

## Post-Employment Ethics Restrictions

As a Treasury employee, you are subject to certain restrictions regarding matters you may work on after you leave Government employment. Moreover, even before you leave Government, if you begin seeking non-Federal employment, you are subject to recusal requirements under a criminal statute, 18 U.S.C. § 208. While you remain a Federal employee, you must remain recused from working on matters affecting the financial interests of any future non-Federal employer. (See [Chapter 8 of the Treasury Ethics Handbook](#) for guidance on “Seeking and Negotiating for Employment”)

These post-employment restrictions are complex and technical, and this is intended only as a summary. Other rules may apply. Employees who require more specific advice concerning the applicability of these restrictions should contact a [Treasury ethics official](#).

### Criminal Restrictions Applying to All Former Employees

- **Permanent Matter-specific Representational Bar** – No former employee who personally and substantially<sup>1</sup> participated in a particular matter involving a specific party or parties<sup>2</sup> at any time during his/her Federal employment may communicate with or appear before any Executive or Judicial branch employee on behalf of any other person with an intent to influence concerning that same matter after leaving the Government. 18 U.S.C. § 207(a)(1).
- **Two-year Representational Bar** – For two years after leaving the Government, no former employee may communicate with or appear before any Executive or Judicial branch employee on behalf of any other person concerning a particular matter involving a specific party or parties which such person knows or reasonably should know was actually pending under his/her official responsibility during the last year of his/her Federal employment. 18 U.S.C. § 207(a)(2).

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<sup>1</sup> As used in this summary, “participate personally and substantially” means involvement in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. To “participate personally” means directly, and includes the participation of a subordinate in a matter when actually directed by the employee. “Substantially” means that an employee’s involvement must be of significance to the matter, or form the basis for a reasonable appearance of such significance. It requires more than official responsibility, mere knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

<sup>2</sup> The requirement of a particular matter involving a specific party or parties typically involves a specific proceeding involving the legal rights of the parties or an isolatable transaction, or related set of transactions, between identifiable parties. “Particular matters” include any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. For the purposes of the restrictions in sections 207(a)(1) and (a)(2), rulemaking, legislation, and the formulation of general policy standards or objectives **are not** such “particular matters.” Therefore, with respect to both the permanent and two-year representational prohibitions noted above, a former employee may represent another person in connection with a particular matter involving a specific party, even if rules or policies which the employee had a role in establishing are involved in the proceeding.

- **One-year Trade/Treaty Negotiation Bar** – For one year after leaving the Government, no former employee who personally and substantially participated in any ongoing trade or treaty negotiation within the last year of employment **and** who gained access to information that is exempt from disclosure under the Freedom of Information Act may represent, aid or advise anyone concerning the same ongoing trade or treaty negotiation on the basis of such information. 18 U.S.C. § 207(b).

### **Criminal Restrictions Applying to “Senior Employees”**

For purposes of the restrictions below, “senior employee” is any Presidentially-appointed, Senate-confirmed individual, or other official serving in a position listed on the Executive Schedule (5 U.S.C. §§ 5313-5316),<sup>3</sup> or any other employee not on the General Schedule and in a position for which the basic rate of pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule (i.e., currently equal to or greater than \$183,467).<sup>4</sup>

- **Two-year Cooling-off Period for Political Appointees (e.g., PAS, PA and Non-Career SES)** – Political appointees are required to sign the President’s Ethics Pledge. Pursuant to the Pledge, political appointees in senior positions agree to abide by the post-employment restrictions in 18 U.S.C. § 207(c) for a period of two years. Specifically, for two years following service in a senior position, no former political appointee may communicate with or appear before any Treasury employee or senior White House staff, on behalf of any other person (except the United States) in connection with any matter concerning which the former employee seeks official action. 18 U.S.C. § 207(c); EO 13989, §1(4). For former Presidential appointees, this restriction applies to communications with or appearances before employees of the entire Department. For other former senior Treasury appointees, it generally is limited to their former employing bureau.<sup>5</sup>
  - “Senior White House staff” means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3. EO 13989, §2(r).
- **One-year Cooling-off Period for Non-Politically Appointed Senior Employees** – For one year following service in a senior position, no former employee may communicate with or appear before any Treasury employee, on behalf of any

<sup>3</sup> At Treasury, this generally includes all Presidential appointees other than the Secretary, who is governed by stricter rules.

<sup>4</sup> This includes many (but not all) SES and SL employees.

