



OIG Fraud Bulletin

United States
Nuclear Regulatory
Commission

Office of the
Inspector General

Post-Employment Conflict of Interest

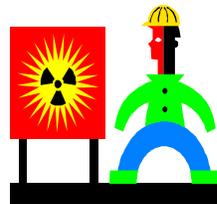
This issue of the "OIG Fraud Bulletin" is to inform Nuclear Regulatory Commission (NRC) employees of the restrictions they may face in working for an NRC licensee, contractor, or power plant after their Government service has ended. The post-employment restrictions that apply to all former Federal employees are contained in the criminal code, at 18 U.S.C. § 207. NRC employees should also be aware that another criminal statute prohibits NRC employees from seeking employment from anyone while working on any NRC matter that could affect that party (18 U.S.C. § 208(a)).

The post-employment law does not bar any former Federal employee, regardless of rank, from employment with any private or public employer after leaving Government service. Only certain communications or representations on behalf of anyone, other than the Government, to a Federal employee are prohibited. Those restrictions are discussed on pages 2-4 of this bulletin.

You should direct any personal questions on the post-employment law to a Deputy Counselor in the Office of the General Counsel or to a Regional Counsel.

Yucca Mountain Project

On July 31, 2002, the Office of Government Ethics (OGE), the agency with authority to issue guidance on ethics for all Federal employees, issued an opinion on the applicability of the post-employment law for all former Federal employees who had worked on the proposed high-level radioactive waste facility at Yucca Mountain, Nevada.



In this opinion, the OGE stated that former Federal employees who participated personally and substantially in the site characterization or any other efforts pertaining to the licensing of Yucca Mountain are permanently barred from representational activity in connection with the license application and

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Yucca Mountain Project *(continued from page 1)*

the related NRC adjudication. Any former Federal employees who did not participate in any of these Yucca Mountain matters but who had official responsibility for pre-licensing matters during their last year of Federal service are barred from representational activity in connection with the licensing proceedings for 2 years after leaving Federal service. The OGE did mention that the post-employment statute does authorize exceptions to the post-employment restrictions, such as for scientific or technological information, and recommended that former employees should consult ethics officials at their previous agency on the applicability of an exception.

A copy of the OGE opinion can be found on the NRC Ethics Web site under "Articles and Resources."

Post-Employment Restrictions

Since its enactment in 1962, the post-employment statute (18 U.S.C. § 207) and its implementing regulations (5 C.F.R. part 2637) remain the primary source of the post-employment restrictions applicable to officers and employees of the Executive Branch. Unlike certain other post-employment laws, the provisions of section 207 apply to individuals regardless of the executive department or agency in which they served while employed by the Government and regardless of the particular duties they performed. The following is a general description of the major post-employment restrictions. Please consult an NRC ethics advisor if you have specific questions about the post-employment law.

The substantive restrictions have two main parts.

The first basic prohibition is contained in 18 U.S.C. § 207(a)(1). This provides that no former Federal employee may knowingly make, with the intent to influence, any oral or written communication to or appearance before any Federal agency, court, or employee on behalf of any other person, other than the United States, in connection with any particular Government matter involving a specific party in which the former employee personally and substantially participated as a Federal employee.



Discussion. This is a lifetime restriction that commences upon an employee's termination from Government service. The target of this provision is the former employee who participated in a matter while employed by the Government and who later "switches sides" by representing another person on the same matter before the Government. It does not prohibit self-representation or communications that do not intend to influence the Government. This restriction does not bar "behind-the-scenes" work, such as advising your private employer about the prohibited matter. The prohibition applies to "particular matters involving a specific party," such as licenses, applications, contracts, investigations, or enforcement actions that the former employee participated in while a Federal employee. It does not apply to general Government matters, such as rulemaking, legislation, or the formulation of policy. The post-employment regulations provide some good examples of how this restriction applies.

Post-Employment Restrictions *(continued)*

Example 1: A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

Example 2: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from that program.

Example 3: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to the project.

