

POST GOVERNMENT EMPLOYMENT
Seminar Questions
OGE SUMMIT
SEPTEMBER 2014



Example 1

- Major General Cash, USMC, is retiring from the Joint Chiefs of Staff where he was the J4, in charge of operations. Mr. Slick Hand, a professional headhunter, called him and asked if he would be interested in becoming the CEO of the USO. MG Cash replies that the offer sounds good, but that he would like to discuss it with his family. After the discussion, MG Cash initials off on the logistics plan to support the USO show, Fifi, in Bosnia. This is the first he knew of the show and had had no involvement in the matter. After that, he wants to speak to the Navy about hosting the USO.



Example 2

- Working with Fifi is too much to let pass, so MG Cash takes the job with USO. One of his first acts is to send a letter to the Secretary of Defense (SecDef), asking for his endorsement of USO's program.



Example 3

- After dispatching his letter to SecDef, he decides to send letters to the service Secretaries and the Secretary of the Department of Veterans Affairs.



Example 4

- Remembering how difficult it was to build morale for the troops in Bosnia, MG Cash writes to the Secretary of State to encourage her to release more USAID funds for radio and TV stations. While on active duty he had not personally dealt with this issue, but it was one of his responsibilities.



Example 5

- When SecDef responds negatively to his letter that asked for an official endorsement, he decides to up the ante. He drafts a stronger letter for Senator Levin, Chairman of the Senate Armed Services Committee, to sign and send to SecDef on behalf of the USO



Example 6

- SecDef responds to Sen. Levin's letter by suggesting a meeting in the Senator's Office. Sen. Levin asks MG Cash to be present at the meeting, but not say anything for fear that it may offend SecDef.

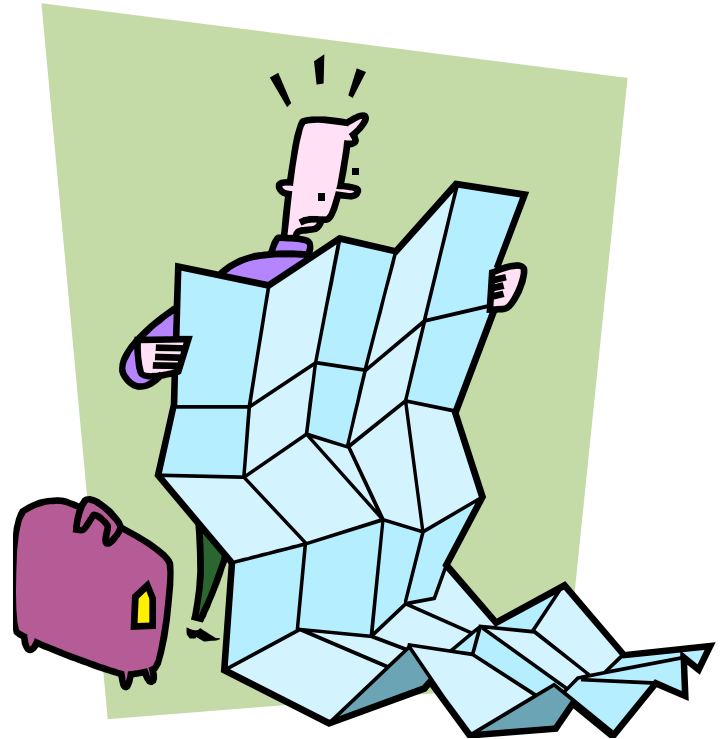
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Core Elements of Post-Government Employment Restrictions



Road Map

- Purpose of Restrictions
- Federal Employment Restrictions



Purpose of Restrictions

- Prevent conflicts of interest
- Promote economy in Federal Government
- Expand employment opportunities in the Federal system
- Preserve public confidence in Government integrity



Retired At Last!!!



