

## David Collins

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**From:** Cronin Colleen E <Colleen.E.Cronin@irsounsel.treas.gov>  
**Sent:** Friday, March 8, 2024 1:31 PM  
**To:** David Collins  
**Cc:** Bendoraitis Kathryn M; Postiglione Amanda J  
**Subject:** RE: [EXT] RE: Ethics Letter  
**Attachments:** GLS Post Employment Monograph.pdf

Hi David,

Thank you for your patience. This responds to your request for advice regarding whether, in your post-IRS employment as an Enrolled Agent, you may assist a taxpayer whose case was assigned to you five years ago while you were at the IRS. For reasons below, 18 U.S.C. § 207(a)(1) likely does not prohibit you from taking the taxpayer's case now.

To summarize the information you provided to our office, you retired from your position as an IRS Revenue Officer on September 30, 2022, and now work as an Enrolled Agent providing IRS resolution and representation services to taxpayers. You shared that on January 2, 2024, you were approached by a taxpayer whose case was assigned to you over 5 years ago while you were at the IRS. You stated that the taxpayer has paid all balances due and filed all returns related to your previous encounter 5 years ago. The taxpayer has now contacted you for issues arising from 2020 onward. You stated that none of the taxpayer's "current issues, periods, or balances" were part of the case when you worked on it five years ago, and you have not had any contact with the taxpayer until recently.

The attached [GLS Post-Employment Monograph](#) outlines the ethics restrictions that apply to former government employees. One of these restrictions is the lifetime bar in 18 U.S.C. § 207(a)(1). This restriction applies to all former Executive Branch employees and imposes a lifetime prohibition that begins when government service terminates. Under this restriction, a former employee may not knowingly make, with the intent to influence, any communication to or appearance before a government employee, on behalf of another, in connection with a particular matter that involves specific parties, and in which the former employee participated personally and substantially while with the government.

Section 207(a)(1) applies only to particular matters involving specific parties. These typically involve a specific proceeding that impacts the legal rights of the parties or an isolatable transaction or related set of transactions between identifiable parties. 5 C.F.R. § 2641.201(h)(1). Specific-party matters include, but are not limited to, tax examinations, judicial or other proceedings, contracts, as well as private letter rulings and other requests for a ruling or determination. 5 C.F.R. § 2641.201(h)(1).

In the context of tax matters, a particular matter involving a recent tax return may be considered part of a particular matter involving previous years' tax returns. This is because, the same particular matter may continue to exist in another form or part. 5 C.F.R. § 2641.201(i)(5). For example, examination and collection work pertaining to the same tax year is typically considered part of the same particular matter. In determining whether two matters are the same, all relevant factors should be considered, including the extent to which they involve the same basic facts, the same or related parties, related issues, the same confidential information, and the amount of time elapsed. 5 C.F.R. § 2641.201(h)(5). Thus, even matters involving different tax years may be considered part of the same particular matter if there is substantial overlap in these factors.

We also note that, to the extent you intend to practice before the IRS (e.g., in roles other than as a tax preparer), you may also be subject to restrictions on former employees contained in Treasury Circular 230. This Circular applies to certain types of practitioners and contains an additional restriction on behind-the-scenes work on a matter that a former employee personally and substantially participated in while employed by the Government. 31 C.F.R. 10.25(b)(2). Moreover, if you are prohibited by Section 207 from representing a taxpayer, then you are also prohibited by Circular 230 from working behind-the-scenes on the matter and your firm would be required to prepare a statement confirming that you have been walled off from the matter. The GLS Post-Employment Monograph references the Circular on pages 9-10, and we are

available to provide additional advice on this restriction should you encounter any situations that may require you to practice before the IRS.

Here, you advised that you were assigned to the taxpayer's case 5 years ago, which would have been in 2019. You stated that the taxpayer's current issues arose in 2020 and began with the start of COVID. Therefore, it is unlikely that the taxpayer's current issues would be considered part of the same particular matter you worked on in 2019. However, if you encounter any tax matters that you personally worked on while you were an IRS employee (or there is additional information suggesting a connection between your current case and the 2019 matter), Section 207(a)(1) could permanently prohibit you from communicating with a federal employee on behalf of the taxpayer or your current employer (or anyone else) about that matter. Such matters could include, but are not limited to, private letter rulings (including, for example, pre-submission conferences and PLR requests) and controversy matters (e.g., examinations, investigations, and prosecutions).

