



**U.S. Department
of Transportation**

GENERAL COUNSEL

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Washington, D.C. 20590

Office of the Secretary
of Transportation

MEMORANDUM TO DEPARTMENTAL EMPLOYEES

FROM: Judith S. Kaleta
Deputy General Counsel and Designated Agency Ethics Official

SUBJECT: Guidance on Seeking or Negotiating for Employment and Post-Government Employment Restrictions

The purpose of this memorandum is to provide updated guidance to DOT employees regarding seeking or negotiating for employment with a non-Federal entity, and the restrictions on post-Government employment activities. This memorandum replaces the guidance issued in February 2024.

If you have any questions about this memorandum, please contact the OST Ethics Office at ethicsoffice@dot.gov or your Ethics Official listed on DOT's website, www.transportation.gov/ethics.

Attachment

U.S. DEPARTMENT OF TRANSPORTATION GUIDANCE ON SEEKING FUTURE EMPLOYMENT AND POST-EMPLOYMENT RESTRICTIONS

This document is intended to assist employees with navigating the rules on seeking future employment and the post-Government employment restrictions.

An employee who continues to work on certain matters while negotiating for employment and a former DOT employee who violates the post-employment restrictions could be subject to a \$50,000 fine, five years of imprisonment, or both.

Application of the rules is highly fact dependent. Before engaging in outreach about potential future employment, employees should consult an Ethics Official to determine how these rules apply in specific circumstances. (See Attachment 1 for a list of Ethics Officials.)

PART I: RESTRICTIONS BEFORE LEAVING FEDERAL SERVICE

If you are seeking a job with a private sector employer; a nonprofit organization, including a political party or party organization; or State or local government, you need to know how the Federal ethics laws may affect your job search. The Standards of Conduct for Executive Branch Employees and criminal conflict of interest statutes prohibit an employee from participating personally and substantially in a particular matter that the employee knows will have an effect on the financial interests of a prospective employer with whom he or she is seeking employment or with whom he or she has an arrangement for future employment. (See 18 U.S.C. § 208.)

A. General Considerations

The rules regarding seeking and negotiating for employment only apply to non-Federal employment. You can freely look for other Federal positions, including Congressional staff positions.

Because seeking or negotiating for non-Federal employment means that the company or entity's interests are now your interests, you will not be able to participate in an official matter that involves the prospective employer as an identified party, such as a grant, contract, application, audit, investigation, or lawsuit. You must recuse yourself from such matters and the recusal extends to any particular matter of general applicability, such as a legislative initiative, regulatory proposal, or policy determination that affects the prospective employer as a member of the discrete industry, economic sector, or other defined class of organizations in which the prospective employer operates. In addition, if you participate in certain procurement matters, as discussed below, there is also the duty to report employment contacts made by you or a bidder or offeror.

B. Seeking Employment

The regulations define “seeking employment” broadly. Employees are seeking employment even before job negotiations. For example, sending a resume or any contacts about possible employment (other than requesting a job application) with a particular entity or company are seeking employment under the regulations. The criminal conflict of interest laws apply once an employee begins discussions about a specific job opportunity or submits an application. You are seeking employment if you make a response other than rejection to an unsolicited offer. The ethics regulations provide that “a response that defers discussion until the foreseeable future does not constitute rejection” of an unsolicited employment overture. (*See* 5 CFR § 2635.603(b)(3).)

If you reach out to friends, former colleagues, or mentors to have general conversations about a particular industry or what opportunities might be out there, you are not seeking employment. Giving friends, former colleagues, or mentors your resume does not trigger further action until you know they have given it to a particular company, and it is being considered. At that point, you are seeking employment and should contact an Ethics Official. (*See* Section E below.)

Note that the more senior an employee you are, the more difficult it will be to have purely “informational” discussions with non-DOT colleagues because you will likely be speaking with individuals who have hiring authority.

