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Letter to a Former Employee  
dated March 13, 2006

You have asked the advice of this Office with respect to certain post-employment restrictions. You provided a copy of general guidance that you received from [an ethics official] at the Department where you worked. You further indicate that you departed Federal service on February 24, 2006. Specifically, you pose four separate questions that you believe were not answered by the guidance you have received.

While we offer additional explanation below, some of your questions require fact-based analyses that our Office is unable to perform. These analyses require information on a wide range of topics, including detailed information about your participation at [the Department] in meetings, drafting documents, making recommendations and supervising others involved in the matters you describe. Therefore, we are not in a position to offer definitive answers to some of your questions. We are forwarding a copy of this response to the ethics officers at [the Department] who are in a better position to perform the fact-based analyses that we cannot, with a request that they give you definitive answers to your specific questions.

First, you would like to know whether you can be paid by [a nonprofit organization] using funds derived, in part, from a [Department] grant if you were not officially involved in the development of the grant or the selection of the grant recipients. The primary post-employment law, 18 U.S.C. § 207, does not restrict a former employee from being paid with funds derived from a Federal grant, regardless of the former employee's involvement with the grant. Rather, section 207 restricts representational activities before the Government on behalf of new employers or clients. Accordingly, section 207 *may* restrict your work with [the nonprofit organization] if it involves representational activity before the Government. See *discussion of Question 2*.

Next, you ask whether you may represent [the nonprofit organization] before [the Department] or other agencies of

the Federal Government regarding matters with which you were not officially involved in your last year of Government service such as commenting on and meeting with Federal officials regarding [certain] regulations, guidance, educational materials or policies.

As [the ethics official] indicated in her guidance, you may be subject to several restrictions at [the nonprofit organization]: the lifetime ban, the two-year supervisory ban and the one-year cooling-off period. However, the lifetime ban and the two-year supervisory ban apply only to representational activity in connection with the same particular matter involving specific parties on which you worked, or which was pending under your official responsibility, at [the Department]. Normally, regulations, generic guidance and educational materials or policies themselves would not be considered matters involving parties. Of course, application of such rules and policies in a particular case ordinarily would be a matter involving parties. We recommend that you contact [the Department's] ethics office to discuss the details of your proposed representation to ensure that none of it is in connection with matters involving parties.

As to your third question, whether you are subject to the one-year cooling-off period for senior employees if your salary was less than \$142,898.00, [Department] officials have informed us that you are not now, nor were you ever, a senior employee subject to that restriction.

Your fourth and final question is whether you may be paid as a consultant under a 20-million dollar contract awarded by [an Office of the Department]. You state that you participated in that contract matter while serving as director of that office in June 2003, but that your participation in the contract matter was limited to signing two forms that initiated the procurement process. The contract was awarded on September 17, 2004, thirteen days after you left that office.

The specific question you pose does not implicate 18 U.S.C. § 207 which, as noted above, restricts only representational activities before the Government. The question whether you can be paid under the contract, however, implicates the post-employment restrictions under the Procurement Integrity Act, 41 U.S.C. § 423. The Procurement Integrity Act bars a former Federal official

from accepting compensation from a contractor as an employee, officer, director, or consultant, for one year after he served in certain roles in connection with the award or the management of, or decision-making in relation to, a contract that is valued in excess of 10 million dollars.

This Office cannot provide definitive advice on the application of the Procurement Integrity Act. However, we can tell you that the answer to your question is dependent on an analysis of all the facts, such as information about relevant procurements in which you were involved, including dates of solicitation or award; a description of the goods or services procured or to be procured; information about your participation in procurement decisions, including the dates or time periods of your participation; and information about the contractor, including the division or affiliate from whom you propose to accept compensation. And keep in mind that, as discussed above, your role as consultant may also be restricted by 18 U.S.C. § 207 if it involves representational activity before the Government. *See discussion of Question 2.* Considering the fact-based analysis required by this question, once again we recommend that you consult with the ethics officers at [the Department].

We hope this is of some help. Please contact [the Department's] ethics office at your earliest convenience to get the specific answer you need.

Sincerely,

Marilyn L. Glynn  
Acting Director