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CHAPTER 7



The Ethics Rules and Life After Government

Donald C. Alexander was a tax lawyer in Cincinnati when President Richard Nixon summoned him to Washington to serve as commissioner of the Internal Revenue Service in 1973. When he stepped down after four challenging years, he knew he did not want to return to Ohio but didn't feel comfortable hanging out his shingle in Washington – at least not right away. He did not want to be viewed as trying to cash in on his public service. “So I went to New York and served out my purgatory period for two years. I had a personal rule,” he recalled. “I just plain went to New York and did wills and things like that.”

Alexander's solution—self-imposed exile before returning to Washington to practice law—was above and beyond the restrictions that federal ethics rules impose on ex-senior officials. Ex-officials generally are free to work for anyone they choose after government, but there may be some strings attached if that work brings them into contact with their former agency.

Some will barely notice these strings. If you are returning to a college faculty or working for a company that is not a government contractor, the restrictions may be imperceptible and have no impact on your ability to earn a living. But if you are returning to or taking a job that deals regularly with the agency you helped run, the restrictions may be an encumbrance, at least for the first year or two.

Post-government employment restrictions prohibit former senior federal employees from engaging in such activities as lobbying for a specified period. There is a two-year “cooling off” period for certain high level officials during which they may not communicate with or appear before their former agencies on behalf of a client or anyone else. This cooling off period used to be one year, but Congress lengthened



it in 2007. It does not apply if the former Cabinet secretary or deputy secretary is acting on behalf of a candidate or political party, or as an elected state or local official, or acting on behalf of the United States.

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Two days after his inauguration in 1993, President Bill Clinton issued an executive order imposing on his senior appointees a five-year cooling off period from dealing with their former agencies. The five-year restriction was criticized as onerous by some groups promoting public service, and Clinton revoked it by another executive order issued in December 2000 in the final weeks of his second term.

In addition to not being allowed to go before their former agency, those who held “very senior” posts may not communicate with or appear before other high level executive branch officials during that first year. The “very senior” officials are Cabinet officers and deputy secretaries on the Executive I and II pay levels. Senior officials include those on Executive Pay levels III, IV and V.

The Office of Government Ethics, in its June 2008 final rule on post-employment restrictions, offered dozens of examples of how the regulations affect not just presidential appointees but others who worked for the federal government. “The former Attorney General may not contact the Assistant Attorney General of the Antitrust Division on behalf of a professional sports league in support of a proposed exemption from certain laws, nor may he contact the Secretary of Labor. He may, however, speak directly to the President or Vice President concerning the issue,” it said. Likewise, a former Secretary of Labor may not represent another person in a meeting with the current Secretary of Transportation to discuss a proposed regulation on highway safety standards.”

The conflict of interest laws, which date back to 1962, permanently prohibit former federal employees from “switching sides” and representing a private company or organization before any federal agency on matters that they personally and “substantially” handled while working for the government. This ban does not prevent a former senior official from giving advice behind the scenes to a party in a dispute with his or her former agency.

For two years after leaving government service, former officials may not represent their new employer before their former agency on matters that were pending under their official responsibility in their final year of service.

Ex-officials may not lobby for nor represent a foreign government before any U.S. official or agency for one year after their service ends. Those who participated in an ongoing trade or treaty negotiation face additional restrictions; so do those who were involved in procurements or contract administration.

The U.S. Office of Government Ethics has additional details on these [post-](#)

[government restrictions](#), including links to the primary conflict of interest statute: [18 U.S.C. § 207](#) and especially 5 C.F.R. parts [2637](#) and [2641](#). The Ethics Reform Act of 1989 made major changes to the original law. Congress has made minor changes a dozen other times in efforts to avoid embarrassment over what some regard as a “revolving door” between lobbyists and those in the upper echelons of government. While there have been conflict of interest rules on the books since 1872, only in modern times did Congress make violations of the post-employment restrictions a criminal matter. OGE published a final rule on the post-employment conflict of interest regulations in the [June 25, 2008, Federal Register](#).

“None of its provisions bars any individual, regardless of rank or position, from accepting employment with any private or public employer after Government service. Section 207 only prohibits former employees from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation,” the Office of Government Ethics emphasized in a [2006 report to Congress](#).

The OGE concedes that Section 207 is very complex. It now includes seven different prohibitions applicable to executive branch employees, and they vary by what authority the official exercised and how much he or she was paid.

“Nevertheless, the statute’s complexity creates few real practical problems for the majority of employees since the average executive branch employee is affected by only one restriction in section 207: the lifetime ban ... with regard to certain matters in which the individual participated personally and substantially,” OGE said.