EXAMPLE: An employee who works in Government Affairs has coffee with friends who work for public relations firms. The employee explains that he is looking for a change and asks if they know of any openings. The employee has not begun seeking employment with any particular entity. If, a few days later, one of the friends says she knows of an opening and the employee expresses an interest to the potential employer or submits an application, at that point, the employee should contact an Ethics Official because the recusal requirement attaches once the employee expresses interest or submits an application.

EXAMPLE: A Deputy Administrator wants to have a general conversation about opportunities in a particular industry with a former colleague who is the Vice President of a company that does business with the Deputy Administrator’s agency. Although the conversation is intended to be general, the person has hiring authority or can influence the hiring decision and may indicate the company is interested in considering the Deputy Administrator for a position during their meeting. The Deputy Administrator should contact an Ethics Official within three business days after the meeting and discuss recusal obligations.

C. Negotiations

Negotiating for future employment generally begins when an employee begins actual discussions with an employer regarding potential employment. Negotiating is not limited to discussions of specific terms and conditions of employment; it includes indications of availability of a position. Once employment discussions have begun, the criminal conflict of interest laws apply, and an employee must recuse themselves from working on any matters that could affect the prospective

employer. These matters include contracts, grant applications, enforcement actions, and rulemakings that affect a discrete industry in which the prospective employer is part, or where the prospective employer has commented on the rulemaking.

If you accept a job outside the Government, you must continue to refrain from working on matters that would affect the financial interests of your prospective employer until you leave the Government.

D. Using a Headhunter or Employment Search Firm

Employees who use an intermediary to assist in their job search such as a headhunter or employment search firm should ensure they explain their Federal status to the firm. If an employment search firm contacts a prospective employer on behalf of an employee, the employee is NOT considered to be seeking employment until the search firm tells the employee that a particular company was contacted. Therefore, an employee could specify to a search firm that the firm should only communicate serious offers to the employee to avoid the need to recuse from every potential employer that the search firm contacts.

EXAMPLE: The FRA Deputy Administrator has hired an Executive Search Firm to assist in securing a new job. She provides her resume and has a discussion with the recruiter about wanting to work in the Pacific Northwest, closer to her family. She also tells the recruiter that there is a major grant selection taking place in October, so it will be difficult to learn about any offers before that time. The recruiter sends the Deputy Administrator's resume to three cities in Washington and Oregon that have openings in their transportation agencies. The Portland Transportation Department (PTD) wants to interview the Deputy Administrator in September. Once the headhunter tells the Deputy Administrator about the opportunity, the Deputy Administrator will be seeking employment with PTD and must either decline the interview and withdraw from consideration or recuse from the selection process.

E. Recusal and Screening Arrangement

When seeking and negotiating for future employment, an employee must execute a written recusal to acknowledge that he or she is prohibited from participation in those matters affecting the potential employer. Recusals that designate a screener or are signed by a supervisor are not required in all cases. Employees must contact an Ethics Official to discuss what steps are necessary. All appointees who have been confirmed by the Senate (PAS employees) must develop and file their recusals with the OST Ethics Office. Recusals remain in place until the employee leaves the Government or ceases negotiations with the employer. (*See Attachment 2 for an example of a recusal for 450 filers.*)

If you are required to file an OGE 278 Public Financial Disclosure Report (e.g., SES officials and all appointees, including PAS), you must notify your 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.

The Notification of Post-Employment Negotiation form is included as Attachment 3. **All OGE 278 filers should use this form and submit it to an Ethics Official.** The Ethics Official will then determine if a more detailed recusal and screening arrangement is warranted. This process is important to ensure that employees do not work on matters involving a prospective employer.

F. Interview Expenses

An employee may accept meals, lodging, transportation, and other benefits customarily provided by a prospective employer in connection with an employment interview, including travel to and from the interview. This is considered a permissible gift under the ethics regulations.

(See 5 CFR § 2635.204(e)(3).) Interview expenses provided by a prospective employer may be reportable on a financial disclosure report, depending on the total value of the expenses provided by the prospective employer. Employees should contact an Ethics Official for assistance in determining whether these expenses are reportable.

