

U.S. DEPARTMENT OF COMMERCE



OUTGOING TRANSITION GUIDANCE

TRANSITION GUIDANCE

For Outgoing Employees

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Attachment 1: Seeking Employment and Post Employment Activities - Summary of Ethics Rules

Attachment 2: Litigation Guidance for Departing Employees

Attachment 3: Document Preservation Guidance for Departing Employees

Document Prepared by

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With Input from:

Office of the General Counsel Office of Security

Office of Facilities and Environmental Quality

Office of Financial Management

I. GENERAL TRANSITION INFORMATION

At the beginning of a new Presidential Administration, the incoming President makes personnel changes, including selecting new Cabinet secretaries and agency heads. These new appointees may appoint a number of officials on the basis of their support for the President's goals and policies. These are the officials who are responsible for formulating, advocating, and directing Administration policies and programs, or are those who serve such officials in a close and confidential relationship.

Most executive branch positions are in the "competitive service" or in a separate, but similar, competitive merit system. Governmentwide, there are relatively few positions whose incumbents are subject to change during periods of transition. Employees in positions that traditionally change when Presidential Administrations change are not part of the competitive civil service. Rather, they are excepted from competitive service requirements and protections by law, Executive order, or regulation.

Incumbents of these discretionary positions customarily resign at the request of the new incoming Administration officials or before a new agency head takes office. It also is common for an incoming Administration to ask certain persons to remain in their jobs during the transition to ensure continuity during the initial period of staffing.

Requests for resignations are initiated by the White House and will be coordinated through the Department of Commerce's (DOC) Office of White House Liaison.

Positions or Individuals Subject to Change

There are four broad categories of individuals or positions that may be changed during transition:

Presidential appointments made with the advice and consent of the Senate (PAS) to positions in which the incumbent serves at the pleasure of the President;

Other Presidential appointments (PA) to positions in which the incumbent serves at the pleasure of the President;

Noncareer Senior Executive Service (SES) appointments; and

Appointments to other positions in which the incumbent serves at the pleasure of the agency head. These positions are excepted from the competitive service by law, by Executive order, or by the Office of Personnel Management (OPM) based on their responsibility for determining or advocating agency policy or their confidential character (commonly known as "Schedule C" positions).

Positions in these four categories normally include Cabinet Officers and heads of other executive branch agencies; Under Secretaries; Assistant Secretaries; Directors of Bureaus and Services; and Chairpersons and Members of Boards, Commissions, and Committees. Positions in all four categories above are often authorized by specific provisions of law.

Positions that are generally subject to change during transitions are listed in a document called United States Government Policy and Supporting Positions, commonly known as the Plum Book. OPM prepares this document every 4 years at the request of Congress. It is published immediately after the November election, and it will be available on OPM's website (<https://www.opm.gov/>).

II. INVOLUNTARY SEPARATION/RESIGNATIONS

Presidential Appointees and Immediate Staff. When the President accepts the resignation of a Presidentially-appointed policy-making officer, the separation is considered involuntary. A separation is involuntary at any time the resignation is submitted and accepted, whether or not it is related to a change in Presidential Administrations. Further, when it is known that a Presidential appointee is leaving, the resignation of a noncareer SES or Schedule C employee who works for that Presidential appointee is involuntary. This “involuntary” status may have some bearing on whether a former political employee is eligible for unemployment compensation. (See Section VIII of this guidance.)

Requested Resignations. When an agency separates an employee who submits his/her resignation in response to a request from a recognized representative of the new incoming Administration, that separation is also considered to be involuntary for retirement purposes. However, unsolicited resignations, i.e., those based on an anticipated request for a resignation and those prompted by personal choice, are voluntary for retirement purposes and may not qualify the employee for unemployment compensation benefits. (See Section VIII of this guidance.)

When an incumbent’s intention to leave has been documented, an agency may establish a different position to employ a designated successor for a brief period, pending the incumbent’s departure. For example, when an office director is leaving, the agency could establish a temporary special assistant position for a short period to facilitate orientation of the incoming director to the office’s operations.

III. POST-EMPLOYMENT ETHICS RESTRICTIONS

There are certain limitations on employment after Government service. These restrictions include some limitations on contacting Federal agencies or Federal courts after leaving Government service, providing assistance to foreign governments (for some officials), disclosing non-public information, and receiving compensation from contractors for employees who had an important role in major procurements. The restrictions on contacting the Government include a 1-year cooling-off period on contacting anyone on behalf of someone else in the entire DOC for Presidential appointees in Senate-confirmed positions or anyone in the employee’s specific agency for other senior employees (meaning employees whose base pay is 86.5 percent of Executive Level II, that is, base pay of \$170,665 or more in 2020). All employees are barred from contacting any Federal official on behalf of someone else regarding matters involving specific-parties on which they worked, or, for a 2-year period, on matters on which subordinates worked. These restrictions are based on a criminal statute, 18 U.S.C. 207. Restrictions based on an Ethics Pledge you signed include a bar on serving as a lobbyist before your agency (or the entire Department of Commerce for Presidential appointees in Senate-confirmed positions) for 5 years and serving as a registered foreign agent at any time.

Agency ethics officials are available to provide specific advice on post-employment restrictions and disqualification obligations while engaged in a job search before and after leaving Government service by calling 202-482- 5384, or by emailing the Office of the General Counsel (OGC) at EthicsDivision@doc.gov. A summary of these restrictions is available at the Ethics Law and Programs Division website: <http://www.commerce.gov/ethics>. (See the links at the right-hand column.)

Frequently Asked Questions

Are there restrictions on my seeking non-Federal employment while I am currently employed?

Although there is no restriction on seeking employment, once an employment search begins, you must immediately disqualify yourself from working as a Government official on matters affecting the financial interests of a prospective employer. Generally, there is no requirement to provide written notice of such disqualification, unless the disqualification will require reassignment of a matter assigned to you, the employment contact is with a bidder on a contract of \$100,000 or more in which you have responsibility as a procurement official, or you receive a payment for travel expenses from the prospective employer. For further guidance, contact an ethics official by telephone at 202-482-5384, or by email at EthicsDivision@doc.gov.

Furthermore, within 3 business days of entering into employment negotiations (two-way discussions about a possible position), you must send an ethics official an email or Notice of Employment Negotiations identifying the prospective employer and confirming that you will comply with disqualification requirements. (The form can be downloaded from the Ethics website at: <http://www.commerce.gov/ethics>.)

May I compete for other Federal jobs in my agency or in other Federal agencies?

You may compete for any Federal career jobs that are open for applications from the general public. This would include jobs announced through OPM and jobs announced by agencies when the announcement specifies that applications will be accepted from “all sources.” However, many agency jobs are open only to current career employees or status candidates. You could not apply for those positions unless you had previous Federal career service and the announcements were open to reinstatement or status candidates.

Some nonpolitical jobs are filled in what is called the “excepted service.” These jobs are excepted from the specific appointment procedures required for competitive career jobs although they are subject to the basic principle of selection based on merit. Each agency establishes its own procedures and qualification requirements for filling excepted service positions. If you qualify for such a position, you will be considered in accordance with the agency’s procedures.

You may compete for an SES career appointment when the position is advertised under merit staffing procedures. However, if you are a noncareer SES appointee, you cannot receive a career SES appointment in your current position, or a successor position, since there is no bona fide vacancy.

Where and how can I find current job openings and other information on applying for other Federal jobs?

The address for employment information on OPM’s worldwide website is <http://www.usajobs.gov>. The USAJOBS website, like all components of the employment information delivery system, provides access to the Federal Jobs Database for worldwide opportunities, full text job announcements, answers to frequently-asked Federal employment questions through delivery of Employment Info Line fact sheets, and access to electronic and hard copy application forms.

What are my reinstatement rights if I previously worked for the Federal Government in a career (competitive) position?

You do not have a right (i.e., an entitlement) to be reinstated to a career job. However, if you are eligible for veterans’ preference, if you had career tenure, or if you have not had a break in Federal service of more than 3 years since you left your competitive job, you do have reinstatement eligibility in the competitive service. This means that you may apply for jobs open only to status candidates and do not have to compete for employment with candidates from outside the Government. However, agencies do not have to consider reinstatement candidates for any particular job. Some jobs may be open only to current competitive employees or may be filled from other sources.

If you are considered for reinstatement, you will have to compete with other employees and status candidates for any job that is at a higher grade than you held under your last competitive service appointment. If the job is at the same grade as your last competitive career job, the agency may reinstate you without competition, but that would be subject to the agency’s internal merit staffing policy. The

agency could require you to compete with employees and status candidates at any grade.

You may be reinstated in the SES if you previously successfully completed the 1-year SES probationary period as a career appointee, or if you converted to a career SES appointment when the SES was established in 1979. However, separation from the SES career appointment must not have been for performance or disciplinary reasons.

If I am reemployed in the Federal Government, must the agency match my current salary and grade?

An agency is not required to match your salary and grade. However, if you are reemployed in a General Schedule (GS) position, an agency may, if its internal rules permit, set your basic pay based on the highest previous rate you received in the Federal Government, but not above the highest rate for the grade of the new position.

If I retire, can I later return to Federal service?

Yes. However, depending on the type of annuity you receive, your annuity will terminate or your salary as a reemployed annuitant will be reduced by the amount of the annuity.

If you received a lump-sum payment for unused annual leave and are reemployed in the Federal service before the end of the annual leave period covered by the lump-sum payment, you must refund that portion of the lump-sum payment. The refunded portion covers the period between the date of reemployment and the expiration of the lump-sum leave period. Your employing agency will recredit to you an amount of annual leave that is equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

Also see attached OGC guidance:

Attachment 1, "Seeking Employment & Post Employment Activities - Summary of Ethics Rules" and Attachment 2, "Litigation - Guidance for Department Employees."

IV. PROTECTING FEDERAL RECORDS AND OTHER DOCUMENTS FROM UNAUTHORIZED REMOVAL

National Archives and Records Administration (NARA) guidance reminds heads of Federal agencies that official records must remain in the custody of the agency. [See NARA Bulletin 2008-02, dated February 4, 2008, (www.nara.gov).] Federal officials should be aware that there are criminal penalties for the unlawful removal or destruction of Federal records [18 U.S.C. 2071] and the unlawful disclosure of national security information [18 U.S.C. 793, 794, and 798]. Departing Federal officials should contact their DOC bureau records officer if they have questions about maintaining and disposing of records and extra copies of records.

DOC records officers should have copies of *Documenting Your Public Service* and *Agency Recordkeeping Requirements*, two NARA publications that address records creation and maintenance procedures and distinguish records versus personal documentary materials. These publications are available on the NARA website at <http://www.archives.gov/records-mgmt/publications/documenting-your-public-service.html> and <https://www.archives.gov/records-mgmt/policy/agency-recordkeeping-requirements.html>, respectively. NARA records management regulations address the identification and protection of Federal records and are also

accessible at 36 CFR Chapter XII, Subchapter B.

Also see attached OGC guidance:

Attachment 3, "Document Preservation - Summary of Rules for Departing Employees."

