Updated January 14, 2025

Summary of Post-Employment Restrictions Applicable to NASA Employees

Prepared by
Office of the General Counsel
NASA Headquarters

Over the years, Congress has passed several laws that affect the activities of civil servants after they separate from the federal government. Collectively known as the "post-employment restrictions," they often present a significant consideration in a former employee's professional plans. This paper contains a brief summary of the most common restrictions. Because deciding whether the restrictions apply to someone's specific situation can often be complex, this paper should not be used as a substitute for specific guidance from an ethics counselor.

There are two post-employment statutes that affect most people. Section 207 of Title 18 places restrictions on communications that a former employee may make to the Government after their federal employment ends, and Procurement Integrity may prohibit employment with certain contractors altogether. A third statute, 18 U.S.C. Section 208, may require a civil servant to change his or her official duties prior to talking with a prospective employer.

A. Prohibitions on Representational Activity Contained in 18 U.S.C. 207.

The ban on representational activity is contained in Section 207 of Title 18. The basic thrust of the statute is to restrict communications between a former employee and the Government. It does not prevent anyone from working for the employer of his or her choice, nor, in most cases, does it prevent them from working on specific matters. It may, however, prevent a former employee from discussing those matters with the Government.

1) General Prohibition of 207(a)(1).

No former employee may knowingly make, with intent to influence, any communication to or appearance before the United States on behalf of any other person in connection with a particular matter in which the employee was personally and substantially involved as a civil servant, and in which the United States is a party or has a direct and substantial interest.

Discussion. This prohibition applies to all NASA employees, and prevents former employees from communicating with NASA, or any other Government agency, concerning matters the employee worked on while employed by NASA. As noted above, it does not prevent an employee from working for a contractor with whom they had dealings as a civil servant. It even permits the former employee to work on something that was a part of their duties as a civil servant--so long as they do not communicate, verbally or in writing, with the Government. The prohibition applies to "particular matters," which generally are specific

transactions between specific parties, rather than broad areas of agency activity. In NASA's case, a particular matter is often a contract, grant, or agreement. The prohibition does not apply to programs, except to the extent that they are implemented through specific contracts. This means that a former employee may communicate to the Government concerning a contract with which they had no involvement, even if the contract is in support of a program with which they were involved. The prohibition remains in effect for the life of the particular matter (e.g., the duration of the contract).

2) Two Year Supervisory Prohibition of 207(a)(2).

For two years after separation, no former employee may knowingly make, with intent to influence, any communication to or appearance before the United States on behalf of any other person in connection with a particular matter which the employee knows or should reasonably know was pending under his or her official responsibility during the last year of Government service.

Discussion. This restriction is much the same in scope as the restriction of Section 207(a)(1), with the difference that the former employee need not have been personally involved in the matter, if he or she was responsible for it. In other words, supervisors and managers are held accountable for all matters under their responsibility, even if the actual work was performed by a subordinate. They are also expected to be aware of what matters they were responsible for. Because the restriction applies to situations where there was no personal involvement, it only applies for two years from separation.

3) Prohibition on Aiding or Advising With Respect to Treaties or Trade Negotiations of 207(b).

For one year after separation, a former employee may not aid or advise anyone other than the United States with respect to an ongoing trade or treaty negotiation, if they participated personally and substantially within their last year of Government service.

Discussion. This prohibition rarely applies to NASA employees. It prevents participants in trade or treaty negotiations from switching sides during negotiations. Note that it prevents behind the scenes involvement, not just communications with the Government.

4) One Year SES Cooling Off Period of 207(c).

For one year after separation, no former senior employee whose rate of basic pay is equal to or greater than 86.5% of the rate of basic pay for level II of the Executive Schedule ($195,231 in 2025) may knowingly make, with intent to influence, any communication to or appearance before the employee's former agency on behalf of any other person in connection with any matter on which he or she seeks official action.