There are other post-employment restrictions that you may have seen in the GLS Post-Employment Monograph. *See, e.g.*, 18 U.S.C. §§ 207(a)(2), 207(c). However, these restrictions are not implicated by the facts provided because you have not asked about a matter that was being handled by a subordinate under your official responsibilities, and because you left the IRS more than one year ago.

I hope this is helpful. Please let us know if you have any additional questions.

Respectfully,  
Colleen

**Colleen Cronin**  
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**From:** David Collins <david@dctax.us>  
**Sent:** Friday, January 26, 2024 10:28 AM  
**To:** Cronin Colleen E <Colleen.E.Cronin@irsounsel.treas.gov>  
**Subject:** [EXT] RE: Ethics Letter



Secure upload:



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**From:** Cronin Colleen E <[Colleen.E.Cronin@irsounsel.treas.gov](mailto:Colleen.E.Cronin@irsounsel.treas.gov)>  
**Sent:** Friday, January 26, 2024 10:25 AM  
**To:** David Collins <[david@dctax.us](mailto:david@dctax.us)>  
**Cc:** Silberhorn Ashley S <[Ashley.S.Silberhorn@irsounsel.treas.gov](mailto:Ashley.S.Silberhorn@irsounsel.treas.gov)>  
**Subject:** Ethics Letter

Hi David,

Thank you for reaching out to the Ethics & General Government Law Branch, we have received your letter dated January 4. I wanted to reach out and let you know that I will be handling the substantive response to your inquiry. If I have any follow-up questions, may I use this email to contact you? Thank you again.

Respectfully,  
Colleen

**Colleen Cronin**  
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## Seeking Employment Outside the Government and Post-Government Employment Restrictions

(March, 2016)

I. [Seeking Other Employment](#) II. [Post-Employment Restrictions](#) III. [Obtaining Legal Assistance](#)

Internal Revenue Service and Office of Chief Counsel employees who are thinking about seeking a job outside the government need to be aware of the legal requirements that apply to the process of looking for other work. In addition, both current and former employees should know about potential post-employment restrictions before they begin a non-government job. These laws are needed to safeguard public confidence in the integrity of government employees by preventing actual and apparent conflicts of interest. Employees should pay close attention to these requirements because they carry potential criminal and administrative sanctions. Under the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), current employees who file Public Financial Disclosure Reports (OGE Form 278e) are subject to an additional notification requirement when negotiating for other work.<sup>1</sup>

This document will provide you with basic information on these laws. The requirements are sometimes complex, and their application is always fact-specific. This document will describe how you can get legal advice regarding your particular circumstances. See section III.

### I. SEEKING OTHER EMPLOYMENT

#### Basic Rule

An employee may not participate personally and substantially in any particular matter in which a person or an organization with whom he is seeking employment or has any arrangement concerning prospective employment has a financial interest. 18 U.S.C. § 208(a) (conflict of interest statute); 5 C.F.R. § 2635.602 (Standards of Ethical Conduct for Employees of the Executive Branch). The term "particular matter" includes such activities as examinations, investigations, collections, applications, procurements, contracts, requests for rulings, cases in litigation, rulemaking narrowly focused upon a discrete and identifiable class of persons, and similar matters.

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<sup>1</sup> The rules discussed below are also applicable to critical pay employees, who are appointed under the streamlined critical pay authority of 5 U.S.C. § 9503.