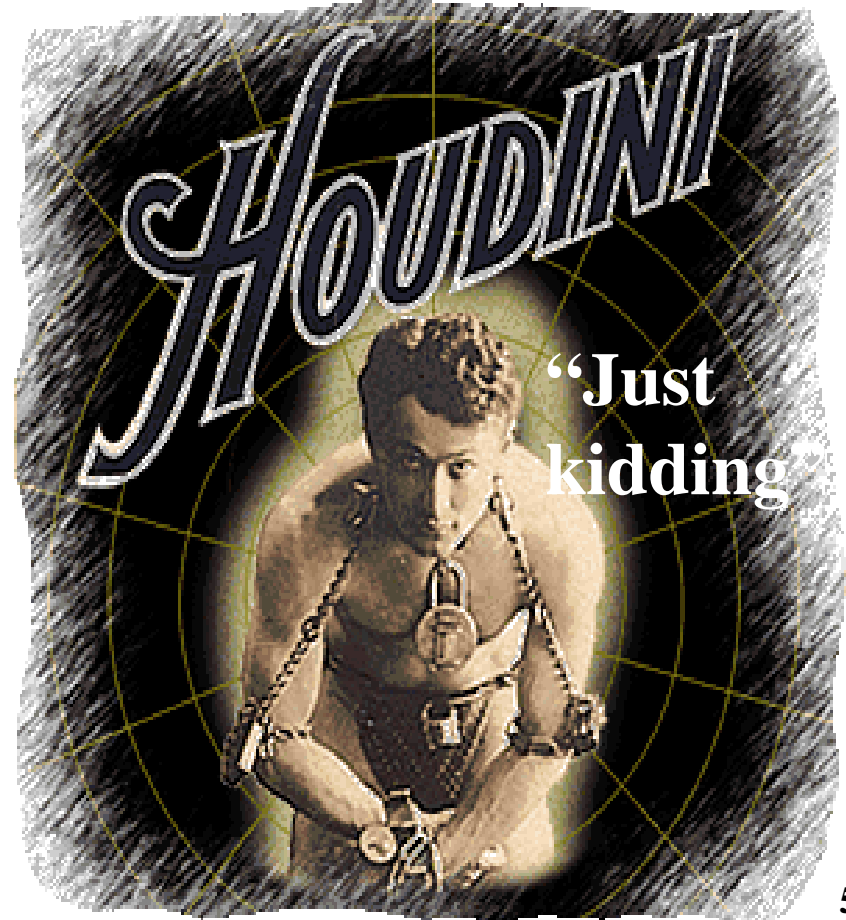
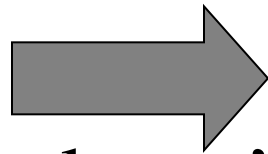
Representational Restrictions

18 U.S.C. § 207

Designed to curb “switching sides”

DOES NOT prohibit
acceptance of
employment

MAY restrict
scope of former employee’s
activities



Representational Restrictions

18 U.S.C. § 207; 5 C.F.R. 2641; EO 13490

- Prohibits representing another before U.S. Government with intent to influence

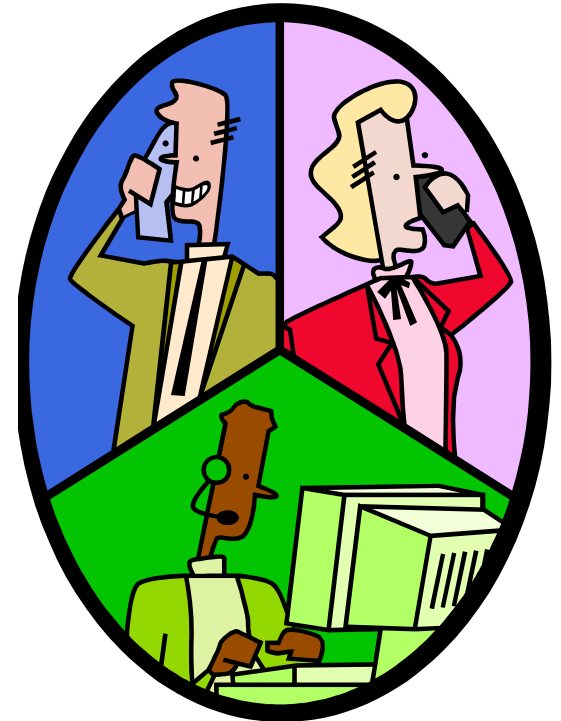
- Lifetime ban
- 2-year ban
- 1-year cooling-off period for senior employees
- Pledge paragraphs 4 and 5



“We represent the Lollipop Guild!”

Lifetime Ban

- 18 U.S.C. § 207(a)(1)
- May not:
 - Communicate/appear on behalf of another
 - With “intent to influence”
 - Regarding a “particular matter”
 - Involving specific parties
 - Where participated “personally and substantially” as Federal employee
 - Behind-the-scenes assistance permitted



Communication or Appearance

5 C.F.R. 2641.201(d)

- Communication – any oral, written, or electronic communication that former employee intends to be attributed to himself
- No requirement that former employee be recognized by current employee
- Appearance – Physically present
- Behind the scenes assistance – permitted but be careful of 3rd party intermediary communications

Intent to Influence

5 C.F.R. 2641.201(e)

- Present when made for the purpose of
 - Seeking a government ruling, benefit, approval, or other discretionary action or affecting government action in a matter involving a dispute or controversy
- Not Present when made for the purpose of
 - Making routine requests not involving a potential controversy, factual statements not involving element of dispute or effort to seek discretionary government action, and social contacts



Intent to Influence (cont)

Mere physical presence – relevant factors to consider set forth in 5 C.F.R. 2641.201(e)(4)

Particular matter involving specific parties

Particular matter – includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, or investigation. Generally, does not include rulemaking, formulation of general policy, standards or objectives, or other matters of general application.