Discussion. Because this section sweeps so broadly, if it applies, it is often the most important post-employment restriction. This provision prohibits a former employee whose basic pay is $195,231 or greater (in 2025) from communicating with NASA on behalf of

anyone else about any particular matter. It applies regardless of whether they were personally involved in the matter being discussed, or whether it was pending under their official responsibility during their final year with the agency. The prohibition is effective for one year.

5) One Year Restrictions on SES Representing Foreign Entities of 207(f).

For one year after separation, no former senior employee may aid or advise any foreign entity, or knowingly make, with intent to influence, any communication to or appearance before the United States on behalf of any foreign entity.

Discussion. For one year after separation, a member of the Senior Executive Service who was paid at $195,231 or higher (in 2025) may not assist a foreign entity in any matter pending before any agency. A foreign entity for purposes of this subsection is a foreign government or any organization, such as a political party, that has or seeks a role in a foreign government or seeks to advance or influence the policies or relations of a foreign government. It includes agencies or similar components of foreign governments. This restriction applies to the same employees as the SES cooling off period, but the prohibition applies to communications to any agency, not just NASA, and it applies to aiding or advising, as well as communicating. Unlike most of Section 207, if this provision applies, it prohibits any involvement, even behind the scenes.

6) Exceptions

There are some exceptions set forth in the statute. The most important exceptions permit former employees to represent state or local governments, universities, or hospitals back to the Government, and to make scientific or technical communications without intent to influence.

a) Governments, Hospitals, and Universities Exception of 207(j)(2).

The restrictions of 207(c), (d), and (e) do not apply to acts done in carrying out official duties as an employee of an agency or instrumentality of a State or local government, or of an accredited, degree-granting institution of higher education, or a hospital or tax exempt medical research organization, if the appearance, communication or representation is on behalf of such government, institution, hospital or organization.

Discussion. The one-year SES cooling-off period does not apply to someone working for the listed entities. This exception has been used by NASA employees, particularly those who have gone to work for universities, and then sought grants for their institutions from NASA. This exception is limited to the SES cooling-off period, however, and does not permit any former employee to make representations to the Government concerning matters in which they were involved, or which were under their responsibility during their Government employment.

b) Exception for Scientific or Technological Information of 207(j)(5).

The restrictions of 207(a), (c), and (d) do not apply where the communication is made solely for the purpose of communicating scientific or technological information in accordance with agency procedures.

Discussion. This exception, which is occasionally used, is subject to NASA regulations at 14 C.F.R. 1207.202 (Enclosure 1). Without restating the regulation here, it basically requires that each communication to a NASA employee be preceded by information sufficient to establish that the statute applies and that the conditions for the exception are met. This provision can be difficult to utilize since the communication must not be intended to influence the civil servant recipient. This exception will typically be satisfied by a transmittal of raw scientific or technical data that has not been interpreted by anyone outside the Government. It is advisable to seek advice of counsel prior to utilizing this exception.

c) Exception for Imparting Special Knowledge.

A former senior employee will not violate Section 207 (c) or (d) if the communication is based on their special knowledge, as long as they are not receiving compensation.

Discussion. This exception, which has seldom, if ever, been used within NASA, permits a former employee covered by the cooling-off period to "set the record straight" about something if they possess special knowledge. Note that it only lifts the cooling off period and does not permit representations concerning a matter in which the former employee was personally and substantially involved. It also requires that the former employee not receive compensation for the representation.

B. Restrictions On Future Employment Imposed By Procurement Integrity Act in 41 U.S.C. § 2104.

The post-employment provisions of the Procurement Integrity statute have changed several times since its initial enactment. The most recent change will affect employees separating from the Government after January 1, 1997. Those who left earlier than that date are covered by entirely different provisions that are not addressed here.

The Procurement Integrity rule now in effect has extensive post-employment restrictions based on the role of a civil servant under a specific contract. If an employee participates in a procurement as a source selection official, contracting officer, Source Evaluation Board member, or chair of an evaluation panel; is the program manager or deputy program manager; or makes a decision to award a contract, subcontract, modification, task order, or delivery order in excess of $10 million; makes a decision to pay a claim in excess of $10 million; or makes a decision establishing rates for a contract in excess of $10 million, that employee may not work for the specific contractor involved in any capacity, including as a consultant, for one year from the time the employee engaged in any of those activities.

