

# Post-Employment Debriefing

- ❑ This post-employment guide has been designed to assist you review and understand the post-employment rules that apply to you after you leave Federal service.
- ❑ After your review is complete, make sure you visit with your servicing ethics advisor (Human Resource Office) to have any outstanding questions answered.
- ❑ By regulation, even after you leave the BLM, you are entitled post-employment advice from your servicing ethics advisor. Best wishes!

**Applicability: Employees terminating on or after January 1, 1991. Developed by Markci D. Metcalf, Deputy Ethics Counselor, BLM (Updated June 2012)**

This presentation is located at:

[http://web.blm.gov/portal/global/\\_assets/ehcticstocics/Post-Employment%20Debriefing%20-%20June%202011.pdf](http://web.blm.gov/portal/global/_assets/ehcticstocics/Post-Employment%20Debriefing%20-%20June%202011.pdf)

# Post-Employment Restrictions

Things you have to look forward to during retirement...



# Post-Employment Restrictions

## 18 U.S.C. § 207

What **facts** should you know before leaving Federal service?



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Fact 1

❑ None of the post-employment restrictions bar you, regardless of rank or position, from accepting employment with any private or public employer after Government service.

**In short, you can work for anyone you wish\*.**



\*Note: During your BLM tenure, if you served in a procurement role, there are additional restrictions that may apply to you. These restrictions may impact whether or not you can work for a contractor after leaving Federal service. See Slide 8.

# Post-Employment Restrictions

## Fact 2

❑ Section 18 U.S.C. § 207, only prohibits individuals from engaging in certain representative activities on behalf of other persons or entities (excluding the U.S.), whether or not done for compensation.



**Post-employment rules generally don't come into play until you have to represent someone else before a Federal agency/employee.**

# Post-Employment Restrictions

## 18 U.S.C. § 207

### Fact 3

□ None of the restrictions bar self-representation.

**You are never barred from representing yourself.**



# Post-Employment Restrictions

## **Fact 4: Former Federal Employees Who Are Employees or Elected or Appointed Officials of a Tribal Organization or Inter-Tribal Consortium [25 U.S.C. 450i(j)]**

Notwithstanding anything to the contrary in 18 USC § 207, this statutory provision authorizes a former Federal employee who is carrying out official duties as an employee or as an elected or appointed official of a tribal organization or inter-tribal consortium to act as an agent or attorney, including any matter in which the U.S. is a party or has direct and substantial interest

**Note:** The former employee must advise the head of the department, agency, court, or commission with which the former employee is dealing, or before which the employee is appearing, on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement that he or she may have had as an employee of the U.S. in connection with the matter involved.



# Post-Employment Restrictions

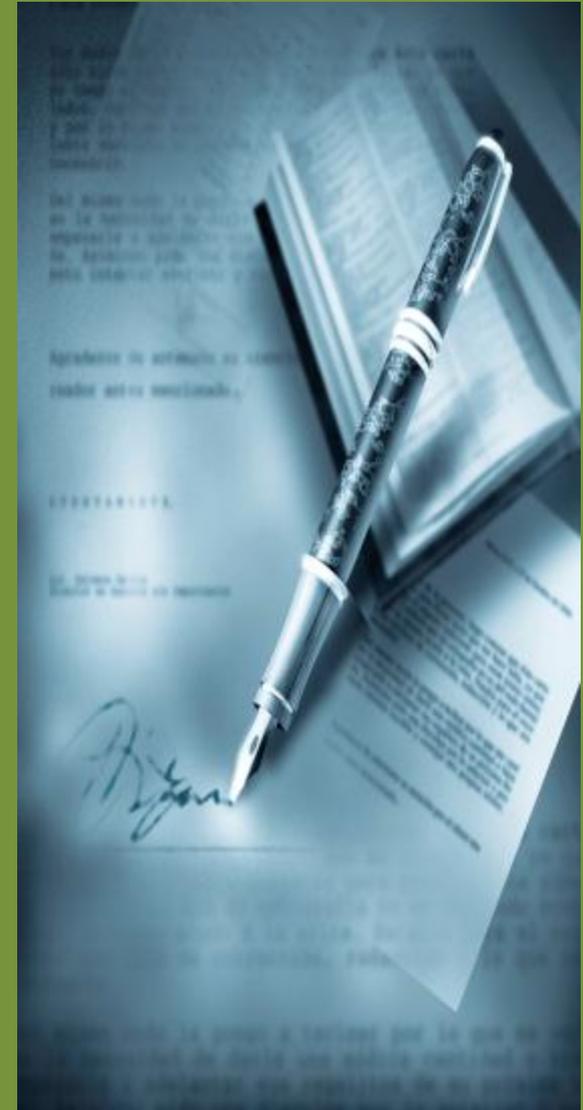
41 U.S.C. 423 (Procurement Integrity)