V. GIFTS

As representatives of the Government, employees are prohibited from keeping official gifts or donations. These must be turned in to the Department. Donations of money are kept by the Chief Financial Officer and Assistant Secretary for Administration in the Gifts and Bequests Fund. Questions regarding the propriety of accepting any gift should be addressed to OGC (202-482-5384). As a general rule, departing employees may take with them copies of publicly available papers and pictures. Items other than publicly available documents are usually considered to be Government property and may not be removed. Questions regarding the status of a particular item may contact Andre Jessup, Chief of the Personal Property and Fleet Management Division (202-482-4784), who will coordinate with OGC and other appropriate parties to make a determination.

VI. PAY AND LEAVE

Separation Payments

Certain payments may be due an individual who is separated from the Federal service. (However, please note that all separation payments are contingent on the employee's timely completion of separation procedures.)

Final Salary Payments. Salary is paid on a biweekly basis, and electronically deposited approximately a week after the biweekly period worked. This is not a hold-back of pay, but a one-week period required for routine processing of the biweekly pay. Separations are usually effective at the end of a biweekly pay period and employees would receive their last salary payment after their departure.

Severance Pay. Employees who are covered by the severance pay law are entitled to a series of payments equal to their normal salary following an involuntary separation that is not for misconduct or unacceptable performance. Presidential Appointees, noncareer SES appointees, Schedule C employees, and other similar political appointees are not covered by severance pay law and are not eligible for severance pay.

Lump-Sum Payments for Unused Annual Leave. Employees who separate from Federal service and who are covered by the Federal leave system are entitled to a lump-sum payment for unused annual leave. The lump-sum payment equals the pay the employee would have received had he/she remained in Federal service on annual leave. This payment excludes any incentives that are paid for the sole purpose of encouraging an employee to remain in Government service, such as retention incentives. Most political employees are excluded from these incentives. Most Presidential Appointees (PAS and PA) are excluded from coverage under the Federal leave system.

A current career SES Federal employee who receives a Presidential appointment does not receive a lump-sum payment for his/her unused annual leave. The unused annual leave is held in abeyance for recredit if and when the employee is subsequently reemployed in a career position covered by the Federal leave

system. If the individual separates from Federal service while under a Presidential appointment, he/she will receive a lump-sum payment for unused annual leave based on the rate of pay in effect for the position the employee held immediately before he/she accepted the Presidential appointment.

When an employee who received a lump-sum payment for unused annual leave is reemployed in the Federal service before the end of the annual leave period covered by the lump-sum payment, he/she must refund a portion of the lump-sum payment. The refunded portion covers the period between the date of reemployment and the expiration of the lump-sum leave period. The employing agency will recredit to the employee an amount of annual leave that is equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

You can obtain additional information on lump-sum payments for annual leave at OPM's website at <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/lump-sum-payments-for-annual-leave/>. ***Please note that separation payments referred to above cannot be made until after the full separation clearance process is completed.***

Leave Questions and Answers

What happens to my accrued annual and sick leave?

You will be paid a lump-sum payment upon separation for accrued annual leave and restored annual leave, if applicable. You will be paid at the rate of basic pay you were earning at the time of separation, less applicable deductions. If you were a Presidential Appointee who had annual leave balances held in abeyance from a position in the Senior Executive Service (SES), your annual leave will be paid at the rate of basic pay you were earning in the last SES position. No payment is made for accrued sick leave. Sick leave will be recredited if you are reemployed in a Federal position.

Note that in order to receive a lump-sum payment, the leave balances on your time and attendance (T&A) report must be in agreement with your leave balances in the Department's payroll/personnel system, the National Finance Center. For this reason, your timekeeper must generate a leave audit from the web-based T&A system, WebTA, to ensure the balances are in agreement. If they are not, your timekeeper must work with staff in your servicing human resources office (HRO) to resolve the discrepancies. To receive payment, your timekeeper must prepare a Form CD-529, Lump Sum Leave or Compensatory Time Payment, and submit it along with the leave audit to your servicing HRO for processing.

Can I still use my accumulated compensatory time balances?

You should use your accumulated compensatory time balances before your accrued annual leave. Pursuant to regulations, compensatory time off must be used no later than 26 pay periods after the pay period in which it was earned and reported on your webTA. Any unused hours after the 26-pay period timeframe would be forfeited.

VII. RETIREMENT, HEALTH AND LIFE INSURANCE

Federal Benefits Information

Retirement

An employee under CSRS may retire voluntarily after reaching age 55 with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Under FERS, voluntary retirement is available at the minimum retirement age (MRA, 55 to 57, depending on year of birth) with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Under FERS, one can also retire on a reduced annuity at MRA with as little as 10 years

of service.

An employee may also be eligible for early retirement, (discontinued service retirement (DSR)), based on an involuntary separation. Under both CSRS and FERS, one must be age 50 and have at least 20 years of service or have at least 25 years of service regardless of age, in order to be eligible for DSR.

An involuntary separation may be qualifying for DSR unless it is based upon misconduct or delinquency. A resignation may also qualify for DSR if the individual resigns in response to a written request from an Administration representative having the authority to request such resignations or the new head of an agency. The resignation of a Presidentially-appointed policy-making officer qualifies for DSR whenever the individual's resignation is accepted by the President (not limited to the advent of a new Administration). When it is known that a Presidential Appointee is leaving, the resignation of a noncareer SES appointee or Schedule C appointee who works for that person is also considered an involuntary separation for purposes of DSR.

Individuals Not Eligible for Immediate Retirement. Such individuals might be eligible for a deferred annuity. Under both CSRS and FERS, if an individual has at least 5 years of civilian service, he/she can receive a deferred annuity at age 62. Also, a FERS employee with at least 10 years of Federal service (which must include at least 5 years of civilian service) may elect to receive a deferred annuity as early as the minimum retirement age (55-57, depending upon year of birth). To qualify for deferred benefits, individuals must leave their retirement contributions in the retirement fund. Individuals with less than 5 years of civilian service do not qualify for a deferred annuity.

Refunds of Retirement Contributions. Those not eligible for an immediate annuity (whether or not eligible for a deferred annuity) may elect to receive a refund of retirement contributions. To qualify for the refund, the individual must be separated for at least 31 days and apply for the refund at least 31 days before qualifying for a deferred annuity. Under CSRS and FERS, the service covered by the refund may be creditable towards retirement benefits if the individual returns to Government service and a redeposit is paid. However, under FERS, receipt of the refund permanently terminates the right to use the service covered by the refund for retirement benefits under any circumstances.

A refund includes all retirement contributions deducted from basic pay, deposits and/or redeposits and post 1956 military service deposit you have made. Your refund is not subject to Federal income tax. Voluntary contributions you may have made and interest are also refunded. The voluntary contributions were paid after taxes were withheld, so there is no tax on them. The interest paid on the voluntary contributions, however, is taxable and subject to a 20 percent automatic withholding rate unless you transfer the contributions directly into an IRA. In addition, if you are under age 55, the refund of voluntary contributions will be subject to a 10 percent tax penalty for early withdrawal.

The Standard Form 3106, Application for Refund of Retirement Deductions (FERS) is used in order to apply for a refund. This form can be obtained from your servicing Human Resources Specialist.

Retirement Recap:

Q: What are the basic age and service rules for retirement?

A: Under the Civil Service Retirement System (CSRS), you can retire voluntarily after reaching age 55 with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Under the Federal Employees Retirement System (FERS), voluntary retirement is available under these same combinations, but you can also retire at the minimum retirement age (MRA, 55 to 57, depending on year of birth) with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Individuals under FERS can also retire on a reduced annuity at MRA with as little as 10 years of service.

Q: How do I know if I am eligible for early retirement?

A: You would be eligible for early retirement if you qualify for a discontinued service retirement (DSR) based on an involuntary separation (see next question) and meet the following age and service requirements. Under both CSRS and FERS, you must be age 50 and have at least 20 years of service, or you may retire at any age if you have at least 25 years of service.

Q: What is considered an involuntary separation for purposes of qualifying for discontinued service retirement?

A: Generally, a separation is qualifying for DSR if it is an agency-initiated action that is not a removal for cause on charges of misconduct or delinquency. A resignation qualifies you for DSR if you resign in response to a written request from an Administration representative having the authority to request such resignation or the new agency head. The resignation of a Presidentially-appointed policy-making officer qualifies for DSR whenever the individual's resignation is accepted by the President. When it is known that a Presidential Appointee is leaving, the resignation of a noncareer SES or Schedule C appointee who works for that person is also considered an involuntary separation for purposes of DSR.

Q: If I retire, can I later return to Federal service?

A: Yes. However, depending on the type of annuity you receive, your annuity will terminate or your salary as a reemployed annuitant will be reduced by the amount of the annuity.

Q: What if I am not yet eligible for retirement?

A: You might be eligible for a deferred annuity. Under both CSRS and FERS, if you have at least 5 years of civilian service, you can receive a deferred annuity at age 62. Also, a FERS employee with at least 10 years of Federal service (which must include at least 5 years civilian service) may elect to receive a deferred annuity as early as the minimum retirement age. To qualify for deferred benefits, you must leave your retirement contributions in the retirement fund. If you have less than 5 years of civilian service, you do not qualify for a deferred annuity.

Whether or not you qualify for a deferred benefit, you may elect to receive a refund of your contributions as long as you are not eligible for an immediate annuity. To qualify for the refund, you must be separated for at least 31 days and apply for the refund at least 31 days before you qualify for a deferred annuity.

Generally, interest is payable on FERS refunds, but no interest is payable on CSRS refunds. Desirability of the refund depends on individual circumstances (how far from or close to retirement you are and whether you anticipate future Federal employment). Under CSRS and FERS rules, you can reinstate credit for the service if you return to Federal service under CSRS or FERS, and redeposit the refund with interest.

Q: Can I receive a refund of my retirement contributions?

A: Whether or not you qualify for a deferred benefit, you may elect to receive a refund of your contributions as long as you are not eligible for an immediate annuity. To qualify for the refund, you must be separated for at least 31 days and apply for the refund at least 31 days before you qualify for a deferred annuity. Remember, to qualify for deferred benefits, you must leave your retirement contributions in the retirement fund. Desirability of the refund depends on individual circumstances (how far or close you are to retirement and whether you anticipate future Federal employment). Under CSRS and FERS rules, you can reinstate credit for the service if you return to Federal service under CSRS or FERS and redeposit the refund with interest.

Q: With regard to my retirement benefits, is there anything else I need to watch out for?

A: If you have active military service that you want credited in your retirement calculation, you may need to make a deposit for military service before you leave the Federal government. Your servicing HRO will be able to give you more specific answers to whether you owe a military service deposit and how much the deposit amount is.

Q: Can I keep my Federal dental and/or vision insurance coverage when I leave?