Particular matter involving specific parties

5 C.F.R. 2641.201(h)(cont)

- Would not include matters of general applicability (legislation or rulemaking)
- International agreements – maybe depending on focus (e.g. specific claim)
- Must be specific parties at all relevant times (both when participating as a government employee and making the post-employment communication or appearance)



Same Particular Matter Involving Specific Parties

5 C.F.R. 2641.201(h)(5)

- Contracts, grants, or agreements
 - Generally new particular matter does not arise simply because of a contract modification
 - Generally successive or otherwise separate contracts are new particular matters
 - Generally, a contract is a single particular matter involving specific parties
 - Individual delivery order or task order could be separate particular matter in some cases

Before an Employee of the U.S.
5 C.F.R. 2641.201(f)

- Includes any current Federal employee
- Public Commentary – address at a public gathering, conference, seminar, or other similar forum as a speaker or panelist is not a prohibited communication if forum is
 - Not Government sponsored or co-sponsored
 - Attended by a large number of people
 - Significant portion of attendees are not US employees

On Behalf of Another Person

5 C.F.R. 2641.201(g)

- “Person” broadly defined. It includes an individual, corporation, company, association, firm, partnership, society, joint stock company or any other organization, institution, or entity.
- It does not include the former employee himself or any sole proprietorship owned by the former employee

Personal and Substantial

Participate personally and substantially –
to participate directly and significantly by
decision, approval, recommendation,
rendering of advice or investigation.
Includes actions of a subordinate if
actually directed by the former employee.

Representational Restrictions

2-Year Ban

- *18 U.S.C. § 207(a)(2)*. May not, within 2 years of termination of Government service
 - Communicate/appear on behalf of another
 - With “intent to influence”
 - Regarding a “particular matter”
 - Involving specific parties
 - Under “official responsibility” during last year of Government service
- Behind-the-scenes assistance permitted



Representational Restrictions

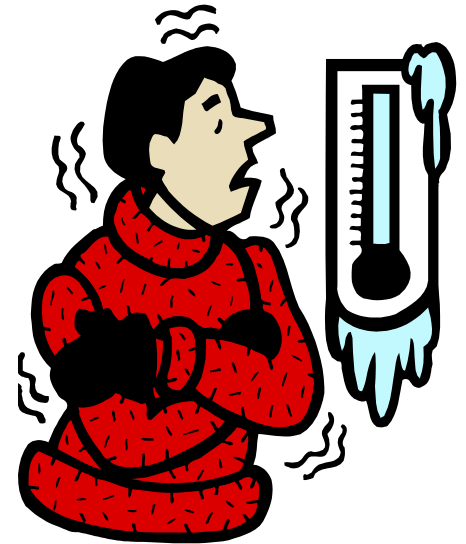
Definitions

- Official responsibility – direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.
- “Acting” – official responsibility may be affected
- Leave status – official responsibility is not affected by annual, sick, or terminal leave, excused absence or leave without pay.
- Disqualification – official responsibility is not affected

Representational Restrictions

1-Year Cooling-Off Period

- *18 U.S.C. § 207(c)*
 - Applies to former senior employees (personnel whose basic pay exceeded 86.5 percent of the rate for level II of the Executive Schedule (EL II)).
 - Prohibits communication or appearance before *former agency*, on behalf of another with intent to influence, on any matter where official action is sought



1-Year Cooling-Off Period

- Behind-the-scenes assistance permitted
- Communications to other agency components permitted
- Dual-Hatted



Procurement Integrity Act

- No longer has a name;
codified on 1/4/11 at 41 U.S.C. 2101-2107
- Still Applies to employees who retire on or
after 1 January 1997; just finally codified
- Bars acceptance of compensation from
contractor for 1 year after certain
participation in procurement >
- \$10M
 - Covers 7 positions and 7 activities
defined in the statute



Executive Order 13490 and Pledge

- Applies to Political Appointees
- Senior Officials have 2-year cooling off
- No former political appointee can lobby current political appointees in the executive branch until administration is over