## Fact 5: Former Procurement Officials

A former BLM procurement official may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year if he/she served during contract selection or award on a procurement (in excess of \$10 million) as a:

- Procuring Contracting Officer
- Source Selection Authority
- Member of the Source Selection Evaluation Board
- Chief of Financial/Technical Evaluation Team
- Program Manager/Deputy Program Manager
- Administrative Contracting Officer; or
- Decision-Maker Regarding (award, overhead rates, subcontracts, payments, and settlements)

**Note: Behind the scenes assistance for compensation is prohibited.**



# Post-Employment Restrictions

(18 USC 203)

## Fact 6: Representational Services Compensation (Prohibition)

18 U.S.C. 203 prohibits a former employee from receiving any compensation for representational services in connection with a particular matter in which the U.S. is a party or has a direct and substantial interest, if the representational services were provided at a time when the individual was a Government employee, and regardless of whether or not the individual personally provided those representational services.

Representational services means communications to or appearances before Federal entities with the intent to influence the Government on behalf of a third party. This includes legal and consulting services.



# Post-Employment Restrictions

## 18 U.S.C. § 207(a)(1)

### Life Time Ban

No former employee shall communicate (orally or in writing) with the intent to influence or appear before any Federal employee on behalf of another in connection with a particular matter involving a specific party/parties, in which he participated personally and substantially while an employee, in which the U.S. is a party or has a direct and substantial interest.

Behind-the-scenes assistance is o.k.

Example: Mary, former BLM employee, worked with her new employer, Gas Company, to increase its chances of submitting a winning bid. (Mary did not communicate or appear before a BLM official)



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Life Time Ban –Definition of Communicate

**Communicate.** A former employee communicates when he or she imparts or transmits information of any kind, including facts, opinions, ideas, questions or direction, to any Government employee, whether orally or in writing, by electronic media or any other means.



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Life Time Ban –Definition of Appearance

**Appearance.** A former employee makes an appearance when he or she is physically present. Under some circumstances your physical presence, without any communication concerning any material issue or otherwise, may constitute an appearance with the intent to influence an employee of the United States.



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Life Time Ban –Definition “Particular Matter”

A particular matter applies to investigations, applications, requests for rulings or determinations, rulemaking, contracts, controversies, claims, charges, accusations, arrests or other judicial or other proceedings. However, it does not generally apply to legislation, policies, standards/objectives, or matters of general applicability where there is an absence of specific parties.



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Life Time Ban –Definition “Participated Personally and Substantially”

#### *Participated Personally and Substantially*

“**Participate**” means that you took action while a BLM employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action, or purposefully forbearing in order to affect the outcome of a matter.

“**Personally**” means that your participation was direct, either individually or in combination with other persons, through direct and active supervision of the participation of others you supervised, including a subordinate.

“**Substantially**” means that your involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter.



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Life Time Ban – Example 1

Sue retired from the EPA as an attorney in the Office of General Counsel. She was hired by the State of Alaska six months after leaving Federal service. She wants to make a good impression with her boss, so she called up her old colleague from the EPA and asked to meet with him on a contract matter involving a private landowner, the same matter she worked on while employed at the EPA. They met and conversed about the matter. (This is a violation based on “communication” and “appearance.”)



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Life Time Ban – Example 2

Bobby resigned from the Department of Energy (DOE) about 9 months ago. Since leaving, he has worked for a non-profit organization. His boss asked him to accompany her to a meeting with DOE to discuss the grant he administered through a cost-share arrangement with 10 grantees when he was employed by DOE. He went to the meeting. (This is a violation based on an “appearance.”)