A: After separation, FEDVIP coverage terminates unless you are eligible for an immediate annuity. If an employee retires under a retirement system for Federal employees, FEDVIP coverage eligibility is retained. Retirees must have retired with an immediate annuity (a FERS Minimum Retirement Age plus 10 annuity, postponed, counts as an immediate annuity). Those in receipt of a deferred annuity are not eligible to enroll in FEDVIP. However, unlike FEHB coverage and FEGLI coverage, there is no length of time you must be enrolled in FEDVIP as an active employee in order to continue coverage after retirement.

Thrift Savings Plan

When employees separate from Federal service they have a number of withdrawal options regarding their Thrift Savings Plan (TSP) accounts. They may choose to receive their TSP account balance in a single payment, a series of monthly payments, or a TSP life annuity. They may ask to have their payment(s) begin as soon as possible or may specify a future date. Separating employees may have the TSP transfer all or a part of single payment or, in some cases, a series of monthly payments, to an Individual Retirement Account or other eligible retirement plan. They may also leave their account in the TSP and make a withdrawal decision at a later date. If they choose to leave their accounts in TSP, they cannot make any additional contributions to it after leaving Federal service and can no longer borrow from the TSP account. The Internal Revenue Code requires that individuals receive a portion of their TSP account (“required minimum distribution” or “RMD”) beginning in the calendar year when they become age 70½ and are separated from service. If they do not make a full withdrawal of the account before turning 70½, they may make a partial withdrawal through December of the year in which they turn 70½. However, they must select a withdrawal option for the balance of the account before April 1 of the following year. A partial withdrawal will be applied toward the IRS required minimum distribution.

Employees covered by the Federal Employees Retirement System (FERS) must work for the Federal Government for a certain number of years to be entitled to keep (or be vested in) the Agency Automatic (1 percent) Contributions in their TSP account and the earnings on those contributions. Most FERS employees become vested in the automatic contributions after 3 years of Federal civilian service. However, employees who are in one of the following positions at separation are vested after 2 years of civilian service:

A noncareer Senior Executive Service appointee.

Executive Schedule positions listed in 5 U.S.C. 5312, 5313, 5314, 5315, or 5316.

A position placed in level IV or level V of the Executive Schedule, under 5 U.S.C. 5317.

A position in the executive branch that is excepted from the competitive service by OPM because of the confidential and policy-determining character of the position (i.e., a Schedule C position).

A Member of Congress or a Congressional employee.

Employees separating from Federal service will be provided a TSP Withdrawal Package that contains a tax notice and the necessary forms. Servicing HRO will also notify the TSP Service Office about the separation from Federal service by providing TSP a separation code and the date of separation.

Other contact information and information regarding the Thrift Savings Program can be found at the TSP website: www.tsp.gov.

The TSP Service Office can answer questions about TSP accounts and provide TSP withdrawal materials to supplement the TSP Withdrawal Package provided. TSP withdrawal forms must be submitted directly to the TSP Service Office.

Employees separating from Government service who have not repaid an outstanding TSP loan may pay the loan in full at separation or take a “taxable distribution” of the unpaid amount.

For additional information on this topic, please request a copy of the TSP booklet, “Loan Program,” from your HRO and/or the website (www.tsp.gov).

TSP Recap:

Q: What are my Thrift Savings Plan (TSP) withdrawal options after I leave Federal service?

A: The TSP provides three basic ways to withdraw your account.

1. You can make a partial withdrawal of your account in a single payment.
2. You can have a full withdrawal of your account by any one, or any combination, of the following methods:
 - A single payment
 - A series of monthly payments
 - A life annuity
 - A combination of any of the above three full withdrawal options is called a “mixed withdrawal.”
3. You can have the TSP transfer all or part of any single payment or, in some cases, a series of monthly payments, to a traditional Individual Retirement Arrangement (IRA) or eligible employer plan.

Payments to you can be deposited directly into your checking or savings account by means of electronic funds transfer (EFT).

Q: Can I leave my money in my account, and can I add to this money after I leave Federal service?

A: You can leave the money in your account. You cannot make direct deposits. However, under certain circumstances, you can make transfers (or rollovers) of eligible distributions from an eligible retirement plan, including a traditional IRA, and an eligible employer plan (or its designated financial institution). Only TSP participants who have open accounts can transfer money into the TSP. This includes participants who are separated from Federal civilian service. However, a separated participant who is receiving monthly payments from his or her TSP account cannot transfer money into it.

Your account will continue to accrue earnings, and you can continue to move your money among the TSP investment funds by making interfund transfers. **Caution:** You must receive your account in a single payment or begin receiving monthly payments from the Thrift Savings Plan, or from the annuity vendor, by April 1 of the year following the year you turn 70 ½.

Q: If I leave Federal service, can I have the TSP transfer my payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan?

A: Yes, you can have the TSP transfer all or part of a single payment to an IRA or other eligible retirement plan. You also can transfer certain monthly payments.

Q: Where can I find tax information about TSP disbursements?

A: For detailed information about withdrawing your account, see the booklet, “*Withdrawing Your TSP Account After Leaving Federal Service*.” For detailed information about the tax consequences of your withdrawal choices and Federal income tax withholding requirements, see the TSP tax notice, “Important Tax Information about Payments from your TSP Account.” The booklet and notice are available from the TSP website www.tsp.gov, and you will be given this information when you leave Federal service. You should also ask your State and local tax authorities about State and local taxes.

Q: Will I keep the FERS Agency Automatic (1 percent) Contributions to TSP when I leave?

A: If you meet the TSP vesting requirements when you leave Federal service, you are entitled to the Agency Automatic (1 percent) Contributions in your account and their earnings.

Most FERS employees become vested in their Agency Automatic (1 percent) Contributions after completing 3 years of Federal (generally civilian) service. However, employees who are in one of the following positions at separation are vested after 2 years of civilian service.

A noncareer SES appointee.

Executive Schedule positions listed in 5 U.S.C. 5312, 5313, 5314, 5315, or 5316.

A position placed in level IV or level V of the Executive Schedule, under 5 U.S.C. 5317.

A position in the executive branch that is excepted from the competitive service by OPM because of the confidential and policy-determining character of the position (i.e., a Schedule C position).

A Member of Congress or a Congressional employee.

Federal Flexible Spending Accounts Program (FSAFEDS)

Money in an FSAFEDS flexible spending account – either the health care flexible spending account or the dependent care flexible spending account – has to be used by the date the employee separates from the Government, or he or she will lose the unused balance. However, the claims do not have to be submitted by the separation date. When an employee incurs eligible expenses before the separation date, he or she can submit bills for eligible expenses incurred in 2020 until April 30, 2021.

Conversely, if an employee had more eligible expenses than money deducted from payroll, he or she will not have to reimburse the difference, and the balance will not be recovered against the employee. This could happen, for example, if the employee signed up for \$2,750 and used it all by the separation date. Because this amount (\$2,750) is designated to be taken out of paychecks in equal amounts spread out over the course of the year, if the employee leaves before the end of the year, the missing payments can no longer be deducted from payroll, and he or she will not be required to otherwise make them up.

For additional information on this topic, please visit www.fsafeds.com.

Federal Long Term Care (LTC) Insurance

Long term care insurance is fully portable, which means it continues without change when employees leave the Federal Government – the same product and same price – as long as they continue to pay premiums. OPM is still the policyholder, and the coverage continues to be administered by Long Term Care Partners, LLC. If the employee is paying premiums through direct bill or automatic bank withdrawal, those arrangements continue unchanged. However, employees paying through payroll deduction should contact Long Term Care Partners directly so that they can switch their payment methods to direct bill or automatic bank withdrawal.

For additional information on this topic, please visit www.ltcfeds.com.

Social Security

If an employee has ever worked under the Civil Service Retirement System (CSRS) or another retirement plan for Federal employees that doesn't include Social Security, such as the Foreign Service Retirement System, and after separating, receives a Federal annuity based on that service, these two provisions of the Social Security law may affect the employee's Social Security benefits:

The **Windfall Elimination Provision (WEP)** may reduce the benefit earned based on the employee's work. The WEP doesn't apply if the employee was automatically covered by the Federal Employees Retirement System (FERS) or if the employee has 30 or more years of "substantial earnings" in Social Security-covered employment.

The **Government Pension Offset (GPO)** may reduce or eliminate any spousal benefit the employee is otherwise eligible to receive. The GPO doesn't apply if the employee was required by law to have coverage under the CSRS Offset provisions that are a combination of CSRS coverage and Social Security, or if the employee was automatically covered by FERS without electing coverage.

The Social Security Administration prepares an annual *Social Security Statement* for everyone who has paid Social Security taxes. The Social Security website, <http://www.socialsecurity.gov>, allows individuals to create accounts to view an online version of their *Statements*. The benefit estimates contained in the *Statement* are not adjusted to consider the WEP or GPO. Servicing HROs' benefits specialists can help determine whether either of these provisions will affect an employee's benefits. The Social Security Administration also has fact sheets: *The Windfall Elimination Provision* (Publication No. 05-10045) and *Government Pension Offset* (Publication No. 5-10007), that can be printed from <https://www.ssa.gov> or be ordered by calling **1-800-772-1213 (TTY 1-800-325-0778)**.

This Social Security website at <https://www.ssa.gov/planners/benefitcalculators.html> also provides detailed calculators. Individuals may enter their earnings history (found on the *Social Security Statement*) and specific information about the non-covered pension, and the detailed calculators can refigure your benefit, including any adjustment for the WEP.

Health Insurance

After separation, FEHB plan coverage continues at no cost to the employee for 31 days. In addition, if the employee files an election with the separating agency and pays both the employee and the Government share of costs (plus a 2 percent administration fee), coverage in the existing plan or another plan in the Program can be continued for up to 18 months under the temporary continuation of coverage (TCC) program feature. When group insurance eligibility ends, the employee has the right to convert the coverage to an individual health insurance policy.

A former employee is also eligible to purchase health insurance through the Health Insurance Marketplace

under the Affordable Care Act. Individuals who would like to purchase health insurance through the Marketplace should visit <https://www.healthcare.gov/>. This is a website provided by the U.S. Department of Health and Human Services that provides up-to-date information on the Marketplace.

If an employee retires under a retirement system for Federal employees, group health insurance can be continued into retirement, provided the employee qualifies for an immediate annuity and was enrolled in the FEHB program for the 5 years of service immediately preceding retirement, or - if less than 5 years - for all periods of eligibility since the employee's first opportunity to enroll. Eligible retirees have the same health plan choices and pay the same share of the costs for health insurance as active employees do.

Consumer Driven Health Plan. Employees who join a high deductible health plan (HDHP) and have a Health Savings Account (HSA) have funds that are fully portable. As long as their money stays in a qualified account and is used for qualified medical expenses, as established by the Department of the Treasury, both the interest and any withdrawals are tax free. This is true even for employees who elect a health care option in the future that is not a Consumer Driven Health Plan or the equivalent. The money in an HSA may continue to accrue or be used for future medical expenses. However, employees who retire and enroll in Medicare are not eligible for health savings accounts, so if they have a High Deductible Health Plan, a new health reimbursement arrangement (HRA) will be established by their health plan. Monies in their HSA will remain in that account until used for qualified medical expenses. Monies in their HRA belong to the employer, and not the annuitant, and are managed by the health plan. They do not earn interest and are not portable. The HRA may continue to be used for qualified medical expenses so long as the annuitant does not switch to another health plan.