Discussion. This restriction obviously has a far greater impact on those to whom it applies than the ban on representational activity. By prohibiting employment, even as a consultant, it

sharply restricts the employment options available to individuals employed in the designated roles. *However, this Procurement Integrity restriction only applies to the individuals listed in the statute*. It does not, for example, apply to someone who has assisted in defining a requirement, despite that individual's involvement with the procurement, unless they were also appointed to the source evaluation board. In addition, the $10 million threshold excludes many procurements, but no major ones, from coverage entirely.

By exempting most of the civil service workforce, the statute focuses primarily on individuals who were instrumental in giving significant agency business to a contractor. Those individuals, including program managers and deputy program managers who may not have been involved in the original source selection process at all, are not permitted to leave the Government and go to work with the companies that have been the beneficiaries of those decisions for one year from their last covered activity.

C. Restrictions on Searching for Jobs Imposed by 18 U.S.C. 208.

In addition to the post-employment restrictions, two statutes place restrictions on the career transition process. 18 U.S.C. Section 208 equates employment negotiations with financial interests, and Procurement Integrity has employment negotiation provisions as well.

1) Restrictions on Negotiating for Employment in 18 U.S.C. 208.

An employee is prohibited from participating personally and substantially in any matter affecting the interests of a person with whom they are negotiating for, or have an arrangement concerning, prospective employment.

Discussion. This is the basic financial conflict of interest statute. This statute equates, as a matter of law, an employment negotiation with a financial interest. Therefore, it is a violation of the law for someone negotiating for employment to become personally and substantially involved in any matter involving the potential employer. In other words, before discussing employment with a contractor, the employee must take steps to ensure that he or she is not involved in a contract that is held by that company. This can be accomplished by requesting recusal from any matters involving a prospective employer. This recusal should be in writing and coordinated with the employee's supervisor and with an ethics advisor.

NOTE: Under the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), employees who file public financial disclosure forms must file a statement notifying their agency ethics official of any negotiation for, or agreement of, future employment or compensation with a non-federal entity within three business days after commencement of the negotiation or agreement. An employee who files a notification statement also must file a recusal statement with the ethics official whenever there is a conflict of interest or appearance of a conflict of interest with the entity. The notification statement and written recusal may be combined in a single submission. The employee may elect to file advance notification and recusal statements before negotiations have commenced and before an agreement of future employment or compensation is reached. If the employee elects to file a

statement in advance, he or she need not file the document again upon commencing negotiations or reaching an agreement of future employment or compensation.

2) Restrictions on Negotiating for Employment in Procurement Integrity.

If an agency employee contacts or is contacted regarding possible employment by an offeror or bidder in a procurement in excess of the simplified acquisition threshold in which the employee is participating personally and substantially, the employee must promptly report the contact in writing to the employee's supervisor and the designated agency ethics official and reject the possibility of non-federal employment or be disqualified from further participation in the procurement.

Discussion. This restriction is different than the post-employment restrictions of Procurement Integrity in several important respects. First, it applies to all participants, not just the limited list of individuals whose post-employment activities are restricted. Second, it applies to all procurements in excess of $100,000, not just those over $10 million. Third, the statute requires that reports of contacts be retained by the agency and made publicly available upon request, so there is no confidentiality concerning employment discussions during the pendency of a procurement. This statute is in addition to the requirements of 18 U.S.C. 208, discussed above, which also applies in the case of most procurement activities.

D. USE OF NON-PUBLIC OR SENSITIVE INORMATION

Under the Procurement Integrity Act, a present or former NASA employee, who is or was involved with a procurement and who has or had access to contractor bid or proposal information or source selection information, must not (other than as provided by law) knowingly disclose that information before the award of the procurement contract to which the information relates. Further, a person must not (other than as provided by law) knowingly obtain contractor bid or proposal information or source selection information before the award of the procurement contract to which the information relates.