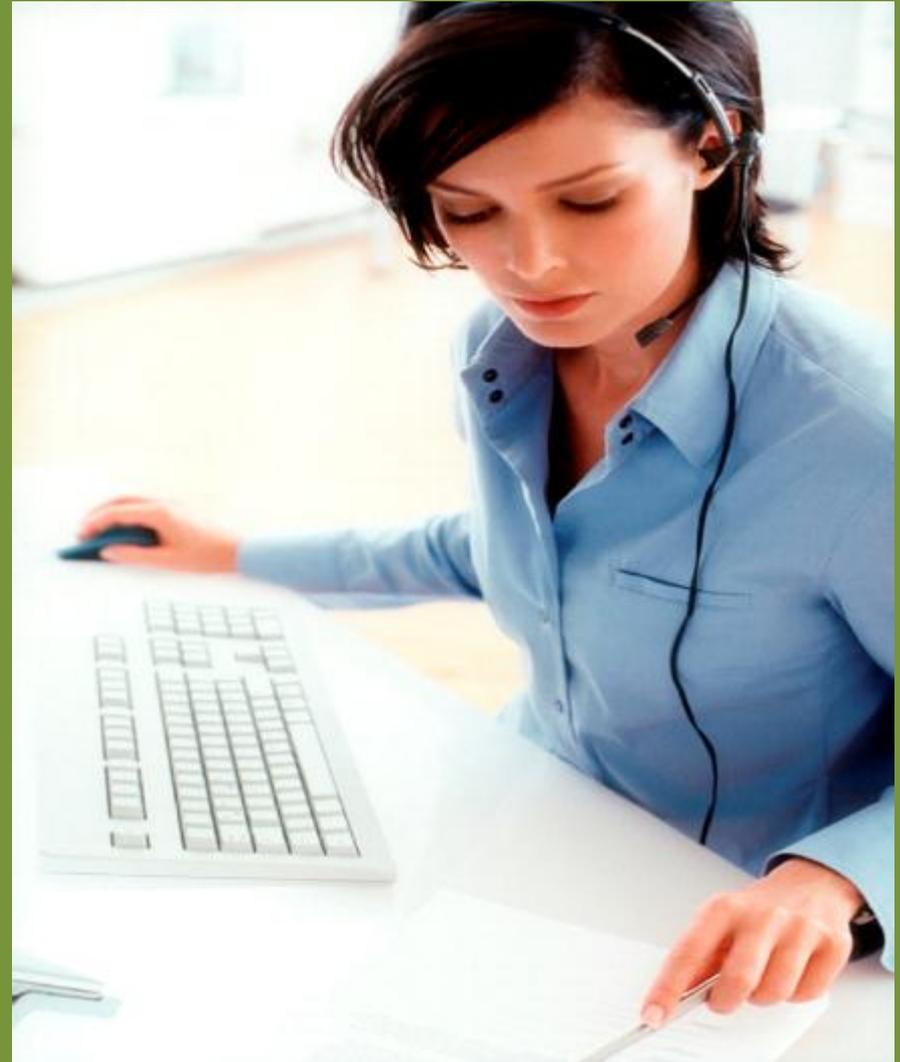


# Post-Employment Restrictions

## 18 U.S.C. § 207

### Life Time Ban – Example 3

Latitia worked as a Management Analyst. She was responsible for auditing 20 large consulting firms. However, shortly after earning her PhD in earth sciences, she resigned from the BLM and assumed the position as Director of a large consulting firm, Way Way, Inc. Two weeks after serving as Director, she called a BLM official to complain about its auditing methods of Way Way, Inc. (This is a violation based on “communication.”)



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Two-Year Ban

For 2 years after an employee's service terminates, he may not communicate (orally or in writing) with the intent to influence or appear before any Federal employee on behalf of another in connection with a particular matter involving a specific party/parties, in which the U.S. is a party or has a direct and substantial interest, and which the employee knows or reasonably should know was actually pending under his **official responsibility** within the one-year period prior to the termination of Government service.



Behind-the-scenes assistance is o.k.

# Post-Employment Restrictions

## 18 U.S.C. § 207

### **Official Responsibility**

means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, either personally or through a subordinate, to approve, disapprove or otherwise direct Government action.



# Post-Employment Restrictions

## Two Year Ban

## 18 U.S.C. § 207



**Example 1:** The position description of District Manager (DM), Anywhere, USA, indicates that she has final signature authority on all contracts and grants issued. There are 50 contracts and 34 grants currently pending that require her signature. In an e-mail to the subordinate, the Assistant DM, she declines to sign the needed approvals. Two days later, she retires. (**Note: At the moment the contracts and grants were ready for her review, they were under her official responsibility.**)

If the DM attempts to communicate or appear before any Federal employee, on behalf of another, on matters that were pending under her official responsibility (e.g., 50 contracts and 34 grants) in the last year of service, within two years from her termination date, it would constitute a post-employment violation of this 2 year ban.

# Post-Employment Restrictions

## 18 U.S.C. § 207

### Two Year Ban

**Example 2:** A BLM employee sent an e-mail to the Solicitor seeking advice on a contract matter involving Hess Cupcakes. The Solicitor assigned the matter to an attorney in General Legal Services Branch, Division of General Law before taking any action on it. A week later the Solicitor retired.

Although, the Solicitor took no action on the contract matter, it was pending under his official responsibility from the time the request was submitted. For two years from the date of his departure from Government service, he may not represent another or make an appearance before any Federal employee on a matter (including the contract matter) that was pending under his official responsibility during his last year of Federal service.



# Post-Employment Restrictions

## 18 U.S.C. § 207

### **One Year Restriction – Trade & Treaty (Covered Information)**

For one year after Government service ends, no former employee may, on the basis of “covered information,” knowingly represent, aid, or advise any other person concerning an ongoing trade or treaty negotiation in which during the last year of Government service, he participated personally and substantially as an employee.