## **Disqualification**

An employee who wants to seek employment outside the government must first disqualify himself from participating in any particular matter affecting the financial interests of the potential employer. Disqualification, or recusal as it is sometimes called, simply means that the employee has no further involvement in the matter. Employees who are not responsible for their own work assignments accomplish disqualification by notifying their supervisors that they are ineligible to work on any particular matter involving the potential employer. Employees who make their own work assignments need to take appropriate steps to ensure disqualification. Written disqualification normally is not necessary; however, employees may give written notice to their supervisors, and appropriate oral or written notification may be given to coworkers by employees or their supervisors. Disqualification is not necessary where an employee is not currently involved, nor is reasonably likely to be involved, in any particular matter affecting the financial interests of a prospective employer.

### **When Do These Rules Apply?**

These rules apply during the time that an employee is seeking employment with a prospective employer as well as after he accepts a position. Disqualification usually is no longer needed if discussions with the employer terminate without the employee accepting an offer. An employee subject to disqualification should notify his supervisor immediately if he is no longer seeking employment with an employer from whose matters the employee has been disqualified.

### **When Does An Employee Begin Seeking Employment?**

When he does any of the following:

- (1) Engages in employment negotiations, *i.e.*, communications or discussions with the employer or its agent, with a view toward reaching an agreement about employment. This is not limited to discussions of specific terms and conditions of employment for a particular job;
- (2) Makes an unsolicited communication regarding employment to any potential employer or its agent, such as by sending a résumé to one or more such prospective employers. Merely asking for a job application is not seeking employment; or
- (3) Gives a response other than outright rejection to an unsolicited communication from a prospective employer or its agent regarding possible employment.

### **When Is An Employee No Longer Seeking Employment?**

When either of the following occurs:

- (1) The employee or the prospective employer rejects the possibility of employment and all discussions have terminated (a letter stating that the employee's application will be kept on file is considered to be a rejection); or
- (2) Two months pass after the employee sent an unsolicited résumé or employment proposal, provided the employee received no indication of interest from the prospective employer.

### **May An Employee Accept Reimbursement For Travel Expenses Associated With A Job Interview?**

Yes, an employee may accept meals, lodgings, transportation, and other benefits customarily provided to a job applicant by the prospective employer. This includes travel for the employee's spouse, if it also is customarily provided. However, if the prospective employer is one for whom the employee must disqualify himself, such disqualification must occur before accepting these benefits.

### **A Word About Recruiting Firms**

An employee who contacts or is contacted by a recruiting firm need not disqualify himself from any particular matter until such time as:

- (1) A prospective employer is identified; or
- (2) Circumstances clearly indicate who the prospective employer is even if it has not been specifically identified.

### **Employees Participating in Competitive Procurements Exceeding \$100,000**

There are additional requirements for employees who are participating personally and substantially in a competitive procurement for a contract in excess of the simplified acquisition threshold of \$100,000. Under the Procurement Integrity Act (41 U.S.C. § 2104) and its implementing regulation (48 C.F.R. § 3.104), any such employee who contacts or is contacted by a person who is a bidder or offeror for that procurement regarding possible employment must promptly report the contact in writing to his supervisor and the Associate Chief Counsel (General Legal Services) and: (1) reject the possibility of employment or (2) disqualify himself from further personal and substantial participation in that procurement until such time as the employee is authorized to participate in the procurement. Notification is required whether or not the possibility of employment is immediately rejected by either party. Where disqualification is necessary, the employee must promptly send a written notice of disqualification to the head of the contracting activity or designee, with copies to the contracting

officer, the source selection authority (if other than the contracting officer), and the employee's immediate supervisor.

An employee covered by the Procurement Integrity Act is eligible to have his disqualification from participating in the procurement terminated when either: (1) the prospective employer no longer is a bidder or offeror for that procurement; or (2) all employment discussions with the prospective employer terminate without an agreement or arrangement for employment, whichever occurs first. Written approval must be obtained from the head of the contracting activity or designee to participate in the procurement before doing so.

Employees who are participating personally and substantially in a procurement for a contract of \$100,000 or less are not covered by these additional requirements.