G. Restrictions Applicable to Employees Who Work on Procurement Matters

The Procurement Integrity Act contains a restriction concerning negotiations for future employment. (See 41 U.S.C. § 2101 *et seq.*) Any employee who personally and substantially participates in an agency procurement over \$250,000 must report in writing to his or her supervisor, and to the Designated Agency Ethics Official (Judy Kaleta) or the appropriate Ethics Official in the operating administration, any contacts with or by a bidder or offeror regarding possible non-Federal employment. (See Attachment 1 for a list of DOT Ethics Officials.) The employee making the report must either reject the possibility of non-Federal employment or recuse him or herself from further personal and substantial participation in the procurement. (See Attachment 2.)

H. Departure Announcements

To ensure that an employee's impartiality in performing Government duties would not be questioned, an employee may not issue statements or permit a future employer to issue statements announcing his or her future employment while still working for the Department if the future employer is a prohibited source. This includes a press release issued by an employee's future employer, an internal announcement made by a future employee to staff, adding an employee's biography to the future employer's website, updating the employee's LinkedIn profile, or posting on social media. An employee should consult with the Ethics Office if their future employer seeks to inform its leadership, board, or other staff for purposes of making an employment offer and/or approving the employee's hire.

If you have any questions as to whether an announcement would be permissible, please contact an Ethics Official.

PART II: RESTRICTIONS AFTER LEAVING FEDERAL SERVICE

All employees who leave Government service are subject to certain restrictions on representing a third party back to their former agency based on either their position while they were a Government employee or based on certain official actions they took while working for the Government. (*See* 18 U.S.C. § 207.)

The purpose of the law is to promote public confidence in the fairness of Government proceedings by preventing an employee from “switching sides” in his or her representation on matters he or she was involved with during Federal service. The restrictions do not bar anyone, regardless of grade or position, from accepting employment with any private or public employer after their Government service ends, and in most cases, do not prohibit the sharing of public information with such employers. The law only prohibits individuals from engaging in certain activities on behalf of others before the Federal Government.

These restrictions are representational restrictions only. Former employees may always provide “behind the scenes” advice to their new employer, even on matters in which they participated personally and substantially or were under their direct supervision, as long as they do not act as the employer’s representative before their former agency through appearance or communication and do not disclose non-public information. Although former employees are unable to telephone, sign their name to a letter addressed to, or attend a meeting with, a DOT official, they may legally tell an employer the name of the DOT employee to call or write, or with whom to meet.

A. Definitions Common to all Post-Employment Rules

Federal statutes and regulations address post-employment restrictions that apply to employees leaving Federal service. Generally, these statutes and regulations prohibit certain former employees from representing anyone before their former operating administration or the Office of the Secretary of Transportation (OST). Representing is defined as knowingly communicating – orally or in writing – with the intent to influence, with any Federal employee on behalf of anyone other than yourself. (*See* 5 CFR § 2641.201.)

A communication occurs when a former employee imparts or transmits information of any kind – including facts, opinions, ideas, questions, or direction – to an employee of the United States, whether orally, in written correspondence, by electronic media, or by any other means. (*See* 5 CFR § 2641.201(d)(1).)

An appearance occurs when a former employee physically presents him or herself before an employee of the United States, in either a formal or informal setting. Although an appearance also may be accompanied by certain communications, an appearance need not involve any communication. Mere presence in a meeting may be considered an appearance. (*See* 5 CFR § 2641.201(d)(2).)

A communication or appearance is made with the intent to influence when made for the purpose of either (i) seeking a government ruling, benefit, approval, or other discretionary government

action or (ii) affecting government action in connection with an issue or aspect of a matter which involves an appreciable element of an actual or potential dispute or controversy. (*See* 5 CFR § 2641.201(e).)

Intent to influence is generally not present where a former employee makes a routine request for a publicly available document or inquiries about the status of a matter, or makes factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action.