Covered information refers to agency records accessible to an employee, but which were not releasable to the public under the Freedom of Information Act. (Behind-the-scenes assistance is prohibited, unless it's the U.S.)

# Post-Employment Restrictions

## 18 U.S.C. § 207

In addition to the post-employment restrictions previously discussed, “**Senior**” employees have additional restrictions imposed upon them.

**Senior Employees\*** are those employees whose basic rate of pay is at or above 86.5% level II (\$179,700) on the Executive Schedule, exclusive of locality pay.

As of December 29, 2011 the rate of pay is **\$155,440.50**. (for calendar year 2012)

\*Usually includes, Presidential appointees, General and Flag Officers, most members of the Senior Executive Service (and some high-level employees in similar pay systems), and private sector participants in the Information Technology Exchange Program.



# Post-Employment Restrictions

## 18 U.S.C. §207(c)



### One Year Restriction on Former Senior Employee Representations to Former Agency

For **one** year after service in a senior position terminates, no former senior employee may knowingly (with the intent to influence) communicate (oral or written) or appear before a BLM employee within the one-year period prior to terminating senior status, if that communication or appearance is on behalf of another in connection with any matter on which the former senior employee seeks official action by the employee of his/her former agency, except the U.S. Government. (This is called the one-year “**cooling off**” provision.)

The one-year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously.

- This does not have to be a matter on which the employee worked previously.
- This provision does not prohibit behind-the-scenes assistance.

# Post-Employment Restrictions

## 18 U.S.C. § 207

### Example 1:

Jacob, a former Senior employee, retired from the BLM on March 15, 2011. In just two short weeks, she was hired by Exxon Mobile. The Vice President called him into his office on June 1, 2011, and asked him to contact the Deputy Director (DD) of the BLM to expedite Exxon Mobile's application for a new oil and gas lease. He returned to his office, picked up the phone, and dialed the DD's administrative assistant, to see if she could move the application along. Is this a problem? **Yes!**

**Has it been a year since Jacob left his senior position? No.**

**Is he contacting his former bureau/department on behalf of another? Yes.**

**Is he knowingly communicating with the intent to influence? Yes.**

**Is he seeking official action? Yes.**

**This is a post-employment violation for Jacob!!!!!!**



# Post-Employment Restrictions

## 18 U.S.C. § 207

### Example 2:

Rutti retired from a Senior position in the National Park Service (NPS) about three months ago. He was hired by Bow Wow, Inc., a large company that manufactures dog treat vending machines. Bow Wow, Inc. Asked Rutti to represent it in a meeting with the NPS to discuss amendments to a concession contract. Can he do it?

Rutti may not represent BowWow, Inc. (or appear) before a NPS employee on the concession contract or any other matter in which official action is sought.

(Note: Rutti has 9 months remaining on his 1-year restriction on former Senior employees that began when he retired, and the two-year and lifetime ban still apply.)



# Post-Employment Restrictions

## 18 U.S.C. § 207

In addition to the post-employment restrictions (except the one-year restriction on former Senior employees) previously discussed, “\*Very Senior” employees have additional restrictions imposed upon them:

For two years after service in a “very senior” position terminates, no former “very senior” employee may knowingly make, with the intent to influence, any communication to or appearance before:

- (1) Any individual appointed to an Executive Schedule position or,
- (2) Any employee of a department or agency in which the former “very senior” employee served during the one-year period prior to termination from a “very senior” employee position.

The type of communication or appearance prohibited is one made on behalf of any other person (except the United States), in connection with any matter on which the former “very senior” employee seeks official action by any official or employee. This provision does not prohibit behind-the-scenes assistance.

\*Very Senior employee means an employee whose rate of pay is \$199,700 (Executive Schedule Level I CY 2012).



# Post-Employment Restrictions

## 18 U.S.C. § 207

### One-Year Restriction on any Former **Senior** and **Very Senior** Employee's Representations on Behalf of a Foreign Entity

For one\* year after service in a **Senior** or **Very Senior** position terminates, no former **Senior** or **Very Senior** employee shall knowingly represent a foreign government or foreign political party before an officer or employee of an agency or department of the United States, or aid or advise such a foreign entity, with the intent to influence a decision of such officer or employee.



\*The one year restriction is measured from the date when an employee ceases to be a senior or very senior employee, not from the termination of employment, unless the two occur simultaneously.

Behind-the-scenes assistance is prohibited.

# Post-Employment Restrictions

## 18 U.S.C. § 207

### The End



The guidance provided in this presentation is not intended to cover every aspect of post-employment. For specific answers to your questions consult your servicing ethics advisor or the BLM Deputy Ethics Counselor at [blm\\_wo\\_ethics\\_office@blm.gov](mailto:blm_wo_ethics_office@blm.gov).