



## Department of Energy

Washington, DC 20585

September 18, 2014

MEMORANDUM FOR DANIEL PONEMAN  
DEPUTY SECRETARY

FROM: SUSAN F. BEARD *SFBeard*  
DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: POST EMPLOYMENT SUMMARY

You have asked for guidance with regard to the restrictions that will apply to your employment activities after you have terminated your Federal service. This summary is based upon the current applicable laws and the Administration's pledge of ethical conduct pursuant to Executive Order (EO) 13490.

Since its enactment, 18 U.S.C. § 207 has remained the primary source of post-employment restrictions for Federal employees. As a "senior" employee, there are five provisions of particular import to you, all of which are largely representational prohibitions. There is also one procurement integrity restriction that you must consider. Your activities while a Federal employee are determinative of your post employment restrictions with the exception of the one year bars. All are discussed below.

For you, the most immediate and comprehensive restrictions are the one year, no contact bar under the provisions of section 207(c) and the one year bar under section 207(f) with regard to aiding and advising foreign entities (foreign governments or foreign political parties). You are prohibited, for a period of one year after separation from Federal service, from making representations or communications on behalf of a third party back to DOE, including FERC, on *any* matter under section 207(c). The ethics pledge, however, established in EO 13490 extends the one year no contact bar set forth in section 207(c) from one year to two years. Further, you are prohibited for a period of one year from *aiding or advising* a foreign entity with regard to communications or representations before the Federal government.

The third restriction is the most enduring but has a more narrow application. The "lifetime bar" of 207(a)(1) states no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee 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, and in which the United States is a party or has a direct and substantial interest. This restriction covers the entire lifetime of the particular matter at issue. A particular matter involving specific parties includes any investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. This restriction specifically applies to any particular matter involving specific parties in which you have personally and substantially participated during your career as a Federal employee. In essence, you are not permitted to "change sides" with regard to a matter in which you participated as a government employee after you leave government employment.



The fourth restriction is a two-year bar, commencing at the termination of your Federal employment on acting as a representative for a third party before the Government with respect to a particular matter involving specific parties where such matter was *pending under your official responsibility* during the one-year period prior to termination of your Government service under the provisions of section 207(a)(2). As Deputy Secretary, all particular matters involving specific parties at DOE are under your official responsibility. And the fifth restriction is a one-year bar from representing, aiding, or advising (including Members of Congress) on the basis of covered information<sup>1</sup>, a third party (except the United States) concerning any ongoing trade or treaty negotiation in which, during your last year of Government service, you participated personally and substantially pursuant to section 207(b).

The three restrictions under section 207(a)(1),(2), and (c) apply in situations involving contact, either through communication or appearance, with the Government.<sup>2</sup> None of these restrictions prohibits you from providing "behind-the-scenes" assistance to another person or entity intending to appear before or communicate with the Government. In addition, you are not prohibited from making appearances or communications purely social in nature or from making requests for publicly available documents. However, the restrictions under sections 207(f) and 207(b) prohibit you from providing *any* type of assistance to foreign entities and third parties in certain instances, who seek to make representations before the Federal government, including Members of Congress and their staff for a period of one year.

Further, as a political appointee, EO 13490 prohibits you, upon leaving Government service, from lobbying any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration. For purposes of the ethics pledge, to lobby is to act as a registered lobbyist who is a registrant in filings as a lobbyist for a particular client under the Lobbying Disclosure Act, 2 U.S.C. 1603(a). In practice, a former appointee covered by the ethics pledge who is registered as a lobbyist, cannot make any lobbying contact with a covered executive branch official or non-career Senior Executive Service appointee.

The significant post employment provision of the Procurement Integrity Act is codified at 41 U.S.C. 2104 and applies to former employees who performed any one or more of the following specified functions concerning the award of or administration of a contract:

- < for a contract of more than \$10,000,000, serving at the time of selection of a contractor or the award of a contract, 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;
- < serving as the program manager, deputy program manager, or administrative contracting officer for a contract of more than \$10,000,000; or
- < personally making any decision resulting in a payment, award, modification, overhead or other rate, or settlement valued at more than \$10,000,000.

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<sup>1</sup> Covered information refers to agency records that were accessible to the former employee but were exempt from disclosure under the Freedom of Information Act.

<sup>2</sup> The lifetime bar applies to all particular matters involving specific parties, including those in any other agency, during your entire career as a Federal employee.

This post-employment restriction prohibits a former employee who performed any of these functions from *receiving compensation from the successful bidder/contractor*, including compensation as an employee, officer, director, or consultant, for a period of one year after performing such function.

If you have any questions, please do not hesitate to contact me.