The second basic prohibition is 18 U.S.C. § 207(a)(2). This provides that, for 2 years after termination of Government service, a former Federal employee may not knowingly make, with the intent to influence, any communication to or appearance before any Federal agency, court, or employee on behalf of any other person, other than the United States, in connection with a particular Government matter involving a specific party which the former employee knows or reasonably should know was actually pending under the former employee's official responsibility within the 1-year period prior to termination of Federal employment.

Discussion. This is a 2-year bar that commences upon an employee's termination from Government service. It is similar to the lifetime restriction, except that it is of a shorter duration and requires that the former employee had official responsibility for a specific matter while employed by the Government and no personal and substantial participation in that matter while a Federal employee. Like the lifetime restriction, it prohibits certain communications or appearances on behalf of another person, other than the United States, with intent to influence, to a Federal agency, court, or employee. The restriction applies only to a particular matter involving parties that was pending under the former employee's official responsibility during the last year of Federal service. The law defines "official responsibility" as the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. The post-employment regulations contain an example of this restriction.

Example: Within 2 years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

Former senior employee prohibitions under 18 U.S.C. §§ 207(c) and (f). The post-employment law also contains two restrictions that apply only to former Federal employees who were at the SES V or above level at the time of their termination.

First, for 1 year after terminating service in that senior position, no former senior Federal employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the agency in which the former employee served in a senior position on behalf

Post-Employment Restrictions *(continued from page 3)*

of anyone, other than the United States, on any particular agency matter for which the former employee seeks official action.

Discussion. This is a 1-year restriction. The 1-year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Federal service, unless the two occur simultaneously. There are two differences between this 1-year bar and the prohibitions that apply to all former Federal employees: this restriction applies only to the agency that employed the former senior employee, not to other agencies, and it applies to general agency matters, not just matters involving parties. The purpose of this 1-year "cooling off" period is to allow for a period of adjustment to new roles for the former senior employee and the agency served, and to diminish any appearance that Government decisions might be affected by the improper use by individuals of their former senior position.

The second restriction is similar, except that it prohibits former senior Federal employees for 1 year from the termination of their senior service from representing a foreign government or foreign political party on influencing an official decision of a Federal employee or even "aiding or advising" a foreign government or political party in its attempt to influence a Federal employee. The following article contains cases of actual violations that occurred when a former Government employee violated 18 U.S.C. § 207.

Actual Cases on Post-Employment

Former Department of Defense (DOD) Official Pays \$12,000 to Department of Justice to Settle Ethics Complaint

A former DOD Deputy Inspector General (IG) paid \$12,000 to the Government to settle allegations that he violated 18 U.S.C. 207(a)(2), a criminal statute that prohibits former Government employees from representing others to the Government on matters that were under the former employee's official responsibility during his last year in office. The prohibition lasts for 2 years after the former employee leaves office. In this case, during the former Deputy IG's last year in office, his audit staff commenced an audit of a particular DOD program. The audit report, which

was not released until after the Deputy IG had left the Government, recommended eliminat-



ing part of the program that was operated by a private contractor. The same contractor hired the former Deputy IG, who had by then been gone over 1 year, as an independent auditor to review the audit report. On several occasions while acting on behalf of the contractor, and within 2 years after leaving DOD, the former Deputy IG contacted DOD employees and criticized the report with the intent to influence the judgment of the DOD employees. The statute prohibits such representations. This statute is often

overlooked by Government employees. It includes all particular matters involving specific parties in which the United States is a party or has a direct and substantial interest, that were actually pending under the former employee's official responsibility during his or her last year of employment. This includes matters that the former employee may not have known about, or played in role in their determination, but, because of the employee's position, were pending under his or her official responsibility. As noted above, the statute prohibits the former employee from representing anyone to the Government regarding such matters for a period of 2 years after the employee leaves Government service.

