

From: [Jones, Cherie](#)
To: [FDA Ethics Advice](#)
Cc: [Goswami, Jaya](#); [Allende, Maria](#); [CBER Ethics](#)
Subject: FW: Reminder- Seeking Employment and Post Employment Restrictions
Date: Wednesday, June 1, 2022 10:26:51 AM
Attachments: [non-federal-employment \(5\).pdf](#)
[POST_EMPLOYMENT Summary April 2019.pdf](#)
[image001.png](#)

Hi Advice team,

Jaya and her supervisor Maria would like to meet and discuss in detail the recusal requirements for employees seeking employment. Below is the communication I sent along with attachments.

Thank you

Cherie Jones

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Ethics Website:

<https://fda.sharepoint.com/sites/CBER-OneOM/SitePages/CBER-Ethics.aspx>

From: CBER Ethics
Sent: Tuesday, May 31, 2022 11:40 AM
To: Goswami, Jaya <Jaya.Goswami@fda.hhs.gov>
Subject: FW: Reminder- Seeking Employment and Post Employment Restrictions

Please see below.

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From: CBER Ethics <CBEREthics@fda.hhs.gov>
Sent: Friday, August 20, 2021 4:23 PM
To: CBER Subscribers <Subscribers@fda.hhs.gov>
Cc: Hussey, Deirdre <Deirdre.Hussey@fda.hhs.gov>
Subject: Reminder- Seeking Employment and Post Employment Restrictions

Dear Colleagues,

This memo is a reminder on Seeking employment and post-employment restrictions. Attached are fact sheets from HHS Office of General Counsel on the rules regarding seeking employment and post-employment restrictions for federal employees. Below is a summary, however please read the attachments as they have detailed information.

Seeking and Negotiating Employment:

Employees who are seeking non-federal employment or who have an agreement for prospective non-federal employment must recuse/disqualify from participating in any and all particular matters that would have a direct and predictable effect on the prospective employer’s financial interests. As soon as you reach out to a prospective employer by sending a resume or other forms of interest in employment, you need to recuse from any “particular matters” that would affect the prospective employer’s financial interests. For pharmaceutical companies, their financial interests may be affected by FDA action on competitors matters if they are in the same product area(s) as your prospective employers, so you generally need to recuse from those matters as well. You would also need to recuse from particular matters of general applicability like regulations, guidance’s, policymaking, etc., that are directed to the particular business or industry your prospective employers are part of (i.e., the pharmaceutical industry). So, the recusal obligation can be quite broad, and you may be required to take annual leave or leave without pay if your ability to perform your job duties is impaired. The recusal obligation ends when either you or the prospective employer rejects the possibility of employment.

If you are required to file an **OGE 278 Public Financial Disclosure Report**, you must notify your agency ethics official of any negotiation for, or agreement of future employment or compensation with, a non-federal entity within three business days after commencement of the negotiation or agreement. You must submit with your notification a written recusal statement whenever there is a conflict of interest or appearance of a conflict of interest with the entity unless you have obtained a written waiver or an authorization.

Post-Employment:

Some of the post-employment restrictions applicable to all former employees prohibit them from making communications or appearances, with the intent to influence, to any Federal agency or federal court on behalf of another person or entity, regarding the same matters that they either personally participated in, or were under their official responsibility, during their federal service. Please note that some of these bans are specific to the employee personally making representations to a government agency, they may still be permitted to work “behind-the-scenes” advising others on the communication, the employee just could not make any communication personally with the intent to influence. Other rules apply to employees who participated in specific types of matters, such as contract procurement or trade or treaty negotiations.

- *18 U.S.C. 207(a)(1)* is a lifetime ban that prohibits employees from communicating to or appearing before the federal government (any agency or court) on any *specific party matters* in which they participated personally and substantially during their entire government service;
- *18 U.S.C. 207(a)(2)* prohibits employees, for two-years, from making representations or communication to or appearing before the federal government (any agency or court) regarding *specific party matters* that were pending under their official responsibility during their last year of government service.

Restrictions Applicable only to Senior Employees-Executive Levels II through V; Uniformed Service Pay Grades O-7 or above; SES and Employees in other Pay Systems with an Annual Rate of Basic Pay (Excluding Locality-Based Adjustments) at or above \$172,395

- (*18 U.S.C. 207(c)*), is a one-year ban, that prohibits former senior employees from making representations or communication to or appearing before FDA on any matters, on behalf of another seeking official action.

There is an exception to the *one-year ban* for the following institutions:

- a state or local government
- a college or university; or
- a non-profit hospital or medical research organization

The Office of Ethics and Integrity will conduct your post-employment restrictions exit review and should be contacted as part of your exit. **OEI Hotline & Email Inbox** (240) 402-1111; FDAethics_Advice@fda.hhs.gov

Please be on the lookout for an announcement from CBER Training in the very near future on these subject matters, where a detailed presentation will be given and the opportunity to ask questions. CBER Ethics contact information cberethics@fda.hhs.gov.

Thank you,
CBER Ethics Team