Federal Employee Dental and Vision Insurance Program

Coverage under the Federal Employee Dental and Vision Insurance Program (FEDVIP) terminates upon separation from the Federal service, unless the employee is eligible for an immediate annuity.

If an employee retires under a retirement system for Federal employees, FEDVIP coverage eligibility is retained. Retirees must have retired with an immediate annuity (a FERS Minimum Retirement Age plus 10 annuity, postponed, counts as an immediate annuity). Those in receipt of a deferred annuity are not eligible to enroll in FEDVIP. However, unlike FEHB coverage and FEGLI coverage, there is no length of time one must be enrolled in FEDVIP as an active employee in order to continue coverage after retirement.

Life Insurance

Life insurance continues for 31 days after separation at no cost to you. During this period all or any part of the coverage can be converted, without medical examination, to non-group coverage, with rates based on your age and class of risk.

If an employee retires under a retirement system for Federal employees, Basic and any Optional group life insurance can be continued into retirement, provided the employee qualifies for an immediate annuity and had the coverage for at least 5 years of service immediately before retirement, or during all periods the coverage was available, if that is less than 5 years. (The employee may convert any coverage that he or she is not eligible to continue into retirement.)

Retirees pay the same premiums as active employees. The premiums for Basic insurance and Option A stop at age 65. At that time the face value of Option A insurance in effect at retirement begins to decrease by 2 percent per month. The post-retirement reduction continues until 75 percent of the coverage is gone and 25 percent (\$2,500) remains. There is a similar 75 percent reduction for Basic insurance; at the time of retirement, however, an employee eligible to continue Basic insurance can elect to pay additional premiums to prevent Basic insurance from decreasing or to have a lesser (50 percent) reduction.

At the time of retirement or becoming insured as a recipient of workers' compensation, an employee may elect as many Option B and C multiples he or she wishes to continue into retirement and may choose whether to have all of those multiples reduce (i.e., Full Reduction) or to have none of them reduce (i.e., No Reduction) upon reaching age 65 (or retiring, if later.) If an employee chooses Full Reduction, premiums stop at age 65, and the coverage begins to reduce by 2 percent per month until it is gone. If an employee chooses No Reduction, the coverage does not reduce at age 65, and the individual continues to pay premiums.

VIII. UNEMPLOYMENT COMPENSATION

The Department of Labor (the agency in charge of the unemployment compensation program for Federal workers) advises that Presidential Appointees, noncareer and limited SES appointees, and Schedule C employees who resign by request or are separated due to a change in agency leadership or as a result of the transition to a new Presidential Administration may be eligible for Unemployment Compensation for Federal Employees (UCFE). Unemployment compensation is provided through the District of Columbia or the State in which the individual's last official duty station is located. Benefit levels and eligibility requirements vary from state to state or District of Columbia. For further information about UCFE requirements and benefits, contact the specific State Workforce Agency listed at <http://www.servicelocator.org/OWSLinks.asp>.

Whether your resignation is requested or not requested may affect your entitlement to unemployment compensation. Resigning before receiving a request to resign is generally considered an unprompted resignation and is not usually viewed as sufficient for unemployment compensation purposes. To assure that the State Workforce Agencies are aware that the separation by request is due to a change in Presidential Administration or agency leadership, it is important that this reason be clearly indicated on your separation Standard Form SF-50.

Individuals are advised to provide a copy of the request for resignation to the State Workforce Agency when filing.

DISTRICT OF COLUMBIA: (202) 724-7000 | website: www.dcnetworks.org

MARYLAND: (301) 313-8000 | website: www.dllr.state.md.us/employment

VIRGINIA: (703) 813-1300 | website: www.vec.virginia.gov/unemployed

Dislocated Worker Services

The employees may also be eligible for dislocated worker services, including retraining and placement assistance, which are funded through Department of Labor grants. Benefits and eligibility requirements vary from State to State. For more information about dislocated workers, visit <https://www.dol.gov/general/topic/training/dislocatedworkers>.

IX. BENEFITS PACKAGE FOR SEPARATING EMPLOYEES

Typical benefits packages for separating employees may include most of the forms listed below.

1. Retirement

- SF-2802, Application for Refund of Retirement Deductions (CSRS)
- SF-3106, Application for Refund of Retirement Deductions (FERS)

2. Federal Employees Health Benefits

- Temporary Continuation of Coverage Memorandum to Employee
- SF-2809, Employee Health Benefits Election Form
- SF-2810, Notice of Change in Health Benefits Enrollment

3. Federal Employees' Group Life Insurance

- SF-2819, Notice of Conversion Privilege
- SF-2821, Agency Certification of Insurance Status

4. Thrift Savings Plan (TSP)

TSP Withdrawal Package:

- TSP Memorandum to Employee
- TSP-3, Designation of Beneficiary
- TSP-9, Change of Address for Separated Participants
- TSP-17, Information Relating to Deceased Participant
- TSP-70, Withdrawal Request
- Withdrawing your TSP Account After Leaving Federal Service (Booklet)
- Important Tax Information About Your TSP Withdrawal & Required Minimum Distributions

5. Unemployment Compensation

- SF-8, Unemployment Compensation for Federal Employees Program

6. Records

- SF-293, Notice to Separated Employee Concerning Disposition of Official Personnel Folder/ Merged Records Personnel Folder & Employee Medical Folder

X. SEPARATION CLEARANCE CERTIFICATION

Employees are responsible for leaving Departmental employment by following its clearance procedures. No less than 1 week before separation date, the Form CD-126, Separation Clearance Certificate, is provided to the employee by the Office of White House Liaison. The CD-126 documents exit clearances prior to the employee's separation date. Clearance must be obtained for every office function listed on the form prior to supervisory certification of the form. Use of the form enables proper accounting for items and accesses such as Government property in an employee's custody, information technology tools, travel-related monetary issues, leave audits, and the like, prior to separation.

It is important for separating employees to understand that this clearance process is mandatory. The employee's final salary payment, lump-sum payment or any other monies will not be released until this form is completed.

Once the Form CD-126 is complete the employee must obtain his/her supervisor's signature, and the CD-126 and all other exit paperwork must be returned to the Office of White House Liaison, who with the Office of Executive Resources, will ensure its processing through the applicable Servicing HRO.

Clearance Officials: Clearance officials are responsible for approving the clearance of chargeable items by printing in and signing the applicable block with his/her full name, date and telephone number. If applicable, clearance officials must note the reason any chargeable item is not accounted for or returned, and if appropriate, indicate the dollar value of the unaccounted item(s) to be collected from the employee. Clearance officials must follow the clearance procedures to ensure designated authorizing official(s) have cleared.

Supervisor: In accordance with Departmental and Operating Unit guidance, the immediate supervisor is responsible for:

Ensuring completion of Section I of the form and advising the employee of his/her responsibilities regarding the clearance process;

Upon the employee's receipt of all clearance signatures and his/her completion of Section III, Employee Certification, completing Section IV, Supervisor Certification; and

Certifying the final time and attendance (T&A) record (if applicable) only if the employee has properly cleared, in accordance with Form CD-126. If the employee has not properly cleared, the supervisor should not certify the "final" T&A.

Property Custodian (PC): The PC is responsible for the immediate physical custody of all personal property under their control and within their custodial area.

When an employee separates from the Department, the Property Custodian (PC) of the separating employee must properly clear the employee by validating that the employee returns all property, including loaned property to the PC or the Property Accountability Officer (PAO) prior to his/her separation date. The PC must remove all property under his/her name, and assign the property to another designating official, who will resume responsibility for the equipment. The designating official may include the PC, the PAO, or a supervisor.

If the separating employee is a PC, his/her supervisor must assign a new PC and notify the Bureau Property Management Office, at least 2 weeks in advance, in order to ensure proper clearance procedures for property are followed. The departing PC is responsible for conducting a joint physical inventory with the new PC and transferring all property over to the new PC prior to the departing PC's separation date. Once all property is transferred to the new PC, he/she must submit a signed hand receipt to the Bureau

Property Management Office for record. Additionally, the newly appointed PC must understand and complete the mandatory training requirements within 60 days of appointment. Upon completion of the above procedures, the PC must sign off in applicable Section of the Form CD-126 to validate that the employee has adequately met their requirements in accounting for Government furnished equipment under their control.

Property Accountability Officer (PAO): The PAO administers and maintains a system of control and accountability for personal property.

When an employee separates from the Department, the PAO of the separating employee must validate the PC's signature, acknowledging that all property assigned to the separating employee is removed and assigned to another designating official who will resume responsibility. This designating official may include the PC, the PAO or a supervisor.

If the separating employee is a PAO, his/her supervisor must assign a new PAO and notify the Bureau Property Management Office, at least 2 weeks in advance.

Upon completion of the above procedures, the PAO clears and signs off in the applicable section of the Form CD-126 to validate that the employee has adequately met their requirements in accounting for Government furnished equipment under their control.

Bureau Property Management Office: The Bureau Property Management Office clears the employee for separation by signing the Form CD-126.

When an employee separates from the Department, the Bureau Property Management Office of the separating employee must validate the PAO's and PC's signature, acknowledging that all property assigned to the separating employee is removed and assigned to another designating official who will resume responsibility. This designating official may include the PC, the PAO or a supervisor.

Upon completion of the above procedures, the Bureau Property Management Office provides final validation that the employee has adequately met their requirements in accounting for Government furnished equipment under their control by signing off in Section 3c of the Form CD-126.

Servicing Human Resources Office (SHRO): The appropriate SHRO is responsible for acknowledging receipt of the CD-126 and confirming whether the form was completed in its entirety. If the form is not complete, the SHRO will return the deficient form to the Office of White House Liaison to coordinate the necessary steps to ensure its completion. Final salary payment, lump sum payment, or any other payments may not be released until the form is complete and any debt is resolved.

XI. SECURITY REQUIREMENTS FOR SEPARATING EMPLOYEES

The Office of Security (OSY) has responsibility to ensure that DOC separation requirements are adhered to as related to Physical and Information Security issues. Both the separating individuals and their supervisor have roles to play in this process.

All Separating Individuals: It is the responsibility of all separating individuals in the HCHB to return all DOC issued ID cards, keys, and courier authorization card (if issued). Security Service Center staff will also deactivate any security system account access. With regard to the Security portion of Form CD-126, the separating individual must obtain clearance signatures on the Security section of the form. Any staff member in the Security Service Center, Room 1524, will be able to assist you. Staff can also be reached on

202-482-8355 or via email at: HCHBsecurity@doc.gov.

In addition, all individuals who were granted access to national security information must be debriefed, and sign the debriefing portion of the Non-Disclosure Agreement (SF-312). Individuals granted access to Sensitive Compartmented Information (SCI) must be debriefed and sign the debriefing portion of the SF-4414. Debriefs are handled by the Personnel Security Office, located in Room 1521. Please call 202-482-8115 to schedule an appointment.

