

SEEKING OR NEGOTIATING FOR NON-FEDERAL EMPLOYMENT

If you are planning to leave the executive branch and return to non-federal employment, including work with non-profits or state and local governments, you need to know how the federal ethics laws may affect your job search. It is very important that you be aware that the criminal conflict of interest statute, 18 U.S.C. § 208, will apply when you negotiate for employment outside the Government while you are still working in the executive branch.

Current employees who have begun seeking or negotiating for subsequent non-federal employment must immediately recuse from participation in any official matter that involves the prospective employer as an identified party, such as a grant, contract, application, audit, investigation, or lawsuit. The recusal also must extend to any particular matter of general applicability that affects the discrete industry, economic sector, or other defined class of organizations in which the prospective employer operates, such as a legislative initiative, regulatory proposal, or policy determination that affects the prospective employer as a member of such class.

For example, (1) if you negotiate to serve on the board of directors of a beverage manufacturer, your work on an obesity initiative would have to cease; (2) if you seek employment with a university, you may not serve as an official speaker at its commencement; (3) if you want to join a non-profit organization that advocates against smoking or a commercial enterprise that manufactures tobacco use cessation products, your work on tobacco issues will have to end; or (4) if you negotiate for a job with the State of Maryland, you are prohibited from working on matters specifically involving the Maryland state government, as well as broad matters affecting all state governments such as a Medicaid regulation. (However, in this example, you may be able to work on a specific party matter involving a different individual state, such as a waiver application from Virginia.) In addition, if you participate in certain procurement matters, you may be subject to additional rules, including the duty to report employment contacts made by you or a bidder or offeror.

The rules define "seeking employment" broadly. In most cases, you will be considered to be seeking employment before you are engaged in actual job negotiations. For example, sending a resume or having preliminary contacts about possible employment, whether initiated by you or a prospective employer, may be considered seeking employment. You may occasionally receive unsolicited overtures from prospective employers. You are deemed to be seeking employment if you make any response "other than rejection" to an unsolicited communication from a prospective employer about future employment. The ethics regulations provide that "a response that defers discussion until the foreseeable future does not constitute rejection" of an unsolicited employment overture. The Office of Government Ethics has indicated that these sample statements would firmly communicate rejection:

- All my time and attention right now are devoted to my Government job, and I am not in a position to discuss employment.
- The ethics rules do not permit me to discuss possible employment with you while I am working on your contract/grant/case/regulation affecting your industry, so I am afraid my answer has to be 'no.'

Additionally, if you are engaged in a job search, you must be careful not to misuse Government resources such as your official time, the services of other employees, equipment, supplies, and non-public information to which you have access. If you accept a job outside the Government, you must continue to refrain from working on matters in your Government job that would affect the financial interests of your prospective employer.

If you are required to file an OGE 278 Public Financial Disclosure Report, you must notify your 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. You must submit with your notification a written recusal statement whenever there is a conflict of interest or appearance of a conflict of interest with the entity, unless you have obtained a written waiver or an authorization.

If you have any questions about these rules, please contact the Office of the General Counsel, Ethics Division at 202-690-7258.



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