Behind-the-scenes aid and advice is assistance provided by a former Federal employee to any person that does not involve a communication to or an appearance before an employee of the U.S. Government. (*See* 5 CFR § 2641.201(d)(3).) Attorneys who are former Federal employees may be subject to specific bar rules that place other restrictions on their ability to provide behind-the-scenes assistance.

A senior employee is an employee whose pay is set by the Executive Schedule in 5 U.S.C. §§ 5311-5316¹ or an employee who was paid at the current annual rate of basic pay of \$195,231.00² or more (exclusive of any locality pay). (*See* 18 U.S.C. § 207(c)(2).) Specific restrictions, detailed in Part C, apply to senior employees.

B. Restrictions Based on Prior Government Work or Supervision

All Employees: Permanent Restriction: A former employee may not represent anyone before DOT, including any of its operating administrations or OST, or before any U.S. court, court-martial, or any other agency or department, concerning any particular matter (e.g., a contract, grant, inspection, enforcement action, court or administrative case, etc.) in which he or she participated personally and substantially while in Federal service, and which involved a specific party or parties.

EXAMPLE: Chris is an engineer in the Federal Railroad Administration (FRA). While at FRA, he worked on the testing of certain rail cars. Chris leaves FRA to work for a railroad. He may never represent his new employer before FRA, any other operating administration, or OST, or any other Federal department or agency on the specific testing matters he worked on while at FRA. He can, however, provide his new employer with

¹ DOT positions that are on the Executive Schedule include the Secretary of Transportation, Deputy Secretary of Transportation, Under Secretary of Transportation for Policy, General Counsel, FAA Administrator, FAA Deputy Administrator, FHWA Administrator, FHWA Deputy Administrator, Assistant FHWA Administrator, FTA Administrator, FTA Deputy Administrator, NHTSA Administrator, NHTSA Deputy Administrator, FMCSA Administrator, FMCSA Deputy Administrator, Assistant FMCSA Administrator, FRA Administrator, PHMSA Administrator, MARAD Administrator, GLS Administrator, Assistant Secretary for Research and Technology, Assistant Secretary for Governmental Affairs, Assistant Secretary for Transportation Policy, Assistant Secretary for Tribal Government Affairs, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Administration, Chief Financial Officer, and Chief Information Officer.

² This figure is adjusted by the U.S. Office of Government Ethics (OGE) in accordance with changes to the applicable pay-level thresholds for Federal civilian employees. \$195,231.00 is the applicable amount for Calendar Year 2025.

aid and advice using his expertise in rail car testing, so long as he does not disclose non-public information.

Supervisors: Two-Year Restriction: A former employee may not represent anyone before DOT, including any of its operating administrations or OST, or before any U.S. court, court-martial, or any other agency or department, for two years after leaving Federal service concerning any particular matter which was pending under his or her official responsibility during his or her last year in Federal service, and which involved a specific party or parties.

EXAMPLE: Sally, a Federal Aviation Administration (FAA) career supervisor, oversees all employees working on an airline inspection, though she did not herself work on the inspection personally. The inspection occurred within the year before Sally left FAA. Sally would not be able to represent anyone before FAA, any other operating administration, or OST, or any other Federal department or agency concerning that inspection for two years after leaving Federal service. However, if Sally worked personally and substantially on that inspection, she would also be subject to the permanent restriction.

C. Length of Time Restrictions Based on Employee Status

Senior Employees: One-Year Restriction: Different rules apply to appointees whose pay is fixed by the Executive Schedule, as compared to other senior employees who are paid at an annual rate of basic pay of \$195,231.00 or more (exclusive of locality pay).

Appointees whose pay is fixed by the Executive Schedule in 5 U.S.C. §§ 5311-5316 may not represent anyone in any matter before any agency at DOT for one year after his or her appointment ends.