### **Public Financial Disclosure Report (OGE Form 278e) Filers Engaged in Employment Negotiations**

Under Section 17 of the STOCK Act, employees who file a Public Financial Disclosure Report (OGE Form 278e) and who are negotiating for future employment or compensation (i.e., compensation for speaking, writing, consulting and other services to be performed after federal employment ends), or who have agreements for future employment, with a non-federal entity, must notify agency ethics officials within three business days after negotiations begin. Pub.L. 112-105, § 17(a), 126 Stat. 291, 303 (2012). This notification requirement only applies to negotiations for employment or future compensation; it does not apply to other types of seeking employment activities such as mailing a resume. Employment negotiations occur when an employee has entered into discussions or communications with another person, or their agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. 5 C.F.R. § 2635.603(b)(1)(i). Employment negotiations need not involve discussions of specific terms and conditions of employment.

OGE Form 278 filers must also notify ethics officials that they have recused themselves from a particular matter that would have a direct and predictable effect on the entities with whom they are negotiating for employment or with whom they have an agreement concerning future employment. STOCK Act, § 17(b). Notification of employment negotiations and recusals should be sent to General Legal Services using the "Notification of Negotiation or Agreement with a Non-Federal Entity Regarding Future Employment and Recusal Statement" form available on the EthicsLink [STOCK Act page](#). Forms should be scanned in PDF and submitted to the GLS Negotiation Statement inbox at [nocglsnest@irsounsel.treas.gov](mailto:nocglsnest@irsounsel.treas.gov) or they may be mailed to the address on the last page of this document.



## Examples

The following examples illustrate the application of these rules.

(1) A criminal investigator is contacted by a local manufacturer about a position in its internal security section, and she is interested in pursuing the opportunity. The investigator is not involved in any matters affecting the employer, nor is there any reasonable likelihood that she will be. Disqualification is unnecessary (unless her supervisor subsequently assigns her a case involving the firm).

(2) A revenue agent is conducting an examination of a taxpayer. The taxpayer's representative suggests that the revenue agent may want to think about joining his firm when the case is concluded. No disqualification is needed if the revenue agent categorically rejects the overture. Any other response, such as a suggestion by the revenue agent that discussions be held in abeyance until after the examination is over, is not a rejection and requires disqualification.

(3) An attorney mails unsolicited résumés to every law firm in town with six or more lawyers. The attorney must disqualify himself from all matters in which any of the firms to which he sent a résumé is or represents a party. The attorney should notify his supervisor when he begins seeking employment and if: (a) he receives a rejection from any of the firms from whose matters he is disqualified; or (b) two months pass without any indication of interest from the firms.

(4) A revenue agent has disqualified himself from the examination of a company with whom he is seeking employment. The revenue agent replacing him on the case asks him for a summary of the case to date. The disqualified employee may respond because such action is not personal and substantial involvement in the matter. The replacement employee then asks the disqualified employee for his opinion as to the direction in which the case should be going. The employee should not answer the inquiry, because such advice would constitute personal and substantial involvement in the matter.

(5) A computer systems analyst is serving as a member of the technical evaluation board for a procurement that is expected to result in a contract of \$2 million. The employee is contacted regarding possible employment by X Co., which is one of the offerors in the procurement. The employee must promptly report the contact in writing to her supervisor and the Associate Chief Counsel (General Legal Services). The employee also must disqualify herself from participating in the procurement and provide written notice to the head of the contracting activity or designee, with copies to the contracting officer, the source selection authority (if other than the contracting officer), and the employee's immediate supervisor, unless she immediately rejects any possibility of employment.



(6) A Public Financial Disclosure (OGE Form 278e) filer is contacted by a prospective employer about an opportunity with their firm. The prospective employer invites the filer to lunch where the parties discuss the filer's interests and a potential job at the firm. No offer is made to the filer at the lunch meeting. The filer must file a STOCK Act "Notification of Negotiation or Agreement with a Non-Federal Entity Regarding Future Employment and Recusal Statement" form within three business days of the lunch meeting. Likewise, a filer who has engaged in negotiations for a paid speaking engagement with a private organization that will occur after he or she retires from the IRS (*i.e.* future compensation) must file a notification statement within three business days after commencement of such negotiations. If a filer merely sends out a resume, the STOCK Act's notification requirement is not triggered. However, in all of these scenarios, the filers would need to recuse themselves from particular matters affecting the prospective employers.