Supervisors: The supervisor of the separating individual must ensure the proper transfer of classified documents (if applicable) to another individual who has a national security clearance at or above the level of the information and a valid need to know prior to the document being transferred. Separating individuals cannot, under any circumstances, take classified documents off the premises. Supervisors must also ensure the separating individual turns in or transfers Communications Security Devices (i.e., STE, secure cell phones, Fortezza Cards, Vipers, etc.). Additionally, supervisors must ensure the removal of the separating individual's classified document custodian status from security container(s) and ensure the security container combination has been changed immediately following the individual's separation. Supervisors must ensure individuals holding accounts for classified system outprocess through the OCIO for deactivation of account(s) and proper transfer or disposal of classified information stored in the system(s).

Additional Requirements by/for Specific Positions: In addition to the aforementioned requirements of all individuals, there are also additional requirements that are placed on separating individuals that hold certain positions within the DOC. All staff assigned a Government Emergency Telephone System (GETS) card designated for Continuity of Operations (COOP) are required to return them to the Office of Security. Additionally, several individuals, including the Chief of Staff, Deputy Chief(s) of Staff, Chief Information Officer, and the Chief Financial Officer/Assistant Secretary for Administration, require a debriefing related to the Continuity of Government (COG).

Questions: All questions on Security requirements for separating individuals should be directed to the Office of the Director for Security, on 202-482-4371; a staff member will assist you.

XII. FINANCIAL DISCLOSURE REPORT

Under the Ethics in Government Act, employees serving in political appointee positions are required to file a public financial disclosure report (OGE Form 278e) within 30 days of leaving their Federal Government position (unless entering into another Federal position that requires such a report).

Any employee who cannot meet the deadline for filing a termination OGE Form 278e within 30 days of departing a Federal position should request an extension of the deadline to file the report, which can be obtained by contacting the Ethics Law and Programs Division of the Office of General Counsel at ethicsdivision@doc.gov or OGEForm278@doc.gov or 202-482-5384. (A former employee who does not file a report within 30 days of the deadline is subject to a \$200 late filing fee.)

Because the Department of Commerce uses the *INTEGRITY* electronic filing system, the report must be filed using this electronic system, which requires an employee to log into the *INTEGRITY* website using the employee's MAX.gov user ID and password. There are two options for filing a termination report: (1) submitting a termination report on the last day of Federal Government service, or (2) filing a report after leaving Federal service, which requires the employee to provide the Ethics office (OGEForm278@doc.gov) with a non-agency email address at which the employee may be contacted. *The preferred option is for an employee to file the termination report on the last day of Federal service.*

To file a termination report, the employee must log into the system at <https://integrity.gov>, click on “Login to Integrity (using Max.gov),” and enter the employee’s existing MAX.gov user ID and password. The employee is then asked whether he or she wishes to “pre-populate” the termination report with information from a past report. The pre-population tool will copy the entries from the selected report into the termination report. Pre-population will also track changes between that past report and the new report. For the termination report the employee will need to: (1) update any entries (such as with regard to value of assets to reflect the value on the filing date and amount of income earned to include income earned since the annual report); (2) add any additional assets, transactions, gifts, liabilities, and nonGovernment positions since the last report was filed; and (3) add any agreements with future employers that had not previously been reported. The process is completed by the employee reviewing the changes and signing and submitting the report. An employee who did not file a report prior to filing a termination report should contact the Ethics office (OGEForm278@doc.gov or 202-482-5384).

An employee who cannot or does not file a report on the last day of service will be registered into the INTEGRITY system using the employee’s non-agency email address. (The employee must provide this to the Ethics Law and Programs Division (OGEForm278@doc.gov) in order to be entered into the INTEGRITY system.) The employee is notified when the new account has been created. At this point the employee should log into the system at <https://max.gov> and click the “Login” button (right corner of the screen), using the non-agency email address for the user ID; the employee should then click on the “Forgot, Set, or Change Your Password?” link on the login box. [MAX.gov](https://max.gov) will email the employee a link to set the password for this new account. After the employee sets the password, he or she may access the INTEGRITY login page and use the new user ID and newly-set password. After login access is confirmed with the new user ID and password, the employee’s two accounts will be merged, and the employee will be notified when to complete the termination report.

Employees with questions should contact a member of the public financial disclosure team at OGEForm278@doc.gov. The public financial disclosure team will provide assistance with filling out the termination report and answer any questions regarding the filing requirement.

XIII. HUMAN RESOURCES CONTACTS

DOC OHRM:

John Guenther

Acting Director for Human Resources Management and Chief Human Capital Officer

Paula Patrick

Deputy Director for Human Resources Management and Deputy Chief Human Capital Officer

Room 50003, HCHB

Phone: 202-482-4807

Ade'Leaka M. Gore

Acting Director, Office of Executive Resources

Room 50010, HCHB

Phone: 202-482-1304

HCCS:

Ade'Leaka M. Gore

Director, Human Capital Client Services (HCCS)

Room 50010, HCHB

Phone: 202-482-1304

(also services SES for ITA, MBDA, EDA, BIS, NTIA, OS)

Census:

Veronica LeGrande

Chief, Human Resources Division

Building 3, Room 3260

Suitland, MD 20230

Phone: 301-763-5863

(also services ESA and BEA)

ITA's U.S. & FCS:

Gabriella Russum

Acting Director, Office of Foreign Service Human Capital

Room 3227, HCHB

Phone: 202-482-2062

NOAA: **Sean Clayton**
Director, Office of Human Capital Services
SSMC4, Room 12519
Silver Spring, MD 20910
Phone: 301-713-6369

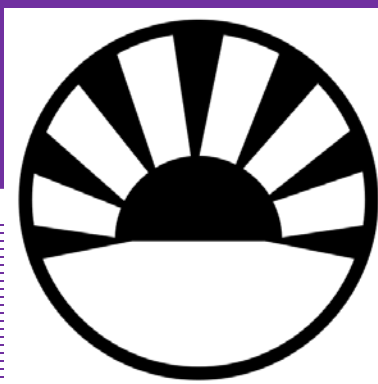
NIST: **Essex Brown**
Acting, Human Resources Director
100 Bureau Drive, Bldg 101, Room A-
133 Gaithersburg, MD 20899
Phone: 301-975-3801
(also services NTIS)

OIG: **Jacqueline Ruley**
Director, Office of Human Resources
Room 7087, HCHB
Phone: 202-482-5476

PTO: **Anne Mendez**
Deputy Director, Office of Human Resources
P.O. Box 1450
Alexandria, VA 22313
Phone: 571-272-6173

SUMMARY OF ETHICS RULES ON SEEKING EMPLOYMENT AND POST-EMPLOYMENT ACTIVITIES

**UNITED STATES DEPARTMENT OF COMMERCE
2020**



**ETHICS LAW AND PROGRAMS DIVISION
OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE
202-482-5384 – ethicsdivision@doc.gov – www.commerce.gov/ethics**

SEEKING EMPLOYMENT

DISQUALIFICATION REQUIREMENTS RELATING TO A JOB SEARCH

During the period of an employment search

which will begin when you

- first contact (by any means of communication, including submission of a resume) the prospective employer (including anyone for whom you are seeking to provide personal services, including as an agent, attorney, consultant, contractor, director, general partner, officer, or trustee, as well as employee);
- are first contacted by the prospective employer; or
- you learn from a headhunter or agent that a firm has been contacted on your behalf and will continue until
- you notify the prospective employer of no further interest,
- the prospective employer notifies you of no further interest, or
- two months have elapsed since you (or your agent) sent a prospective employer an unsolicited résumé or other submission regarding a job,

you may not:

work as a Federal employee

on any matter affecting a prospective employer's financial interests,
either individually or as a member of an industry sector or other group,
during the period of the job search.

NOTIFICATION REQUIREMENTS

If you are engaged in an employment search, you must give notice of disqualifications due to the employment search if:

- you are a member of the SES, a political appointee, or otherwise in a position that requires you to file a public financial disclosure report (OGE Form 278), in which case you must give a signed notice to an ethics official within 3 days of beginning employment negotiations, with a disqualification statement (a Notice of Employment Negotiations, available at www.commerce.gov/ethics, can be used for this purpose);
- you are accepting travel payments from a prospective employer, in which case the notification should be in writing to either your supervisor or an ethics official;
- you are participating in a procurement of greater than \$150,000 in value and you contact, or are contacted by, competing contractors in the procurement, in which case you must provide written notification to both your supervisor and an ethics official, even if you do not pursue discussions after the initial contact; or
- disqualification will affect your participation in a current assignment, in which case notification may be verbal to the person who assigned you the work.

SUMMARY OF POST-EMPLOYMENT RESTRICTIONS

RESTRICTIONS ON CONTACTING THE U.S. GOVERNMENT

1. permanent bar on representing others before a Federal agency or court regarding specific-party matters on which a former employee worked – p. 4
2. 2-year bar on representing others before a Federal agency or court regarding specific-party matters on which a former employee's subordinate worked – p. 5
3. 2-year bar on representing others before the Department of Commerce or other Presidential appointees (*Secretary only*) – p. 5
4. 1-year bar on representing others before a former agency (*senior employees only*) – p. 6
5. 1-year bar on representing a foreign government before any Branch of the United States Government (*senior employees only*) – p. 7
6. bar on lobbying any political appointee during the President's term (*political appointees only*) – p. 7
7. 5-year bar on lobbying before a former agency (*political appointees only*) – p. 8
8. permanent and 2-year bars on practice before USPTO (*USPTO employees only*) – p. 8

RESTRICTIONS ON PROVIDING ADVICE OR OTHER SERVICES

9. 1-year bar on advising a foreign government regarding contacts with a Federal agency or court or Congress (*senior employees only*) – p. 9
10. permanent bar on serving as an agent for a foreign government (*political appointees only*) – p. 9
11. 5-year restriction on returning to Federal service after receiving a buy-out – p. 10
12. bar on testifying on matters relating to a prior Government position – p. 10
13. special rules for attorneys regarding switching sides – p. 11