A former senior employee who worked in OST and who was paid at the current annual rate of basic pay of \$195,231.00 or more (exclusive of any locality pay) may not represent anyone in any matter pending before OST for one year after leaving Federal service, though a senior employee may represent another entity or individual before any other DOT operating administration in which he or she was not employed. A former senior employee who worked in any other operating administration and who was paid at the current annual rate of basic pay of \$195,231.00 or more (exclusive of any locality pay) may not represent anyone in any matter before his or her former operating administration for one year after leaving Federal service, though he or she may represent another entity or individual before OST or before any other operating administration in which he or she was not employed.

These restrictions do not apply to a former senior employee who is representing a State or local government entity or an accredited institution of higher education as an employee of that entity or institution.

EXAMPLE: Two months after resigning from DOT, Tanique, a former Deputy Assistant Secretary, who was a career official with an annual salary of more than \$195,231.00, is asked to represent a domestic airline in an enforcement matter pending in OST. Tanique

did not work on the enforcement matter while at DOT and the matter was never pending in OST. Tanique may not represent the airline before an OST employee in connection with the compliance matter. She has ten months remaining on the one-year restriction applicable to senior employees.

EXAMPLE: Five months after leaving DOT, Karen, a former FMCSA Deputy Chief Counsel with an annual salary of more than \$195,231.00, is asked to represent a municipality in a matter before FTA. Karen may represent the municipality before FTA because she is a Senior Employee whose pay is not specified in or fixed according to the Executive Schedule and because she was not employed by FTA. Similarly, if Karen were asked to represent the municipality before OST, she would be permitted to do so because Karen worked for FMCSA, which is a separate component of DOT.

D. Restrictions Applicable to Attorneys Leaving the Government

Attorneys who leave the Federal Government need to be aware that, depending on the specific rules of the jurisdiction or jurisdictions where the attorneys hold Bar membership, they may face additional restrictions in working on such matters.

Under the American Bar Association Model Rules of Professional Conduct, an attorney cannot: 1) reveal any information relating to the representation of a Government client without informed consent of the appropriate agency; 2) represent a new client if there is a conflict of interest with the former Government client; 3) represent a new client in the same or substantially related matter where the new client's interests are adverse to the former Government client; 4) use or reveal information relating to the representation of the Government to the Government's disadvantage; or 5) work on any matter, even behind the scenes and not adverse to the Government's interests, if the attorney worked on the matter personally and substantially during Government employment. (*See* Model R. Prof. Conduct 1.6, 1.7, 1.9, 1.11 (AM. BAR ASS'N 2013)).

Attorneys leaving the Federal Government should check their State Bar rules.

E. Restrictions Applicable to Employees Who Work on Procurement Matters

The Procurement Integrity Act contains post-employment restrictions. (*See* 41 U.S.C. § 2101 *et seq.*) Under these restrictions, certain former employees are prohibited from accepting compensation from a contractor for serving as an employee, officer, director, or consultant of that contractor for one year after:

- having served, at the time of selection of the contractor or the award of a contract to that contractor, as a procuring officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team on a contract over \$10,000,000 awarded to that contractor;
- having served as the program manager, deputy program manager, or administrative contracting officer for a contract over \$10,000,000 awarded to that contractor; or
- having personally made the agency decision to:

- award a contract, subcontract, modification, task order, or delivery order worth over \$10,000,000 to that contractor;
- establish overhead or other rates valued over \$10,000,000 for that contractor;
- issue contract payments over \$10,000,000; or
- pay or settle a claim over \$10,000,000 with that contractor.

The Procurement Integrity Act also prohibits a former employee who had access to contractor bid and proposal information, or to source selection information, from knowingly disclosing that information before the award of a government contract to which the information relates.

EXAMPLE: Jerry is a former DOT Contracting Officer who now works for ABC Contractor. While at DOT, Jerry had access to source selection information for Contract X, including ABC's bid on Contract X. Jerry cannot disclose that source selection information to ABC Contractor before the award of Contract X. Jerry also cannot disclose any other information he had access to as a DOT employee that is not otherwise publicly available.