Improper Post-Employment Activities by Former Contract Administrator

As a contract administrator for the U.S. Air Force, the employee was responsible for assuring compliance with the terms of two separate construction contracts between the Government and a private contractor. After leaving the Government, the contract administrator was hired by the same contractor, and he became the company's contract administrator on the same two contracts in question. While representing the contractor, he submitted contract progress reports to the Government in order to ensure that the company would be compensated by the Government. Eventually, the former Federal employee submitted to

the Government an equitable adjustment claim for approximately \$574,613 on one of the contracts. The contract had a basic value of \$1.3 million.

The former Federal employee was convicted on two counts of violating 18 U.S.C. §207(a)(1), a post-employment restriction that prohibits former Government employees intending to influence official action from communicating to or appearing before the Government, on behalf of another, in connection with particular matters involving specific parties in which they participated personally and substantially as Government employees. Pursuant to 18 U.S.C. §216(a)(2), he was

sentenced to 6 months of imprisonment, 6 months of home confinement, a fine of \$2,000, and an assessment of \$200.



Former State Department Official Agrees To Settle Post-Employment Dispute

The Department of Justice and a former State Department employee entered into a settlement agreement in which the former employee agreed to pay \$10,000 to settle allegations that he violated 18 U.S.C. §207. The former employee had served in the Government as the Deputy for International Coordination of the Task Force for Military Stabilization in the Balkans in 1996. In that capacity, he oversaw designation of donor funds for Bosnia's purchase of military equipment and training. He retired from the Government on January 2, 1998, and began work on January 5, 1998, for Northrop Grumman as Vice President for Interna-

tional Business Development. On the second day of his new job, the former Government employee contacted the U.S. Embassy in Bosnia about a planned trip to Bosnia 3 months later. He sought to enter into a contract with the Bosnian government on behalf of Northrop Grumman. When the State Department subsequently told the Bosnian government that the contract was more than the country needed, the former employee contacted personnel at the U.S. Embassy in

Bosnia and the State Department to request support for U.S. contracts in Bosnia.

The former employee was subject to the 1-year restriction in 18 U.S.C. §207. This restriction prohibits certain senior Government officials, for 1 year after leaving Government service, from knowingly contacting employees from their former Government agency with the intent to influence them in connection with a matter on which the former Government employee seeks official action on behalf of another.



Money Scams*

*Information provided by the National Consumers League (NCL).

As many of you may know, there have been quite a number of scams involving Nigerian nationals telephoning, faxing, and E-mailing Americans and offering them millions of dollars in exchange for their assistance. According to the E-mails, all the recipient had to do to receive this money was to help transfer money, diamonds, or other riches to his other bank account for safekeeping. The purpose of this scam is to get money out of your bank account, and not to put money in it.



- **Once you are on the hook, they'll never let you go.** You will be asked for a never-ending series of payments for legal fees and transfer fees and other bogus costs.
- **Don't believe the pictures of the so-called treasure.** Con artists will wrap money around blocks of wood to make it look like a large amount of money.
- **Be wary of offers to send you an "advance" on your commission.** Some con artists use this ploy to build trust and to get money from your bank.
- **Never provide your bank account number or other financial information.** This information will be used to access your accounts.
- **Don't agree to travel anywhere to meet these people.** These individuals avoid coming to the United States because they fear arrest. They try to lure their victims to other countries. Victims have been robbed and even murdered when they complied with such requests.

If you receive such a solicitation at work, please contact OIG.

The Top 10 Internet Frauds Reported to the National Fraud Information Center in 2002*

*Information provided by NCL.

Online Auctions. Items that were misrepresented or never received after being sold to the highest bidder in a virtual auction.

General Merchandise. Anything sold on a Web site (not an auction, and not computer software or hardware) that was misrepresented or never received.

Nigerian Money Offers. "Aid" requests from someone claiming to need help to transfer a fortune from Africa.

Computer Equipment/Software. Equipment (not sold on an auction) that was either

never received or misrepresented.

Internet Access Services. Charges from Internet Service Providers (ISP) for services

that were never ordered and/or received.

Information/Adult Services. Charges to credit cards or phone bills for services never provided or misrepresented as free.

Work-at-Home Schemes. Kits sold with false promises of profits.

Advance Fee Loans. Empty promises of loans requiring advance payment of application and other fees.