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## II. POST-EMPLOYMENT RESTRICTIONS

With one exception discussed below (for certain employees engaged in procurement and contract administration matters), none of the post-employment provisions bar any former employee from accepting employment with any particular employer. The rules merely limit certain activities in which the former employee may engage on behalf of his new employer. The post-employment restrictions are intended to prevent employees from switching sides or creating the appearance that they are so doing on matters in which they participated or that were under their official responsibility while with the government.

*The various post-employment authorities overlap with one another in a number of areas; where this occurs, the more restrictive rule should always be followed.*

### **Post-Employment Restrictions Applicable To All Executive Branch Employees**

A. Lifetime Representational Bar: Under 18 U.S.C. § 207(a)(1), an employee is *permanently barred* from knowingly communicating with or appearing before the government on behalf of another *with the intent to influence* regarding any *particular matter* involving a specific party or parties in which the employee participated *personally and substantially* while with the government, and which involved a specific party or parties at the time of such participation.

Under this rule, for example, a revenue agent for a particular examination may accept employment with the taxpayer and represent it before the government on matters unrelated to the one in which he participated while with the government. However, the former revenue agent may not represent the taxpayer before the government regarding the years (and potentially future years as described below) under examination for which he served as a revenue agent.

It is important to remember that the prohibition runs to representational activities regarding particular matters, not issues. For example, an attorney advising a revenue agent on an examination may not represent the taxpayer before the Tax Court regarding the same return, even if the issues in litigation are completely unrelated to those on which the attorney previously provided advice. On the other hand, the attorney could represent another taxpayer before the Tax Court in an unrelated case that involves the same legal issue upon which he provided guidance to the revenue agent. In addition, the restriction does not cover "behind the scenes" activities, only representation before the government. *But see* discussion below on Treasury Circular No. 230 and American Bar Association Model Rule of Professional Conduct 1.11.

The term "particular matter" means the same as it does in the conflict of interest statute (see Part I, above), except that the specific party requirement excludes rulemaking, legislation, the formulation of general policy standards, and similar activities. Thus, for example, a former IRS employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he had a role in establishing are involved in the proceeding. Informational, technical, scientific, and similar exchanges normally are not representational activities knowingly made with the intent to influence.

A particular matter may continue in another form or in part. As an example, consecutive returns of a taxpayer may be the same particular matter because they may share common facts, issues, and confidential information; the parties are the same; and little time has elapsed between them. This means that a revenue agent responsible for examining a given return probably may not represent the same taxpayer before the government with respect to the taxpayer's subsequent year return.

In order to be personal and substantial participation, the employee's involvement must be of significance to the matter. Thus, a onetime approval of a decision to proceed with the matter is substantial participation, whereas purely administrative participation over an extended period of time probably is not.

**B. Two-Year Representational Bar:** Under 18 U.S.C. § 207(a)(2), an employee is *barred for two years* after he leaves the government from knowingly communicating with or appearing before the government on behalf of another *with the intent to influence* regarding any *particular matter* involving a specific party or parties that was *actually pending* under the employee's *official responsibility* at any time during the employee's final year with the government, and which involved a specific party or parties at the time it was so pending. The type of representational activities prohibited by this section are the same as in section 207(a)(1).

This two-year bar primarily covers supervisors, whether immediate or higher level, whose employees participated personally and substantially in a particular

matter, but who did not themselves participate personally and substantially in the matter. See 18 U.S.C. § 202. The former employee need not have known at the time that the matter was under his official responsibility in order for the restriction to apply. An employee has a duty to inquire if he becomes aware of facts indicating that the matter may have been under his official responsibility during his final year with the government. Such inquiries should be directed to the address in Part III, below.

### **Post-Employment Restrictions Applicable To Senior Officials**

Pursuant to 18 U.S.C. § 207(c), sometimes referred to as the "no contact rule," any presidential appointee to a position for which the rate of pay is specified in the Executive Schedule, and any employee whose basic rate of pay is equal to or greater than 86.5% of the basic rate of pay for level II of the Executive Schedule (EL-2), is *prohibited for one year* after the termination of such employment from knowingly making, with the intent to influence, any communication to or appearance before *his former department or agency* on behalf of anyone else in connection with *any matter* on which that person seeks *official action* by the department or agency.

