SBA Information Notice

TO:	All SBA Employees	**CONTROL NO.:**	7000-194
SUBJECT:	Seeking Employment and Post Employment Restrictions	**EFFECTIVE:**	11/15/2011

~ *The Rules for the Road* ~

This Notice is designed to remind SBA employees of the existing restrictions of law that apply to them when they are seeking employment in the private sector, and that apply to them when they leave the Small Business Administration (SBA) and the Federal government and return to employment in the private sector.[1]

I. Seeking Non-Federal Employment While Still at SBA

- **The General Rule –** Under applicable criminal law, you shall not, while performing your official SBA duties, participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer with whom you are seeking employment. See 18 U.S.C. § 208. You are also subject to corrective or disciplinary action. See 5 C.F.R. § 2635.604[2] and § 2635.106(a).

- **Definition of Employment –** "Employment" means any form of non-Federal employment or business relationships involving the provision of personal services by you, whether to be undertaken at the same time as, or subsequent to, Federal employment. It includes personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, managing partner or trustee. See 5 C.F.R. § 2635.603(a).

1 If you seek employment with another Federal agency or department and accept such a position, the post employment rules discussed in this memo generally do not apply.

2 Participation in large procurement matters (more than $10,000,000) can subject you to additional requirements relating to private employment contracts pursuant to Federal Procurement Integrity Rules.

➢ **Seeking Employment –** You may seek non-Federal employment with whomever you wish while still employed at SBA, but as outlined above you may not, while performing your official SBA duties, participate in a particular matter that would affect the financial interests of a prospective employer with whom you are seeking employment. "Seeking employment" with a non-Federal entity begins when you have, directly or indirectly:

- Entered into negotiations for future employment with a prospective employer;
- Submitted a resume or job application to a prospective employer. (But not if you simply contact a potential employer seeking more information or a job application form);
- Responded to an unsolicited communication from a prospective employer with something other than a flat statement of non-interest or a simply "no thank you." If the matter is left open-ended then the discussion, and all future discussions, constitutes "seeking employment");

However, you are no longer "seeking employment" when either you or the prospective employer rejects the possibility of employment and all such discussions have been terminated, or two months have transpired after sending an unsolicited resume or employment proposal to a prospective employer and you have not received a response or any indication of an interest in initiating employment discussions, whichever occurs first.

➢ **Headhunters –** You are "seeking employment" through a headhunter if:

- A headhunter submits your resume to a prospective employer and informs you of the name of the prospective employer;
- A headhunter informs you of the specific employers that are interested in talking to you;
- A headhunter tells you that he or she is going to submit your resume to a class of companies doing business with or likely to be doing business with the Agency (such as participant lenders or CDCs).

➢ **Government Resources –** You must not use Government resources (such as official time, the services of other SBA employees, office equipment and supplies, Government mail and non-public information) in connection with your job search.

➢ **Tie-in with Post Employment Rules –** While you are looking for employment, you will want to familiarize yourself with the restrictions discussed below that may apply to your future post employment, as they may impact the focus of your job search.

II. Post Employment Restrictions

The following brief overview highlights the restrictions on your activities after you leave the Federal government. SBA's ethics officials are available to provide specific advice on these post-employment restrictions, both before and after you terminate your Government service. For easy reference, all of the post-employment restrictions referred to below are summarized in the attached "SBA Post-Employment Quick Reference Chart."

A. ***18 U.S.C. § 207 (post employment restrictions)*** **--** Parts of this criminal statute apply to all former executive branch employees, while others restrict only former senior officials, political appointees, or those with specified duties.

- If you have served as a "senior employee"[3] during your last year of SBA service, you are restricted for one year after your departure from the Government from knowingly making, with the intent to influence, any communication or appearance before any SBA employee on behalf of someone other than yourself, the United States Government, a state or local government, and some institutions of higher education and medical research organizations, in connection with any matter on which official action is sought. See 18 U.S.C. § 207(c).

- Former senior employees are also subject to a one-year ban on assisting or representing a foreign government or foreign political party, with intent to influence any Federal Executive Branch employee. See 18 U.S.C. § 207(f).

- Regardless of your grade at the time you leave SBA, as a former Executive Branch employee, you are permanently barred, after your departure from the Government, from knowingly making, with the intent to influence, any communication or appearance before any employee of an Executive Branch department or agency, or before any court of the United States, on behalf of someone other than yourself or the United States Government, in connection with a particular matter (including but not limited to a contract, loan, grant, certification, eligibility determination or lawsuit) involving a specific party and in which the United States is a party or has a direct and substantial interest, if you participated personally and substantially on that same matter while a Government employee. See 18 U.S.C. § 207(a)(1).

- In addition, if you were not personally and substantially involved in the particular matter, but you know or reasonably should know that it was pending under your official responsibility during your last year of Government service, then you are also restricted for two years from knowingly making, with the intent to influence, any communication or appearance, on behalf of someone other than yourself or the United States Government, before any employee of an Executive Branch department or agency, or before any court of the United States, if the United States is a party or has a

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[3] A "senior employee," is defined as an Executive Schedule or SES (career or non-career) employee making an annual base salary of $155,440.50 or more during calendar year 2011. However, that amount is adjusted annually.

direct and substantial interest in the matter. See 18 U.S.C. § 207(a)(2).