RESTRICTIONS ON COMPENSATION AND EMPLOYMENT

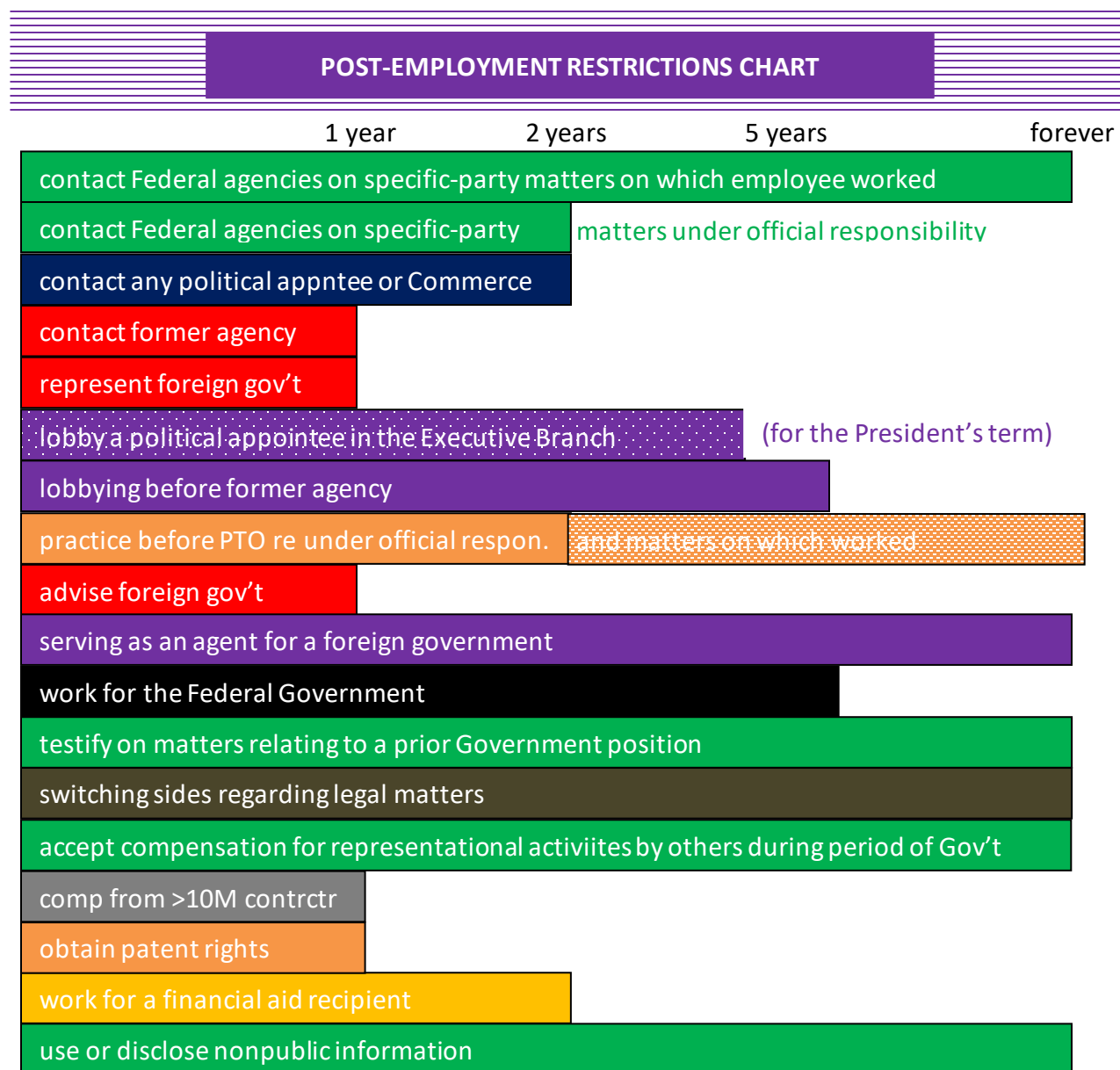
14. bar on accepting payments for representational activities by others before the Federal Government during a period of Federal service – p. 12
15. 1-year bar on receiving payments from a contractor on a major procurement (*procurement officials and program managers only*) – p. 13
16. 1-year bar on obtaining patent rights (*USPTO employees only*) – p. 13
17. 2-year bar on employment with a firm receiving public works or trade adjustment assistance (*Office of the Secretary and EDA employees only*) – p. 14

RESTRICTIONS ON USING NON-PUBLIC INFORMATION

18. 1-year bar on using non-public information from on-going treaty negotiations – p. 15
19. permanent bars on using and disclosing protected information – p. 15

DISCLOSURE REQUIREMENTS

20. requirement to file a financial disclosure report (*OGE Form 278 filers only*) – p. 16
21. requirement for lobbyists to list certain former Federal positions – p. 16



restrictions applicable to **all employees** are in **GREEN**

restrictions applicable to **the Secretary** are in **NAVY BLUE**

restrictions applicable to **all senior employees*** are in **RED**

restrictions that apply to **all political appointees** are in **PURPLE**

restrictions that apply to employees with law degrees are in **BROWN**

restrictions that apply to **USPTO employees** are in **ORANGE**

restrictions that apply to **EDA employees** are in **GOLD**

restrictions that apply to all employees who receive a buy-out are in **BLACK**

restrictions that apply to procurement officials of \$10M procurements are in **GRAY**

** employees with basic pay of \$170,665 or more; paid under the Executive Schedule; or O-7 or higher*

POST-EMPLOYMENT RESTRICTIONS ON CONTACTING THE UNITED STATES GOVERNMENT

1. Permanent Bar on Representing Others Before Any Federal Agency or Federal Court regarding Specific-Party Matters on which the Former Employee Worked Personally

- Applicable to All Employees -

represent re specific-party matters on which employee worked personally

Restriction – After leaving Federal service, you will be barred permanently from:
contacting an employee of any Federal agency or Federal court
on behalf of someone other than yourself
to influence Government action
concerning a particular matter involving specific parties
in which you participated
personally and substantially as a Federal employee.

Participation for these purposes includes any substantive involvement; it is not limited to making the final decision.

Exceptions – This restriction does not apply to:

- activities on behalf of the District of Columbia or as an elected official of a state or local government;
- activities on behalf of an international organization that includes the United States, if the Secretary of State approves;
- communications of scientific or technological information, if approved by the Secretary of Commerce and if notice is given in the Federal Register; and
- testimony under oath or made under penalty of perjury, in certain circumstances.

2. 2-Year Bar on Representing Others before Any Federal Agency or Federal Court on Specific-Party Matters on which Subordinates of a Former Employee Worked or which Were otherwise under the Former Employee's Official Responsibility

- Applicable to All Employees -

rep re spec-party matters under off. resp.

Restriction – After leaving Federal service, you will be barred for two years from:
contacting an employee of any Federal agency or Federal court
on behalf of someone other than yourself
to influence Government action
concerning a particular matter involving specific parties
that was under your official responsibility in a Federal position
during the last year of your service in the Federal position,
including matters in which subordinates participated personally and substantially.

Exceptions – This restriction does not apply to:

- activities on behalf of the District of Columbia or as an elected official of a state or local government;
- activities on behalf of an international organization that includes the United States, if the Secretary of State approves;
- communications of scientific or technological information, if approved by the Secretary of Commerce and if notice is given in the Federal Register; and
- testimony under oath or made under penalty of perjury.

3. 2-Year Bars on Contacting Commerce and Any Presidential Appointee or Executive Scheudle employee

- Applicable to the Secretary of Commerce -

no-contact w/ USG PASs

Restriction – The Secretary of Commerce is barred for 2 years from representing others before:
the Department of Commerce (or any other agency in which the Secretary serves *ex officio*) and
any Executive Level employee (Presidential appointee and some other senior officials) throughout the Executive Branch.

Exceptions – The exceptions described in Number 4 below (page 6) also apply to this restriction.

4. 1-Year Bar on Contacting a Former Employing Agency

- Applicable to Senior Employees -

no-contact fmr agency

Restriction – After leaving Federal service, if you are a senior employee (meaning you have base pay of \$170,665 or more, are paid under the Executive Schedule, or are an O-7 or higher commissioned officer), you will be barred:

for 1 year if you are a senior employee from
contacting an official of your former agency (as defined below)
on behalf of someone other than yourself
to influence agency action.

This restriction applies to all matters, regardless of whether you or your subordinate worked on the matter or whether the matter involves specific parties or not. You may request information available to the general public and have social contacts with employees of your former agency.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia or as an elected official of a state or local government;
- official activities as a state or local government employee;
- activities as an employee of and on behalf of an institution of higher education, a hospital, or a medical research organization;
- appearances on behalf of an international organization that includes the United States, if the Secretary of State approves;
- communications of scientific or technological information, if approved by the Secretary of Commerce and if notice is given in the Federal Register;
- testimony under oath or made under penalty of perjury;
- statements based on special knowledge, if no compensation is received;
- some communications on behalf of a candidate for Federal, state, or local office or a campaign committee or political party; and
- for the second year of the restriction on senior political appointees, any activity that is covered by a waiver from the Director of the Office of Management and Budget, which may be issued if the application of the restriction is inconsistent with the purposes of the restriction or if it is in the public interest to grant the waiver.

Agency – For purposes of the restriction on former senior employees, if you serve as a Presidential Appointee position requiring Senate confirmation your agency is the Department of Commerce; for other senior employees, your agency is whichever of following components employs you:

- (1) Office of the Secretary (including OIG and US/EA), (2) BIS, (3) Census, (4) EDA, (5) ITA, (6) MBDA, (7) NIST, (8) NOAA, (9) NTIA, (10) NTIS, or (11) USPTO.

5. 1-Year Bar on Contacting a Federal Agency or Federal Court or Congress on behalf of a Foreign Government or Foreign Political Party

- Applicable to All Senior Employees -

contact USG for for. gov.

Restriction – After leaving Federal service, if you are a senior employee (meaning you have a base pay of \$170,665 or more; are paid under the Executive Schedule; or are a O-7 or higher commissioned officer), you will be barred for 1 year from:

contacting an official of a Federal agency, a Federal court, or Congress
on behalf of a foreign government or foreign political party
with the intent of influencing any action by the United States Government.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia;
- official activities as an elected official of a state or local government;
- an appearance on behalf of an international organization that includes the United States, if the Secretary of State approves; or
- testimony under oath or made under penalty of perjury.

6. Bar on Lobbying Any Political Appointee during the President's Term

- Applicable to All Political Appointees -

lobbying a political appointee during President's term

Restriction – If you are a political appointee, regardless of your pay level, you will be barred for the term of the President's Administration from:

engaging in lobbying activities (as defined in the [Lobbying Disclosure Act](#))
with respect to any political appointee in the Executive Branch or an admiral or general.

Exception – This restriction does not apply with regard to a communication or appearance regarding a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act. Furthermore, this restriction may be waived by the President or the President's designee.

7. 5-Year Bar on Lobbying before Former Agency

- Applicable to All Political Appointees -

lobbying before former agency

Restriction – If you are a political appointee, you will be barred for five years from: engaging in lobbying activities (as defined in the [Lobbying Disclosure Act](#)) before your former agency (see Number 4 above (page 6) for the definition of agency).

Exception – This restriction does not apply with regard to a communication or appearance regarding a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act. Furthermore, this restriction may be waived by the President or the President’s designee.

8. Permanent and 2-Year Bars on Practice before USPTO

- Applicable to All United States Patent and Trademark Office Employees -

before PTO re patent under resp.

before PTO re patent employee worked on

Restriction – United States Patent and Trademark Office (USPTO) employees intending to practice before USPTO are required to sign a written agreement to not:

represent or

assist in the representation of any other person

before USPTO

in connection with

- any particular patent or patent application in which the employee participated personally and substantially as a USPTO employee and
- for 2 years, any particular patent or patent application which was pending under the employee’s official responsibility during the year before terminating such responsibility.