F. Restrictions Applicable to Former Employees who testify in Court in Matters Involving DOT

The DOT regulations (49 CFR Part 9) limit, and in some instances, prohibit, former DOT employees from providing testimony, written or oral, or records in legal proceedings. These regulations describe procedures that must be followed when a former DOT employee is served with any request or subpoena, or who voluntarily decides to provide testimony or records in legal proceedings concerning matters that the former employee worked on while at DOT.

Any former employee in this situation should immediately contact the Chief Counsel's Office in the Operating Administration where he or she worked, or in the case of former employees in OST, the Office of the General Counsel, Assistant General Counsel for Litigation and Enforcement.

G. Restrictions Applicable to Employees Engaged in Trade and Treaty Negotiations

Employees who personally and substantially participate in ongoing trade or treaty negotiations on behalf of the United States within one year before leaving Federal service, and who have access to information which by law cannot be disclosed, may not for one year after leaving Federal service represent, aid, or advise any other person concerning those negotiations using that information. This restriction includes a one-year prohibition against providing "behind-the-scenes" aid and advice.

H. Restrictions Applicable to Employees Leaving Federal Service to Work for Foreign Entities

Federal law and regulations impose additional detailed restrictions that prohibit certain former senior employees, for one year, from representing or advising foreign governments and certain

other foreign entities in certain matters involving the Federal Government. This restriction includes a one-year prohibition against providing “behind-the-scenes” aid and advice.

I. Sanctions Applicable to Violations of Post-Employment Restrictions

Pursuant to 18 U.S.C. § 207, a former DOT employee who violates these post-employment restrictions (contained in 5 CFR Part 2641) could be subject to a \$50,000 fine, five years of imprisonment, or both. Violations of the post-employment restrictions may also result in injunctions and prohibitions on future representations to DOT.

Pursuant to the Procurement Integrity Act (41 U.S.C. § 2101 *et seq.*), a DOT employee who violates the restrictions laid out in the Act could be subject to a fine, five years of imprisonment, and/or administrative penalties, including debarment.

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**U.S. DEPARTMENT OF TRANSPORTATION SAMPLE RECUSAL AND SCREENING
ARRANGEMENT - NEGOTIATING FOR EMPLOYMENT**

Instructions for Filling Out This Form:

Upon a determination that a conflict of interest exists, an Agency Ethics Official shall execute this arrangement with the employee. Once executed, the Agency Ethics Official shall distribute copies of this arrangement to the employee immediately after execution, and if selected, a screener.

FROM: [Employee]

DATE:

TO: [Agency Ethics Official]

This is to advise that I am seeking employment with _____ and thus, I am recusing myself from personal and substantial participation in any particular matter that would have a direct and predictable effect upon the financial interests of that organization.

____ I have notified my immediate supervisor of this recusal, who will screen any matters from this organization for me.

____ I have consulted with an Agency Ethics Official and made alternate arrangements in the event that any matter in which I am recused from comes to my attention.

I understand that this recusal shall remain in place until I cease employment negotiations with this organization or in the event I am not selected for a position.

/s/ _____
Signature of Employee

/s/ _____
Signature of Agency Ethics Official

NOTIFICATION OF POST-EMPLOYMENT 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. Employees who file this notification statement also must file with their agency ethics official a recusal statement whenever there is a conflict of interest or appearance of a conflict of interest with the entity. In any such case, the employee must recuse, unless the employee has first obtained a written waiver or authorization as discussed in 5 C.F.R. § 2635.605, or qualifies for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

NOTIFICATION OF POST-EMPLOYMENT NEGOTIATION OR AGREEMENT

Name of Employee	
Agency/Office	
Date Negotiation or Agreement Commenced	
Name(s) of Non-Federal Entity or Entities Disclose each non-federal entity with which you are negotiating for or have an agreement of future employment or compensation.	

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 not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of that entity, unless I first obtain a written waiver or authorization consistent with 5 C.F.R. § 2635.605, or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

Employee Signature	Date Submitted
Agency Ethics Official Signature	Date Received