- There are a few limited exceptions to some of these restrictions, which may include representations on behalf of state or local governments, universities, hospitals or medical research organizations, international organizations, and giving factual testimony under oath. Of particular interest is an exception that allows, in some circumstances, former senior employees to make representational contacts on behalf of a candidate for Federal or state office, or an authorized committee, or on behalf of a campaign committee or political party.

B. ***18 U.S.C. § 203 (relating to conflicts of interest)*** **--** This criminal statute may also apply to you, depending on the type of business activity conducted by your new employer.

- If, while you were employed with the Federal Government, a private sector firm represented clients before the Executive Branch or any court of the United States, when the United States was a party or had a direct and substantial interest, you will be prohibited from sharing in the profits earned by the firm with regard to those representational matters. This often is an issue with attorneys, accountants and other professionals who, after Government service, return to the private sector with firms that have a substantial Federal practice.

C. ***41 U.S.C. § 423(d) (procurement integrity)*** **–** This law prohibits certain officials, who were involved in the award or administration of a contract valued at more than ten million dollars, from accepting compensation from the contractor.

- If you served as the contracting officer, source selection authority, member of the source selection evaluation board, chief of the financial or technical evaluation team, program manager, or deputy program manager of a contract over $10 million, or if you were a deciding official with respect to a contract claim or payment in excess of $10 million, you may not accept any compensation from the contractor for a period of one year from the last day you served or acted in that capacity in connection with the contract. See 41 U.S.C. § 423.

D. ***Executive Order #13490 and the "Ethics Pledge"*** **–** This executive order requires all non-career appointees (Presidential-appointed/Senate-confirmed or PAS, non-career SES and Schedule C employees) to sign an "Ethics Pledge" that contains certain commitments (in addition to the ethics and procurement integrity laws outlined above) pertaining to their post-employment activities.

- If you served as a senior non-career appointee,[4] for two years after the end of your appointment you are restricted from making a communication to, or appearance before, with the intent to influence, an employee of SBA on behalf of any other person or entity, on a matter on which you seek official action. *See* Paragraph 4 of the Ethics

[4] A "senior non-career appointee" is an Executive Schedule or non-career SES making an annual base salary of $155,440.50 or more during calendar year 2011. However, that amount is adjusted annually.

Pledge.

- If you served as an non-career appointee (Executive Schedule, non-career SES or Schedule C employee), you are restricted, for the duration of all terms of office of the current President, from making a "lobbying contact"[5] (as a registered Federal lobbyist or an anticipated registered Federal lobbyist[6]) on behalf of a client, with a covered executive branch official.[7] *See* Paragraph 5 of the Ethics Pledge.

III. Restrictions on Recipients of and Applicants for SBA Assistance

In addition to the restrictions discussed above, SBA has several regulations (based in part on provisions of the Small Business Act) that place certain restrictions on recipients of or applicants for "SBA Assistance"[8] who desire to hire or form some other business relationship with a former SBA employee.

- A recipient of "SBA Assistance" may not have a former SBA employee as its employee, partner, agent, attorney or other representative for a period of two years from the date the entity was granted such assistance, if the former SBA employee occupied a position involving discretion over, or exercised discretion with respect to, the granting or administering of that assistance. See 13 C.F.R. § 105.202. Failure of a recipient to comply with this provision may result in the termination of the existing SBA Assistance or a demand for repayment of SBA financial assistance.

- Without the prior approval of the SBA Standards of Conduct Counselor (also known as the Designated Agency Ethics Official or "DAEO"), SBA will not provide "SBA Assistance" to any person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, any individual who, within one year prior to the request for such assistance was an SBA employee. See 13 C.F.R. § 105.203. Under this regulation, the DAEO is required to determine whether, under the specific circumstances presented, granting the assistance would create an apparent

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[5] A "lobbying contact" means an oral or written communication to a "covered executive branch official" about any official matter, but the definition also includes nineteen categories of exceptions. *See* 2 USC § 1602(8).

[6] A "registered Federal lobbyist" is a person or entity that is included on the U.S. Senate's or U.S. House of Representatives' database (www.senate.gov or www.clerk.house.gov) as a registered lobbying organization or lobbyist (or it is anticipated that a future filing will report that the former PAS, non-career SES, or Schedule C employee is a registered lobbyist for the particular client involved at the time of the lobbying contact).

[7] A "covered executive branch official" means: The President and Vice President of the U.S.; any official in the Executive Office of the President; any Executive Schedule official (Ex. Level I-V); any uniformed officer at pay grade 0-7 or above; any non-career SES officer; and any Schedule C employee. *See* 2 USC § 1602(3).