POST-EMPLOYMENT RESTRICTIONS ON PROVIDING ADVICE OR OTHER SERVICES

9. 1-Year Bar on Advising or Assisting a Foreign Government or Foreign Political Party on Its Dealings with the United States Government (including Congress)

- Applicable to Senior Employees -

advising foreign gov't

Restriction – After leaving Federal service, if you are a former senior employee (meaning your base pay was \$170,665 or more; are paid under the Executive Schedule; or are a O-7 or higher commissioned officer), you will be barred for one year from:

aiding or advising a foreign government or foreign political party
with the intent of influencing any action by the United States Government.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia;
- official activities as an elected official of a state or local government;
- appearances on behalf of an international organization that includes the United States, if the Secretary of State approves; or
- testimony under oath or made under penalty of perjury.

10. Permanent Bar on Serving as an Agent for a Foreign Government

- Applicable to All Political Appointees -

serving as an agent for a foreign government

Restriction – After leaving Federal service, if you are a political appointee, you will be barred permanently from:

engaging in any activity on behalf of a foreign government or foreign political party which, if it had taken place on January 20, 2017, would have required registration under the Foreign Agents Registration Act.

Exception – This restriction may be waived by the President or the President's designee.

11. 5-Year Repayment Requirement if Accepting Employment or Contract Work with the Federal Government

- Applicable to All Employees Who Receive a Buy-Out -

re-employment with the Federal Government

Restriction – After leaving Federal service, if you received a buy-out payment, you must repay to the Government the buy-out, if:

within 5 years of leaving Federal service

- you accept Government employment or
- enter into a personal services contract with the Government.

Repayment may be required even if your personal services contract is not directly with the Government; repayment may be required if you provide services to a Government contractor that is providing services to the Government.

Exception – A waiver may be available in extraordinary circumstances. (Note that this restriction does not bar any activity; it only requires repayment of a buy-out (incentive payment) that was received for leaving Federal service.)

12. Bar on Testifying or Providing Documents in Litigation on Matters Relating to Federal Employment or concerning Information Obtained during Federal Employment

- Applicable to All Employees -

testifying on matters relating to Federal employment

Restriction – After leaving Federal service, you

- may not testify
 - in Federal court
 - as an expert witness
 - for a person other than the United States
 - if such testimony is inconsistent with the restrictions on post-employment contacts with Federal officials, as set forth above (unless an exception applies, including the exception for testimony compelled by subpoena),
- and you
- may not testify or
- respond to a request for production of documents
 - in a Federal court, a state court, a foreign court, or in any other legal proceeding
 - as either an expert witness or a fact witness
 - without first receiving prior authorization from the General Counsel (or agency counsel)
 - if the testimony or documents
 - relate to your Federal employment or
 - involve Government information.

13. Restrictions on Attorneys Switching Sides regarding Matters on Which They Worked
- Applicable to Employees Who Are Members of a Bar -

switching sides in litigation

Restriction – If you are licensed to practice law, you are subject to bar rules, including restrictions that may apply after leaving Federal service regarding providing legal services to an employer or client if the subject matter is related to work you provided to the Federal Government or your position with the Government. Bar rules apply regardless of whether you served with the Government in an attorney position.

You should contact the applicable bar association or private counsel for advice regarding these restrictions.

POST-EMPLOYMENT RESTRICTIONS ON COMPENSATION AND EMPLOYMENT

14. Bar on Receiving Payments for the Representational Activities of Others before the U.S. Government during a Period of Federal Employment

- Applicable to All Employees -

compensation for representational activities before the Federal Government

Restriction – After leaving Government service, you will be barred from:

receiving any payment

that is based on representational activities

performed by yourself or by any other person (such as a law partner)

before a Federal agency or Federal court

that took place during the period of your Federal service.

This restriction is most likely to affect you if after leaving the Government you join a partnership with a Federal practice that distributes income based in part on partnership earnings. If you receive payments from such a firm that are based on earnings during the period you were in Government service, you must ensure that any distribution you receive does not include payments based on representational services the firm provided in matters before the U.S. Government during the period in which you worked for the Government. Usually, this means that the first distribution you receive may require some reduction if the firm has a Federal practice.

Note that this restriction on payments for the representational activities of others also applies while you are employed by the Government. However, if you serve for less than 130 days in a 365-day period, the restriction is much narrower. Contact the Ethics Law and Programs Division at 202-482-5384 or ethicsdivision@doc.gov for further information on this restriction on how it would apply to a specific situation.

15. 1-Year Bar on Receiving Compensation from the Winning Contractor of a Major Procurement on Which a Former Employee Had a Substantial Role

- Applicable to Procurement Officials and Program Managers -

comp. from >\$10M contrctr

Restriction – After leaving Government service, if you had substantial responsibilities regarding a procurement or contract, you will be barred for 1 year from your last work on the contract from:

accepting any compensation or payment
for service as an employee, officer, director, or consultant
from the winning contractor
of a Government procurement or contract
valued at greater than \$10,000,000.

This restriction applies if you served as the procuring contracting officer, source selection authority, a member of the source evaluation board, or as the chief of a financial or technical evaluation team on a procurement when a selection was made; or as a program manager, deputy program manager, or administrative contracting officer for a contract; or personally made a decision regarding the award or modification of a contract, subcontract, task order, or delivery order; or made a substantive decision regarding a contract valued at \$10,000,000 or more, such as regarding settlement of a claim or establishment of overhead rates.

16. 1-Year Bar on Obtaining Patent Rights

- Applicable to All United States Patent and Trademark Office Employees -

obtaining patent rights

Restriction – If you are an employee of the United States Patent and Trademark Office, after leaving USPTO you will be barred for one year from:

- applying for a patent or
- acquiring patent rights or interests in a patent (other than by inheritance).

Note that this restriction also applies to you while you are a USPTO employee.

17. 2-Year Bar on Employment with or Receiving an Employment Offer from a Firm Receiving Assistance

- Applicable to All Economic Development Administration Employees -

employment with EDA grantee

Restriction – If you are an Economic Development Administration (EDA) employee, after leaving the Department you will be subject to restrictions for up to 2 years regarding:

- employment with,
- being retained to provide professional services to, or
- receiving an employment offer from
 - a firm to which EDA provided assistance
 - if you occupied a position or engaged in activities that involved discretion with respect to the financial assistance
 - on the date the assistance was provided or within one year prior to the date the assistance was provided.

This restriction is actually a limitation on the financial assistance recipient, who agrees for two years after assistance is provided not to hire, retain, or offer employment to an EDA employee who worked on the financial assistance application when the assistance was provided or within a one-year period prior to the date the assistance was provided.

POST-EMPLOYMENT RESTRICTIONS ON DISCLOSING AND USING INFORMATION

18. 1-Year Bar on Using Non-Public Information regarding ongoing Treaty Negotiations

- Applicable to All Employees -

info re treaty negotiation

Restriction – After leaving Federal service, you will be barred for 1 year from:

using designated non-public information
with regard to
any advice to a non-Government entity, or
representational activities to a Federal official
concerning any ongoing treaty negotiation.

Exceptions – This restriction does not apply to:

- official activities on behalf of the District of Columbia or as an elected official of a state or local government;
- appearances on behalf of an international organization that includes the United States, if the Secretary of State approves; or
- testimony under oath or made under penalty of perjury.

19. Restrictions on Using Non-Public Information

- Applicable to All Employees -

using protected nonpublic information

Restriction – After leaving Federal service, you will be barred from:

using or disclosing information that is protected by statute or other legal authority,
including, but not limited to:

- personal information covered by the Privacy Act,
- trade secrets and confidential economic data,
- procurement information,
- national security information, and
- confidential economic data.

POST-EMPLOYMENT DISCLOSURE REQUIREMENTS

20. Requirement to File a Termination Public Financial Disclosure Report (OGE Form 278E)

- Applicable to All Employees Who Are Required to File an OGE Form 278 -

■ requirement to file a termination Public Financial Disclosure

Requirement – If you in a position that has required you to file a public financial disclosure report (OGE Form 278), you will be required to file a final report within 30 days of leaving that position. This termination report will cover the period between the filing of your prior report and the date you left your Federal position. Information required to be disclosed includes any agreement entered into for future employment while the employee was serving in the Government.

OGE Form 278 filers include political appointees, members of the Senior Executive Service, most members of the Senior Foreign Service, and senior NOAA Corps officers.

Exception – You can seek an extension of the filing requirement for up to 90 days. You do not need to file a termination financial disclosure report if you will be entering into another Federal position within 30 days that requires the filing of an OGE Form 278.

21. 20-Year Requirement on Lobbyists to Report Certain Former Federal Positions Held

- Applicable to non-SES political appointees and admirals -

■ requirement to list Government employment if registering as a lobbyist

Requirement – If you become a registered lobbyist within 20 years after leaving the Government and if you served as:

- a Presidential appointee in a position requiring Senate confirmation or other Executive Schedule position (Executive Level I-V),
- an admiral in the NOAA Corps (uniformed service grade O-7 or above), or
- a Schedule C position (non-career grade level GS 15 or below)

you will be required to report such position if you become a lobbyist—perform services that require registration under the Lobbying Disclosure Act or work for a lobbying organization.

Exclusion – Note that registration is not required for a former employee who served as a political appointee in the Senior Executive Service or Senior Foreign Service.

For advice on rules regarding seeking employment, post-employment restrictions, or disclosure requirements after leaving Federal service, or the application of these rules to specific situations, contact the:

Ethics Law and Programs Division
at
ethicsdivision@doc.gov or 202-482-5384.

LITIGATION GUIDANCE FOR DEPARTING EMPLOYEES

**UNITED STATES DEPARTMENT OF COMMERCE
2020**



**OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE**

LITIGATION GUIDANCE FOR DEPARTING EMPLOYEES

As you depart from Government service it is important you carefully consider your responsibilities regarding litigation in which the Government is currently involved or may face after you leave the Department. You also should be aware of support the Government provides and actions you should take in the event you face a lawsuit in the future based on actions you took as a Federal official or the position you held with the Government.

During the course of your Federal service you may have been involved in various legal matters, administrative proceedings, or lawsuits — as a principal or decision-maker, in a supportive role, or by providing guidance on actions that later led to litigation. Depending on the circumstances, the Government may require your future participation in certain litigation, even after you leave Government service. The Department of Commerce's Office of the General Counsel (OGC) will continue to work with you regarding any post-employment litigation related to the performance of your official duties. This document provides certain basic guidelines, but please do not hesitate to contact OGC if you have questions.

LITIGATION OVERVIEW

Various kinds of legal matters, administrative actions, and lawsuits related to your work in Government service may have arisen or could arise at a future date.