Credit Card Offers. Phone promises of credit cards requiring up front payment of application and other fees.

Business Opportunities/Franchises. Exaggerated claims of potential profits through investments in prepackaged businesses or franchises.



STOP Calling Me!

**Information provided by NCL.*

We all know how frustrating it can be to continually receive unwanted telephone calls from strangers trying to sell something or people asking to change your long distance service provider. There is a way to help stop the majority of these calls.

- **Know your telemarketing rights.** Under Federal law, you can instruct telemarketers to put you on their "Do Not Call" lists and sue them in small claims court for \$500 if they call again. Check with your State or local consumer protection agency to find out if you also have "Do Not Call"

rights under State law.

- **Document your "Do Not Call" requests.** Keep a pad and pencil by the phone. Ask for the name and address of the company on whose behalf the salesperson is calling and note the date. If the company calls you again make note of the date of the call.
- **Understand that unlisted and unpublished phone numbers don't guarantee privacy.**



Once your number is out there, it can be shared widely. Some telemarketers simply use random dialing or machines that are programmed to call numbers in sequence. When you answer your phone, they have you.

- **Get off credit marketing lists.** Call 888-567-8688 to get off telemarketing lists for pre-approved offers of credit and insurance with all of the major credit bureaus (this does not affect your ability to apply for credit or insurance).
- **A telemarketer cannot call again once you've asked them not to.**

Some Tips for Shopping Safely Online *Information provided by NCL.

Get the scoop on the seller. Check complaint records at your State or local consumer protection agency and better business bureau. Get the physical address and phone number to contact the seller offline. Look for sellers belonging to programs that encourage good business practices and help resolve complaints.

Look for clues about security. When you provide payment information, the "http" at the beginning of the address bar should change to "https" or "shttp." Your browser may show whether the information is being encrypted, or scrambled, as it is being sent. See what Web sites say about how

they safeguard your information in transmission and storage. Don't provide sensitive information by E-mail.

Use a credit card. It's the safest way to pay because you have the legal right to dispute charges for goods or services that were never ordered, never received, or misrepresented.

Know the real deal. Get all the details before you buy: a com-



Use common sense when shopping online and any time you transmit sensitive information through the Internet.

plete description of the items; the total price, including shipping; the delivery time; warranty information; the return policy; and what to do if you have problems.

Ask your credit card issuer about "substitute" or "single-use" credit card numbers. This new technology allows you to use your credit card without putting your real account number online, thereby protecting it from abuse by "hackers" or dishonest employees of the seller.

Keep proof handy. Print and file the receipts in case you need proof later.

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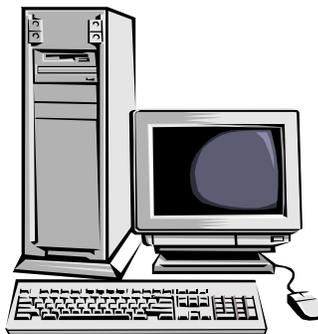
Fax: 301-415-5091

HOTLINE: 1-800-233-3497

*We're on the
Web! Check the
NRC Web site!*

You may now contact the Office of the Inspector General (OIG) via the Internet. Simply log onto www.nrc.gov. Click on Inspector General, click on Hotline, click on the Hotline phone symbol, and then click on the online form. This is a completely anonymous way to inform the OIG

of any fraud, waste, abuse, or mismanagement.



OIG Hotline on the NRC Web Site

When you make a complaint to the Hotline via the Internet, the following is an example of the header of the E-mail that we receive:

From: nobody@nrc.gov
To: <oighotline@nrc.gov>
Date: Thu, Nov 14, 2002 11:10 AM
Subject: Response from "Contact the OIG Hotline staff"

The following information was submitted by
() on Thursday, November 14, 2002 at 11:09:45

recipient_displayed_as: Web Site Category

Complaint: _____

OIG does not try to find out where the complaint came from or who made the complaint. The main purpose for incorporating this feature on the NRC Web site was to make employees feel more comfortable in bringing their concerns to OIG.