Section 207(c) varies in several significant respects from section 207(a). Section 207(c) is broader than section 207(a) in that it: (1) applies to "matters" rather than "particular matters;" and (2) *covers all matters whether or not the former employee participated personally and substantially in the matter while with the government or it was under his official responsibility during his last year of government service*. It is narrower in some respects than section 207(a) because: (1) the restriction applies only to communications to or appearances before the Internal Revenue Service and Office of Chief Counsel (except for the Commissioner and the Chief Counsel for whom the restriction covers Treasury as a whole) rather than such activities before the government; and (2) the bar is effective only for one year.

### **Limitations on Fee Sharing**

A former employee who leaves the government to become a partner in a law firm, accounting firm, or other entity is prohibited by 18 U.S.C. § 203 from sharing in any fees received by the firm in a matter covered by the statute (*i.e.*, matters in which the firm provided representational services before the government and in which the government had an interest), which were earned for services rendered by the firm *at any time during the former employee's government employment*. The matter need not have been before the former employee's department or agency, and the former employee need not have been aware of the matter while with the government. The new partner and his firm must make suitable arrangements to ensure that he does not share in any prohibited fees. An employee who leaves the government for a salaried position is not subject to section 203.

## Post-Employment Restrictions Regarding Practice Before The Internal Revenue Service

Treasury Circular No. 230, 31 C.F.R. § 10.25, contains certain restrictions regarding the practice of former government employees before the Service. These restrictions apply only with regard to matters that are currently before the Service. This means, for example, that they are inapplicable to matters before the Tax Court or any other court. These limitations are as follows:

A. Section 10.25(b)(1) bars a former government employee from representing anyone else before the Service if that representation would violate 18 U.S.C. § 207 or any other law.

B. Section 10.25(b)(2) is substantially similar to the lifetime bar in 18 U.S.C. § 207(a)(1) for matters in which the former government employee participated personally and substantially, except that the prohibition goes to both representational *and assistance activities*. This means that an employee who is barred from representing a third party before the Service under 18 U.S.C. § 207(a)(1) and this section may not provide "behind the scenes" assistance in the matter while it is before the Service.

The following example illustrates the point. Employee A was the lead agent in the examination of Taxpayer X's 2008 return. Employee A leaves the government and sets up her own accounting practice. Employee A is permanently barred by 18 U.S.C. § 207(a)(1) and Treasury Circular No. 230 § 10.25(b)(2) from representing Taxpayer X regarding the 2008 return before the government. In addition, Employee A may not provide behind the scenes advice or assistance to anyone else regarding the matter while it is before the Service.

C. Section 10.25(b)(3) is substantially similar to the temporary two-year bar in 18 U.S.C. § 207(a)(2) for matters that were under the employee's official responsibility during his final year with the government. As in 18 U.S.C. § 207(a)(2), the prohibition goes to *representational, but not assistance activities*. This means that an employee may provide behind the scenes advice and assistance on a matter before the Service, but may not perform representational activities pursuant to 18 U.S.C. § 207(a)(2) during the two-year period following his government employment.

D. Section 10.25(b)(4) restricts a former government employee, for one year after he leaves the government, from *communicating with or appearing before* any Treasury employee in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule in the development of which the employee participated, or for which the employee had official responsibility during his last year with the government (recall that rulemaking generally is not covered by 18 U.S.C. § 207(a)). *The restriction not only applies to physical*

*appearances before a government employee but also covers written correspondence, telephone contacts, or electronic communications.* It does not preclude a former employee from representing another before the Service in connection with a matter involving the *application* of the rule with respect to the matter provided that: (1) such representation is otherwise permissible under 18 U.S.C. § 207 and all other authorities; and (2) the employee does not use or disclose any confidential information that he acquired in the development of the rule. Example: Employee Z drafted a new tax regulation. Employee Z then leaves the government. The proposed regulation is published in the Federal Register with a request for comments. Employee Z may not submit written comments on the rule or speak at a hearing on the rule for one year after he leaves the government. Employee Z may however represent Taxpayer Q before the Service regarding her 2008 return even though the matter involves the application of the rule Employee Z drafted, provided that the conditions above are satisfied.

