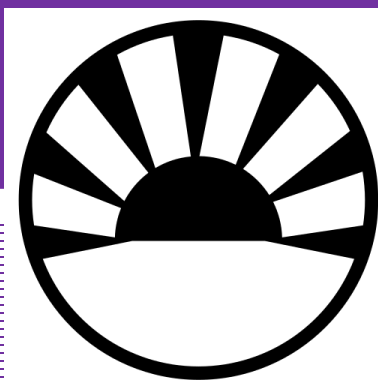


SUMMARY OF ETHICS RULES ON SEEKING EMPLOYMENT AND POST-EMPLOYMENT ACTIVITIES

**UNITED STATES DEPARTMENT OF COMMERCE
2020**



**ETHICS LAW AND PROGRAMS DIVISION
OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE
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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.

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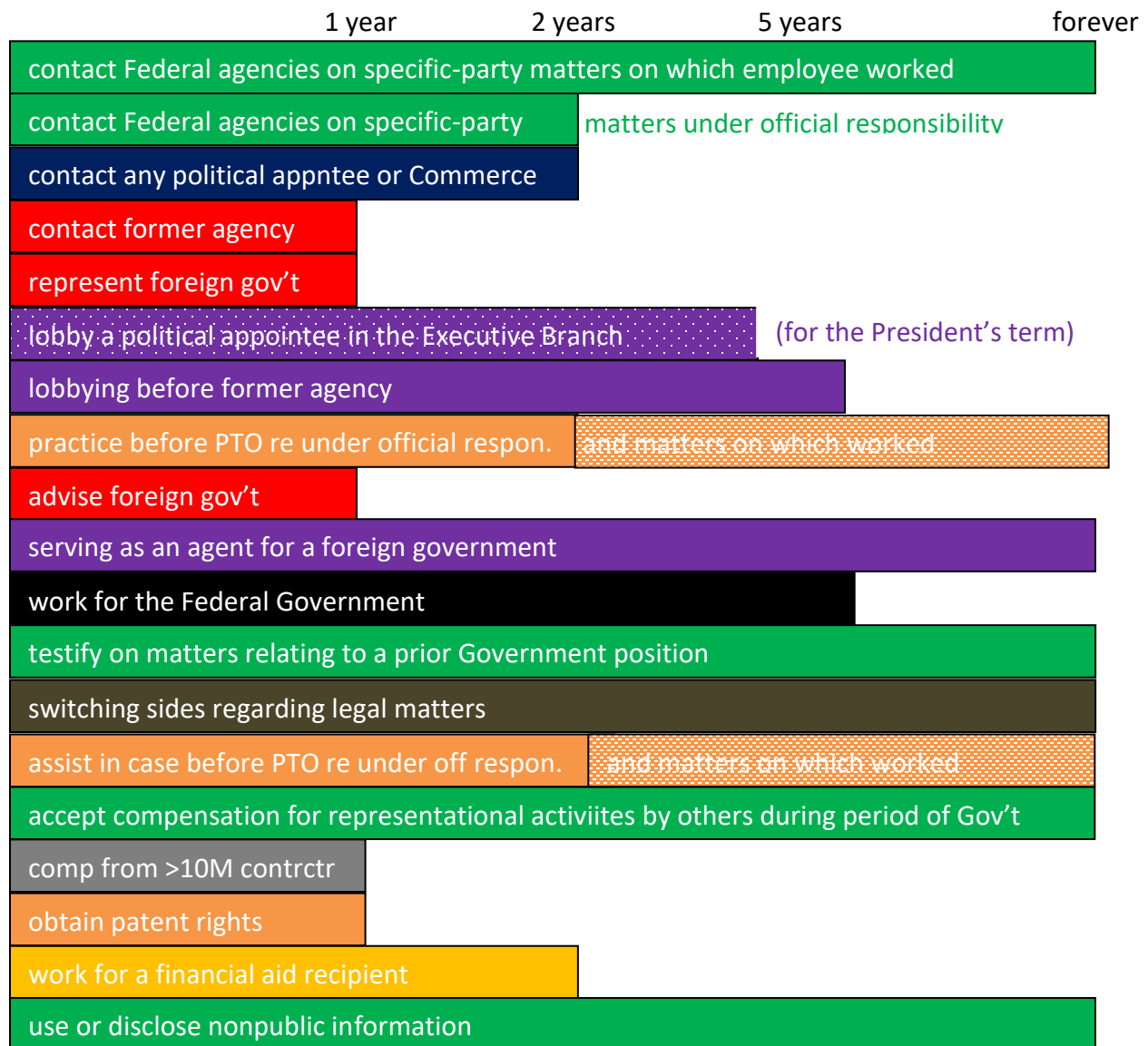
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POST-EMPLOYMENT RESTRICTIONS CHART



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** 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:

lobbying (providing services that require registration under the Lobbying Disclosure Act)
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:
lobbying (providing services that require registration under 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.

14. Permanent and 2-Year Bars on Assisting in Practice before USPTO

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

assisting rep re patents under off. resp.

assisting representation re patents employee worked on

Restriction – As noted above (Number 8 on page 8), United States Patent and Trademark Office (USPTO) employees intending to practice before USPTO are required to sign a written agreement:

- not to 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 COMPENSATION AND EMPLOYMENT

15. 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.

16. 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.

17. 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.

18. 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

19. 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.

20. 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

21. 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.

22. 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.