former government employees are limited for one year after leaving the

\[ 8 \text{ 18 U.S.C. § 207(i)(3) (defining the term “particular matter” as “any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding”); see 5 C.F.R. § 2637.102(a)(7) (defining particular matter).} \]

\[ 9 \text{ 18 U.S.C. § 207(a)(1); see 5 C.F.R. § 2637.201(d)(1) (“personally and substantially” means “through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise. To participate ‘personally’ means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. ‘Substantially,’ means that the employee’s involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a ‘particular matter involving a specific party’”), 48 C.F.R. § 3.104-1 (2004) (defining “participating personally and substantially”).} \]

\[ 10 \text{ 18 U.S.C. § 207(f)(2)} \]

\[ 11 \text{ 18 U.S.C. § 207(a)(2); see 18 U.S.C. § 202(b) (2004) (“official responsibility’ means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action”).} \]
government from assisting someone else regarding trade or treaty negotiations they worked on during their last year of employment;\(^\text{12}\)

For one year after leaving a "senior"\(^\text{13}\) or "very senior"\(^\text{14}\) position, the former government employee may not represent another entity and attempt to influence his or her former agency. Like the lifetime ban, this "cooling off period" does not prevent former employees from providing "behind-the-scenes" assistance or guidance to a contractor;\(^\text{15}\) and

For one year after leaving the government, former Members of Congress and their staff may not lobby their former legislative peers.\(^\text{16}\)


Generally, a government employee is prohibited from participating in matter in which he or she has a financial interest. For example, an executive branch or independent agency, employee (including military officers, but not enlisted personnel) cannot participate "personally and substantially as a Government officer or employee" in matters in which he or she is "negotiating or has any arrangement concerning prospective employment."\(^\text{17}\) Negotiating future employment includes discussing or communicating with "another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person" or making "an unsolicited communication to any person, or a such person's agent or intermediary, regarding possible employment with that person."\(^\text{18}\) In other words, government employees cannot solicit or negotiate for non-government employment or fail to reject unsolicited offers. In such cases, the government employee must disqualify him or herself from any matter involving the contractor.


\(^{13}\) "Senior" employees include people serving at Levels II-V of the Executive Schedule, individuals whose rate of basic pay equals or exceeds 86.5 percent of the rate for level II of the Executive Schedule ($136,757), those paid at or above level 5 of the Senior Executive Schedule, military officers at or above O-7, and some presidential appointees.

\(^{14}\) "Very senior" employees include people serving at Level I of the Executive Schedule, officials at Level II of the Executive Schedule serving in the Executive Office of the President, and certain presidential appointees.

\(^{15}\) 18 U.S.C. § 207(c)-(d) (2004).


A waiver to the financial interest statute may be granted if the employee advises an ethics official, fully discloses the financial interest, and receives an advanced written determination stating that “the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee.”

Additional exemptions can be made by OGE, if a government employee is “serving on an advisory committee within the meaning of the Federal Advisory Committee Act ... [and it is certified] in writing that the need for the individual’s services outweighs the potential for a conflict of interest created by the financial interest involved,” or if the financial interest is related to Native American programs or claims. In certain circumstances, waivers are available to the public through the Freedom of Information Act (FOIA).

Although Executive Branch regulations obligate an employee to disqualify him or herself from conflicted matters, the prohibition on prospective employment does not require the employee to file a disclosure or recusal statement. In fact, “an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.” (Emphasis added). It is not until agency-level supplemental regulations that some agencies have made it mandatory that employees report that they disqualify themselves from participation in a particular matter. Those mandatory provisions, however, are riddled with numerous waiver clauses pursuant to 18 U.S.C. § 208(b). In other words, a DoD employee must report a conflict of interest unless he or she receives, in most cases, a written waiver stating that the employee’s integrity would not be jeopardized or that the individual’s services outweigh the potential for a conflict.

3. Penalties

Agencies have designated ethics officials who are responsible for coordinating and managing an agency’s ethics program. Advice from an ethics counselor, however, is advisory

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20 See Section III.B of this report.


24 5 C.F.R. § 2635.604(c) (2004).


Generally, an employee who makes full disclosure and relies in good faith reliance on the agency ethics official’s advice is safe from discipline. However, “where the employee’s conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute.” The criminal penalty for violating the revolving door and personal financial interest statutes (18 U.S.C. §§ 207 - 208) is up to 5 years in prison, depending on the nature of the violation.

Additionally, “a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct” can be levied. The imposition of a civil penalty under the law does not preclude other criminal, civil, common law, or administrative remedies. Additionally, the government “may declare void” any transaction or contract that was judged to have violated the conflict laws.

4. Procurement Integrity Act (41 U.S.C. § 423)

In addition to the conflict of interest and ethics laws discussed above, the Procurement Integrity Act (PIA) regulates federal employees who are involved in buying goods and services and administering government contracts. The PIA applies to every government employee who is involved in buying goods or services in excess of $100,000 and who contacts or is contacted by an involved government contractor about post-government employment. Employees in such circumstances are required to report the contract to their supervisor and reject the employment

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29 Id.


(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.


32 Id.


opportunity or disqualify himself or herself from participation in the contract.\textsuperscript{36}

Additionally, a former official may not accept compensation from contractors for one year after their last involvement in any contract in excess of $10 million.\textsuperscript{37} This provision, however, allows the former government employee to accept compensation from a “division or affiliate” of the contractor so long as that entity “does not produce the same or similar products or services” as the barred contracting division.\textsuperscript{38} In other words, a government official can work for Contractor A’s tank division if he or she handled $10 million dollar contracts with Contractor A’s submarine division.

Violations of these provisions can result in civil penalties for the government employee (not exceeding $50,000 per violation as well as two times the amount of compensation he or she received or was offered) and the government contractor (not exceeding $500,000 per violation in addition to two times the amount of compensation the contractor received or offered).\textsuperscript{39}

\textsuperscript{36} 41 U.S.C. § 423(c)(1)(A)-(B).


\textsuperscript{38} 41 U.S.C. § 423(d)(2); see 48 C.F.R. § 3.104-3(d)(3) (allowing former government officials to work for a “division or affiliate” different from that the official worked with during their government service).

\textsuperscript{39} 41 U.S.C. § 423(c)-(e)