E. Section 10.25(c) provides that where a firm is representing or assisting another in a matter before the Service, and a partner, associate, or employee ("member") of the firm is a former government employee who is barred from representing or assisting in that matter under 18 U.S.C. § 207(a)(1) and Treasury Circular No. 230 § 10.25(b)(2), the *employee must be isolated from the matter* in such a way that he does not participate in the matter. *If this does not occur, then the firm as a whole may not represent or provide assistance to another on that matter.* When isolation is required, the isolation statement should be retained by the firm and, upon request, be provided to the Director, Office of Professional Responsibility.

### **Post-Employment Restrictions Applicable To Employees Engaged In Procurement and Contract Administration Matters**

As noted above, there is one exception to the general rule that a former employee may accept employment with any person. Under the Procurement Integrity Act (41 U.S.C. § 2104) a former government employee may not accept compensation from a contractor for one year after the employee:

1. served at the time of source selection or contract award to that contractor, as procuring contracting officer, source selection authority, member of the source selection evaluation board, or chief of the technical or financial evaluation team in a procurement in which that contractor was awarded a contract for more than \$10 million;
2. served as the program manager, deputy program manager, or administrative contracting officer for a contract for more than \$10 million with that contractor;
3. personally made a decision to award a contract, subcontract, modification, task order, or delivery order for more than \$10 million to that contractor;



4. personally made a decision to establish overhead or other rates applicable to a contract for that contractor valued in excess of \$10 million;
5. personally made a decision to approve issuance of a contract payment or payments in excess of \$10 million to that contractor; or
6. personally made a decision to pay or settle a claim for more than \$10 million with that contractor.

These restrictions cover contracts that were competitively or non-competitively awarded.

While these provisions technically do not prohibit outright a former employee from working for a contractor, the one year compensation prohibition has such a practical effect. An employee who is covered by the above restrictions may still accept compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the contractor.

### **Post-Employment Restrictions Applicable to Attorneys**

Attorneys who are members of bars or are practicing before courts (including the Tax Court) that have adopted the American Bar Association's Model Rules of Professional Conduct are covered by Model Rule 1.11(a). This rule states that a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a government employee. The term "represent" includes both appearances and behind the scenes advice. The lawyer's disqualification is imputed to his firm unless: (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is provided to the government. The ABA Model Code of Professional Responsibility, which is still in effect in some jurisdictions, contains a similar limitation on post-government employment activities. DR 9-101(B).

In addition, a lawyer who acquired information about a person as a government employee that he knows is confidential may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The employee's firm may undertake such representation only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom. ABA Model Rule of Professional Conduct 1.11(b).

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### **III. OBTAINING LEGAL ASSISTANCE**

The post-employment laws contain more detail than can be described in this document. Employees who are thinking about seeking employment or who are

actually doing so may obtain oral or written advice on seeking other employment, including disqualification and notification requirements under the ethics regulations and the STOCK Act, or the post-employment laws from the Office of Associate Chief Counsel (General Legal Services). GLS will provide oral advice on general questions in this area, and will answer specific questions in writing upon submission of a written request. Current employees may contact GLS directly and do not have to inform their supervisors or otherwise use the formal procedures for obtaining an agency ethics opinion.

Former employees may also contact GLS directly with post-employment questions. As is the case with current employees, general questions will be answered orally and specific questions submitted in writing will be answered in writing.

Questions should be directed to GLS at the following address:

Office of Associate Chief Counsel  
General Legal Services  
Ethics & General Government Law Branch  
Room 6404  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

(202) 317-6999 (voice)      (202) 317-6699 (fax)

[GLS.Ethics@irscounsel.treas.gov](mailto:GLS.Ethics@irscounsel.treas.gov)