[8] "SBA Assistance" means financial, contractual, grant, managerial or other aid, including size determinations, Section 8(a), HUBZone and SDB participation, licensing, certification and other eligibility determinations. The term also includes an express decision to compromise or defer possible litigation or other adverse Agency actions. 13 C.F.R. § 105.201(e). However, entities awarded competitive SBA contracts, as well as participant lenders under SBA's 7(a) and 504 loan programs, are not deemed to be recipients of "SBA Assistance."

conflict of interest.

IV. Conclusion

If you have questions about this Information Notice, the attached Chart, or about seeking employment or post-employment restrictions generally, please contact your Agency ethics official, or Susan L. Sundberg, Alternate Designated Agency Ethics Official, at (202) 619-0585, or Robinson S. Nunn, Chief Counsel for Ethics, at (202) 619-0645.

Although this Notice will expire within a short period of time, employees may want to retain it for future reference since the underlying law that it summarizes remains in effect. This Notice also constitutes "written ethics training," as defined by 5 C.F.R. § 2638.705(d), and counts, in part, toward satisfying the minimum annual ethics training requirement for all SBA employees, except Public Financial Disclosure Report (SF 278) filers.

Robert L. Gangwere
Designated Agency Ethics Official

Attachment (1)

Expires: 11/1/2012

SBA POST EMPLOYMENT QUICK REFERENCE CHART

If you are:	*Then you are restricted from:*	*For this period of time:*
A former SBA employee	Making, with the intent to influence, any communication to or appearance before an employee of the U.S. on behalf of any other person or entity in connection with a "particular matter" involving specific parties, in which you participated "personally and substantially" as an SBA employee. *See* 18 USC § 207(a)(1).	Permanently
A former SBA employee	Making, with the intent to influence, any communication to or appearance before an employee of the U.S. on behalf of any other person or entity in connection with a "particular matter" involving specific parties, which was pending under your official supervision within one year of your separation from the Federal government. *See* 18 USC § 207(a)(2).	Two years from the date of your separation from the Federal government.
A former SBA senior officer* (career SES only).	Making, with the intent to influence, any communication to or appearance before an SBA employee on behalf of any other person or entity. *See* 18 USC § 207(c).	One year from the date of the termination of your senior appointment with the Federal government.
A former SBA senior officer* (both career and non-career).	Representing, with the intent to influence, a foreign entity before any department or agency of the United States or aiding or advising a foreign entity. *See* 18 USC § 207(f).	One year from the date of the termination of your senior appointment with the Federal government.

A former SBA Presidential-appointed, Senate-confirmed (PAS) or non-career SES senior officer.*	Making, with the intent to influence, any communication to or appearance before an SBA employee on behalf of any other person or entity. *See* Paragraph 4 of the Ethics Pledge, and Ex. Order 13490.	Two years from the end of your appointment as a PAS or non-career SES officer.
A former SBA PAS, non-career SES, or Schedule C employee.	Making, as a registered Federal lobbyist (or anticipated lobbyist),** a lobbying contact,*** on behalf of a client, with a covered executive branch official.**** *See* Paragraph 5 of the Ethics Pledge, and Ex. Order 13490.	Duration of President Obama's Administration (including a second term).
A recipient of SBA Assistance. *****	Having a former SBA employee as your employee, partner, agent, attorney or other representative, if the former SBA employee occupied a position involving discretion over, or exercised discretion with respect to, the granting or administrating of your current SBA assistance. *See* 13 CFR § 105.202(a).	Two years from the date such SBA Assistance was granted.
An applicant for SBA Assistance. *****	Having a former SBA employee as your employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, absent prior written approval by the SBA Standards of Conduct Counselor. *See* 13 CFR § 105.203(a).	One year after the date the former SBA employee separated from SBA.

* A "senior officer" is generally defined as a PAS or Senior Executive Service (SES) employee making an annual base salary of $155,440.50 or more during calendar year 2011. That amount, however, is adjusted annually for inflation.

** A "registered Federal lobbyist" is a person or entity that is included on the U.S. Senate's or U.S. House of Representatives' database (www.senate.gov or www.clerk.house.gov) as a registered lobbying organization or lobbyist (or it is anticipated that a future filing will report that the former PAS, non-career SES, or Schedule C employee is a registered lobbyist for the particular client involved at the time of the lobbying contact).

*** A “lobbying contact” means an oral or written communication to a “covered executive branch official” about any official matter, but the definition also includes nineteen categories of exceptions. *See* 2 USC § 1602(8)

**** A “covered executive branch official” means: The President and Vice President of the U.S.; any official in the Executive Office of the President; any Executive Schedule official (Ex. Level I-V); any uniformed officer at pay grade 0-7 or above; any non-career SES officer; and any Schedule C employee. *See* 2 USC § 1602(3).

***** “SBA Assistance” means financial, contractual, grant, managerial or other aid, including size determinations, Section 8(a), HUBZone and SDB participation, licensing, certification and other eligibility determinations. It also includes a decision to compromise or defer possible litigation, or other adverse Agency actions. *See* 13 CFR § 105.201(e). However, entities awarded competitive SBA contracts, and participant lenders under SBA’s 7(a) and 504 loan programs, are not deemed to be recipients of SBA Assistance.