TYPES OF LITIGATION

Litigation may involve:

- contract disputes – suits relating to Government procurements
- criminal investigations – by the OIG, DOJ, or other government agencies
- employment and/or discrimination claims – suits based on personnel actions and/or treatment due to alleged bias or retaliation
- Federal Assistance claims – suits relating to grants and other federal assistance
- Freedom of Information Act (FOIA) claims – actions to obtain Government documents
- official and/or individual capacity claims – often involving alleged violations of constitutional rights
- Privacy Act claims – actions based on the improper release or failure to release information about an individual
- programmatic litigation – litigation based on Government actions in connection with agency programs
- subpoena matters – action through a court system to obtain Government information or testimony
- tort claims – actions based on personal injury to an individual
- unfair labor practice claims – actions by a union alleging violations of labor laws.

LITIGATION-RELATED RESPONSIBILITIES

Before you leave the Department of Commerce, it is essential that you take certain steps to ensure that the Department can successfully defend actions that occurred during your tenure in office.

PRESERVATION OF DOCUMENTS

It is important to preserve any documents relevant to ongoing or likely future litigation. If, during your service, you received notice of a “litigation hold” or “preservation notice,” any and all records you have pertaining to the issues raised in the complaint must be preserved. This includes electronically stored records and emails on computers, laptops, mobile devices, and other media.

Even absent such a litigation hold or notice, you should be careful to preserve any documents that might be relevant to future litigation. For example, if you are aware that you have been identified as a responsible management official in connection with an Equal Employment Opportunity (EEO) complaint or anticipate that such a complaint may be filed, any and all records you have regarding the issues relating to the complaint must be preserved. This is true with regard to any actions that you anticipate may result in litigation or an investigation.

Destruction of such records can result in an adverse inference against the Government. Thus, prior to your departure, you must work with your office’s Information Technology (IT) and records officials, and the relevant OGC Office (the Contract Law Division, Employment and Labor Law Division, General Law Division, General Litigation Division, Oversight Division, or other OGC Office handling the matter) to ensure that all relevant records are preserved and, as necessary, turned over to the Government.

POST-EMPLOYMENT ASSISTANCE IN LITIGATION OR RELATED TO AN INVESTIGATION

The Government may need your assistance in defending litigation or providing information in contemplation of litigation or as part of an investigation. This assistance may be merely to be available to help OGC or other Department officials understand what action took place or the reasons behind the action or may include serving as a witness for the Government.

Therefore, it is important that you provide contact information to attorneys with whom you are working regarding any litigation or investigations or the appropriate legal office if you anticipate that a law suit, administrative proceeding, or investigation may be initiated after you leave the Government on a matter in which you were involved as a Department official. Contact information should include a telephone number, email address, and mailing address at which you may be reached.

PARTICIPATION IN PRIVATE LITIGATION

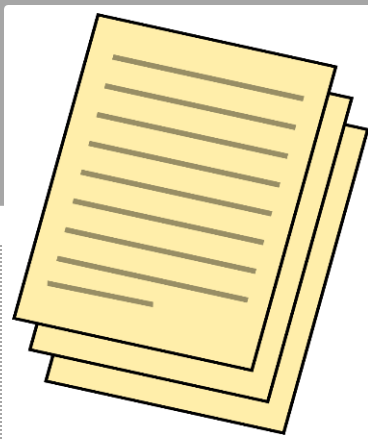
After you leave Federal service, there may be some restrictions on serving as a fact witness or an expert witness in Federal court or state court in connection with your Federal service or in serving as an expert witness in Federal court in litigation in which the United States Government is a party or has an interest. For guidance on these rules, please contact the General Litigation Division (202-482-1070) or the Ethics Law and Programs Division (202-482-5384 or ethicsdivision@doc.gov).

Please note that post-employment laws will also restrict your activities regarding representing parties (including as an expert witness) before a Federal agency or Federal court in a matter involving specific parties in which you participated personally and substantially or, for a two-year period, in which you did not participate personally but which were under your official responsibility. There are also restrictions in some cases on receiving compensation for the representational activities of others that took place during your period of Federal service. Contact the Ethics Law and Programs Division (202-482-5384 or ethicsdivision@doc.gov) if you have questions about your involvement in litigation as an attorney or expert witness.

Prepared by the Office of the General Counsel, United States Department of Commerce
January 2, 2020

DOCUMENT PRESERVATION FOR DEPARTING EMPLOYEES

**UNITED STATES DEPARTMENT OF COMMERCE
2020**



**OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE**

PRESERVATION AND REMOVAL OF DEPARTMENT DOCUMENTS

Prior to your departure from the Department, you will need to review the documentary materials in your office or under your control to determine which documents you may take with you, and to facilitate the proper disposition of those documents that you will leave behind.

The first step in your review is to determine whether the documentary materials are “records,” “nonrecords,” or “personal materials,” as defined below. Documentary materials may be in forms other than paper, such as emails, photographs, and electronic files. Records and nonrecords are subject to Federal laws, including a criminal statute, which may restrict you from removing or destroying them. Personal papers are the property of the individual and are not subject to these preservation rules. We have summarized these restrictions in four rules (see Section III, below).

I. **Types of Documentary Materials**

The three types of documentary materials are as follows:

1. **Records.** Records include all recorded information—regardless of form or characteristic (including in digital or electronic form)—made or received by the Department under Federal law or in connection with the transaction of public business, that is preserved, or is appropriate for preservation, as evidence of agency activities or because of the informational value of data in it.
2. **Nonrecords.** Nonrecords are documentary materials pertaining to official business that lack record value. You must determine that the material is inappropriate for preservation for its evidentiary or informational value or that its substance is adequately reflected in materials that are preserved as records. Nonrecords include library or museum materials intended solely for reference or exhibit and duplicate copies of records preserved only for convenience.
3. **Personal Materials.** Personal materials consist of materials of a private, nonpublic character pertaining solely to an individual’s private affairs which do not relate to or have an effect on agency business.

Each type of documentary material should be maintained separately in your office, under Department regulation. For example, you may keep records and nonrecords in separate (physical or electronic) folders. Some offices may establish a common set of folders for office records, with employees maintaining only nonrecords and personal materials in their individual folders. The policy of maintaining your personal materials separately facilitates your search for materials responsive to a Freedom of Information Act request or your review upon departure.

II. Examples of Written Materials

Notes/Talking Points/ “Q’s & A’s” Prepared in Advance of a Meeting – Materials produced in advance of a meeting are generally records because they are usually prepared to guide the course of an official meeting in which public business will be transacted. Such material is prepared by a government employee on government time, sometimes reviewed by the author’s supervisor, sometimes distributed to one or more participants at the meeting, discussed at length during the meeting, and probably contains a recommendation, or at least some salient points, which were acted upon at the meeting, and then filed with relevant materials to record the action taken at the meeting.

Notes Taken during a Meeting – Notes taken during a meeting are records if they are intended to be a memorialization of what transpired at the meeting. If they are just personal notes, which are never distributed by the author, and are intended to be thrown away once they are no longer needed (that is, they serve only as “memory joggers”), then they are nonrecords. There is a broad spectrum of “need” for such notes: are they kept to preserve a record of action or enable the keeper to act upon it (thus creating records) or are the notes kept through mere inadvertence (usually discarded on a somewhat routine basis), with no intention of using them for any official purpose (thus, being non-records).

Drafts – Drafts of final documents are records if they were circulated for formal approval, comment, action, recommendation, or follow-up, or they communicate official business and contain substantive comments. Otherwise, they are nonrecord materials. It does not matter whether a final document was ever prepared; the content of the draft may still reflect an agency action that is worthy of preservation. In the normal process of drafting final documents, most drafts are discarded after the author incorporates comments, style changes, and typographical corrections into a new draft. This is appropriate because the original draft has lost its utility as insight into, or evidence of, the agency’s final action. However, if an author intentionally kept, or routinely keeps, a series of drafts for the sole purpose of preserving evidence of how the agency arrived at its final position, then those drafts are records.

Email Messages or other forms of electronic documentation – Emails or other forms of electronic documentation are records if they meet the definition, i.e., are made or received in connection with the transaction of public business and evidence agency activities or contain valuable information. Purely personal emails or other personal electronic files/documentation may be forwarded to a personal account or destroyed.

Personal Materials – Personal materials (including uncirculated desk calendars) are materials concerning activities in which you engage in your personal capacity, such as club memberships or political activities. Even if the activity bears some relationship to your official position, such as membership in a professional society, the materials are personal if you participate in your personal capacity rather than as part of your official duties for the Department. Purely personal materials may be removed or destroyed by you.

III. Restrictions on Destruction and Removal of Records and Nonrecords

Records and nonrecords are the property of the Government, and they are subject to the rules set forth below concerning destruction and removal. Personal materials are the property of the individual and are not subject to these rules. A Rule of Thumb: If it was created on official time in response to an official tasking, contains official business or comments, was placed in an agency file, memorialized an official discussion, or was intended to be kept by an employee for the future transaction of official business, it is a record and it cannot be destroyed by you except according to #1 below.

It is sometimes difficult to determine the proper category for particular documentary materials. The determination may depend on how your office organizes and maintains its records, and how the particular record is used or has been used in the past. If there is any doubt as to the proper category, and you determine that removal or destruction of the materials is desirable, you should consult your Records Management Officer. A list of Records Officers by bureau can be found here: <http://www.archives.gov/records-mgmt/agency/departments/commerce.html>.

The following four rules apply.

1. Records may not be destroyed by a departing employee, except as authorized by your agency's records control schedule or the Government-wide General Records Schedules.
2. Records may not be removed by a departing employee. Extra copies of records are considered nonrecords, and may only be removed in accordance with the rules for destruction or removal of nonrecords, set forth below.
3. Nonrecords may be destroyed as soon as they have served their purpose or are no longer needed. HOWEVER, nonrecords may not be destroyed where the materials are within the scope of a pending civil, criminal, or administrative proceeding, or other similar action such as a Congressional inquiry or Freedom of Information Act request. You should obtain advice in such circumstances from the Office of the General Counsel prior to destroying the materials.
4. Nonrecords may be removed only with prior approval from the head of your operating unit (or designee), as certified on the Department clearance form, Form CD-126. Approval will not be granted if any of the materials:
 - contain national security information or other information afforded protection under various statutes or regulations, such as privacy information or trade secrets;
 - relate to any pending or contemplated civil, criminal, or administrative proceeding or other program activity where their release could prejudice the matter;
 - if removed, would hinder the efficient, continued functioning of an office or of your successor;
 - if removed, would diminish the records or other documentary information needed for the official business of the Department;

- if removed, would violate the confidentiality of any interest protected by law, such as national security, privacy, trade secrets; or
- if removed, would exceed normal administrative economies (i.e., impose an unreasonable cost or burden created by copying or removing the materials from the building).

Please be advised, however, that merely because a document does not fall into any of the above categories, it does not necessarily mean that the document may be removed. There are many additional considerations that the Department may take into account in a particular instance that are not readily apparent to you. For example, the Department may choose not to approve removal of records that would not normally be released to a third party under the Freedom of Information Act if it is determined that removal would unnecessarily expose, or risk exposing, to the public any internal deliberations, opinions, legal or policy advice, law enforcement materials, or other professional work-product of any officer or employee of the Department.

Prepared by the Office of the General Counsel, United States Department of Commerce
January 2, 2020