There are also do’s and don’ts about searching for a job while still on the federal payroll. Most are common sense. Don’t ask an assistant to type or photocopy your resume, for example, and don’t conduct your search when you are supposed to be doing your government job. You must avoid dealing with certain issues if you’re talking with a company or industry that has a stake in your agency’s decisions and policies. If your work involves procurement, you may have to file a written report about any job overtures, even if they were unsolicited and you have no intention of pursuing them.

Ex-officials can be fined up to \$250,000 and sent to prison for five years for willful violations of the post-employment restrictions. They can also be forced to cough up any earnings from an illegal representation of some other party in a dispute with the government. Lesser violations are handled administratively by the agencies involved; penalties may include doubling the length of these restrictions on post-government employment. Some agencies expect restricted ex-employees to report on their post-employment activities.

Some thoughtful people inside and outside government worry that these rules make

it harder for presidents to convince talented people to accept the call of public service. Hans Mark, who served as the Pentagon's director of defense research and engineering in the Clinton administration, said, "If I weren't 70 years old, I wouldn't have taken this job because it would have restricted me from doing things in the future that I wanted to do. Twenty years ago, when I was under secretary and then secretary of the Air Force, those restrictions weren't there, so I could go back out and do things, and I didn't lose anything. But today, the only people who can get through without a problem are members of the congressional staffs. That's why you have a preponderance of them in these executive positions. And I don't think that's a good thing. Many have never managed a project or run a large organization. There are now lifetime prohibitions against taking certain jobs. That's nuts."

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For those entirely new to federal service, the ethics rules may seem particularly complex and challenging, and the post-employment restrictions may give nominees pause about accepting a presidential appointment. But they are just part of the larger demands they will face in accepting public service and the rigorous ethical standards that requires.

Office of Government Ethics Director Robert I. Cusick, speaking in September 2008 at his agency's annual conference for ethics officers from across the executive branch, acknowledged that it is a tall challenge to bring a new administration's appointees up to speed on the ethics rules and regulations. This was part of his [message](#) to the ethics officers:

All of the ethics training you have provided to senior leaders will leave with them. You must start over with new leaders who may have little or no previous government experience. All of the financial disclosure work you did with senior leaders will end soon and must be restarted from scratch. You must emphasize the necessity and importance of establishing a strong ethical culture -- not just in words but in deeds -- to your new leadership. You must help them understand the importance of accurate and complete financial disclosure, and the transparency it produces, because new people may be resistant to it. ... New leaders may have no experience in running a large department or agency. They may come from the private sector or from academia and have held very different leadership positions. Many new leaders will not be accustomed to the intense oversight focused on them by the media, by Congress and by non-governmental organizations. ... Many new leaders will not be familiar with federal laws and regulations which both authorize their actions and constrain their discretion. Simply accomplishing something may not be as easy as they expect."

Cusick warned that “brigades” of lobbyists “will want to advise, curry favor, establish social relationships, create the appearance of having influence, and position themselves as appearing to be close to the new leaders.... Outside the government, fancy meals, expensive sports tickets, the use of one’s positional influence, the blurry line between business and social engagements, the opportunities to make money with whispered information are common. A very intelligent new leader uninformed about government ethics principles can be very susceptible to influences that were thought previously to be a legitimate benefit of his or her position.... Your advice to new leaders must come early and be delivered with great emphasis.”

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A Strength of the American System

If you feel anxious about these rules and restrictions, remember this: the movement of top executives, lawyers, professors, soldiers, and others from business, academe, the military and other walks of life into senior appointments, and their return afterwards to the private sector or other public duties is one of the strengths of the American system, not a liability. It brings fresh blood and fresh ideas into government. It mirrors what the Founding Fathers envisioned for the nation’s elected representatives, with private citizens taking time away from duties back home to help lead the nation. Eugene Ludwig, former comptroller of the currency, said, “George Washington’s great gift to America is that after two terms he decided, ‘Well, it’s time. I’ve had enough. It’s time to go home.’ He set a standard for everybody....But keeping that revolving door going is very, very important.”

CHAPTER SEVEN KEY POINTS

- Knowing and fully complying with the ethics and conflict of interest rules will be vital to your success as a presidential appointee. They also will have an impact on what you do for a year or more after leaving government service.
- The rules are complex. Make a point of understanding early on how they affect you.
- The post-government employment restrictions will not prevent you from taking any job, but they will constrain your dealings with your former agency and prevent you from jumping to the other side on a matter with which you were deeply involved. When in doubt, check with your department’s ethics officer.