Independent of the ethical proscriptions in Procurement Integrity Act, a NASA contracting officer also has authority to safeguard the integrity of a procurement process. *See generally* FAR 3.104 and 9.505. For example, the use of the services of a former employee by a prospective offeror, where the employee has had access to certain types of procurement-sensitive information, can create grounds for a protest based on an appearance of impropriety due to an unfair competitive advantage. In those cases, the contracting officer should review the circumstances and address any concerns in accordance with FAR 3.101-1.

Employees also have a continuing obligation to the Government not to disclose or misuse any other information that was acquired as part of their official duties and that is not generally available to the public. In addition, 18 U.S.C. §§ 793, 794, and 1905 (current employees) protect and prohibit the use or disclosure of trade secrets, confidential business information, and classified information.

Discussion. Use of certain procurement sensitive information is a violation of law and can result in criminal and other penalties for current and former employees. There are also procurement risks involved for future employers or agencies. Prior to engaging in the support of the preparation of a proposal, former employees should consider whether their prior access to procurement-sensitive information could create an unfair competitive advantage for the offeror or even an appearance of one. It is advisable that they recommend to a prospective offeror seeking their services that it contacts the contracting officer with concerns or questions regarding the use of the employee and articulate to the contracting officer the compliance efforts it is making to assure that use of such individuals would not constitute an unfair competitive advantage. Finally, additional laws prohibit current or former employees from revealing non-public information, including trade secrets, confidential business information, and classified information.

E. SES EMPLOYEES MUST FILE TERMINATION OGE FORM 278e

NASA employees who file an annual public financial disclosure form (OGE Form 278e) must submit a completed termination OGE Form 278e within 30 days from the date of your initial notification letter. Please note that you may be subject to a $200 fine for filing more than 30 days from the date of your initial notification. Individuals who fail to file are subject to civil and criminal penalties enforced by the U.S. Department of Justice. To file electronically, please contact the NASA Shared Services Center (NSSC) Customer Contact Center by calling 1-877-677-2123 or by e-mail at nssc-contactcenter@nasa.gov or create a request to submit an OGE Form 278e termination report here at NSSC Service Request.

Conclusion

This paper has provided a brief overview of the most common post-employment restrictions applicable to NASA employees. Because of the general nature of the discussion, the complexity of the relevant statutes, and the virtually limitless variety of post-employment factual scenarios, it should be read as guidance, not as an opinion on any individual's plans. If a NASA Headquarters employee wishes to discuss these restrictions further or wants to request an opinion on post-employment rules as they apply to a specific situation, he or she should contact an attorney on the ethics team at (202) 358-2465 or ethicsteam@hq.nasa.gov. NASA Center employees should contact their local Office of the General Counsel.

Enclosure 1

[Code of Federal Regulations]
[Title 14, Volume 5]
[Revised as of January 1, 2007]
From the U.S. Government Printing Office via GPO Access
[**CITE**: **14CFR1207.202**]

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TITLE 14--AERONAUTICS AND SPACE

CHAPTER V--NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1207_STANDARDS OF CONDUCT--Table of Contents

Subpart B_Post-Employment Regulations

Sec. 1207.**202** Exemption for scientific and technological communications.

(a) Whenever a former government employee who is subject to the constraints of post-employment conflict of interest, 18 U.S.C. 207, wishes to communicate with NASA under the exemption in section 207(j)(5) for the making of a communication solely for the purpose of furnishing scientific or technological information, he or she shall state to the NASA employee contracted, the following information:

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(1) That he or she is a former government employee subject to the post employment restrictions of 18 U.S.C. 207 (a), (c), or (d)--specify which;
(2) That he or she worked on certain NASA programs--enumerate which; and
(3) That the communication is solely for the purpose of furnishing scientific or technological information.
(b) If the former government employee has questions as to whether the communication comes within the scientific and technological exemption, he or she should contact the General Counsel, the designated agency ethics official.

[54 FR 4003, Jan. 27, 1989; 55 FR 9250, Mar. 12, 1990. Redesignated and amended at 59 FR 49338, Sept. 28, 1994]