<sup>5</sup> 5 C.F.R. § 2641.302; Appendix B to 5 C.F.R. Part 2641. For former Treasury DO employees (other than former Presidential appointees), this restriction applies to communications with or appearances before Treasury DO but does not apply to the “components” listed in Appendix B to 5 C.F.R. Part 2641.

other person (except the United States) in connection with any matter concerning which the former employee seeks official action. 18 U.S.C. § 207(c). This restriction applies to a former employee's employing bureau.<sup>6</sup>

- **One-year Foreign Entity Representation Bar** – For one year following service in a senior position, no former employee may represent a foreign entity (meaning a foreign government or political party) before any officer or employee of any department or agency of the United States, including Members of Congress (and Congressional staff), or aid or advise a foreign entity with the intent to influence a decision of such officer or employee. 18 U.S.C. § 207(f).

**Additional Revolving Door Restrictions for Political Appointees (Ethics Pledge Signers, e.g., PAS, PA, Non-Career SES, and Schedule C appointees)**

- **Appointees Leaving Government to Lobby** – For the remainder of the Biden Administration or for two years after leaving the Government (whichever is later), no former appointee may:

(1) *lobby* any “covered executive branch official” or non-career Senior Executive Service appointee. Within Treasury, “covered executive branch officials” means officials appointed by the President (whether or not confirmed by the Senate) and Schedule C employees. 2 U.S.C. § 1602(3). “Lobby” is defined by the Pledge to mean acting as a “registered lobbyist” as that term is defined under the Lobbying Disclosure Act.<sup>7</sup>

or

(2) engage in any activity on behalf of a foreign government or foreign political party which, were it undertaken on January 21, 2021, would require the individual to register under the Foreign Agents Registration Act of 1938, as amended (FARA). EO 13989, §1(6). Activities on behalf of a foreign government or foreign political party that would require registration under FARA include engaging, either directly or indirectly, within the United States in political activities, public relations, fundraising, or representation before federal officials. 22 U.S.C. § 611 et seq.

- **One-Year Behind-the-Scenes Lobbying-Related Restriction for Senior Employees** – For one year following service in a senior position, no former employee may provide behind-the-scenes support that *materially assists* others in engaging in *lobbying activities*. EO 13989, §1(5).
  - “Materially assist” is defined by the Pledge to mean providing substantive assistance. EO 13989, §2(h). It does not include providing background or

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<sup>6</sup> *Id.*

<sup>7</sup> EO 13989, §§2(e), (f). The term “lobbyist” means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period. 2 U.S.C. § 1602(10).

general education on a matter of law or policy based upon an individual's subject matter expertise, or any conduct or assistance permitted under 18 U.S.C. § 207(j) (which includes acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government).

- “Lobbying activities” is defined by the Pledge with reference to the Lobbying Disclosure Act’s definition of that term, EO 13989, §2(g), and includes “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.” 2 U.S.C. § 1602.

### **Additional Restrictions for All Employees**

- **18 U.S.C. § 209** – If you receive an offer of a signing bonus or similar compensation (other than salary) from your future non-Federal employer, arrange receipt of such compensation for after your termination from Federal service, to avoid any potential violation of 18 U.S.C. § 209, a criminal statute on supplementation of Government salary.
- **18 U.S.C. § 203** – Certain post-employment restrictions are contained in this statute which may apply to employees who anticipate joining a partnership after leaving Government service. This statute makes it unlawful for a former Federal employee to receive, agree to receive, solicit, or share in any compensation earned for services rendered personally or by another before any Federal department or agency during the time that the former employee worked for the Government.

If, for example, an employee leaves Treasury and accepts a partner position in a law firm which has regularly represented clients before Federal agencies, suitable arrangements must be made to ensure that the former employee does not receive any compensation attributable to such representation provided by the firm while he or she was a Federal employee. In order to avoid this particular prohibition, payment of a salary generally for at least one year, instead of a grant of a usual partnership compensation arrangement, to the employee is advisable.

- **The “Procurement Integrity” Bar** – For one year after taking certain actions or serving in particular capacities in relation to the award or the administration of Treasury contracts or contract amendments in excess of \$10,000,000, former employees are barred from accepting compensation from the contractors concerned. 41 U.S.C. § 2104. Specific advice should be sought with regard to the application of this provision by those departing employees who have been involved in significant Treasury contracting activities.

- **Attorneys** – Government employees who are attorneys may be subject to additional restrictions under their applicable state bar rules.
- **Treasury Circular No. 230, 31 C.F.R. § 10.25** – Additional restrictions may apply to former employees regarding matters before the Internal Revenue Service if they worked on those IRS matters while Federal employees. An ethics official can provide a summary of these restrictions on request.
- **Non-public/Confidential Information** – Once you leave government, you may not disclose non-public information, including information that is exempt from disclosure by statute, Executive order, or regulation, that is designated as confidential by Treasury, and/or that has not actually been disseminated to the general public and is not authorized to be made available to the public. If you have any questions, please contact [SecurityPrograms@treasury.gov](mailto:SecurityPrograms@treasury.gov).

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