
DEPARTMENTAL ETHICS OFFICE

**ETHICS RULES FOR
SEEKING EMPLOYMENT,
NEGOTIATING EMPLOYMENT
&
POST-GOVERNMENT EMPLOYMENT**



ETHICS RULES FOR SEEKING EMPLOYMENT



SEEKING EMPLOYMENT ETHICS RULES

- A series of ethics laws and regulations apply when you begin seeking and negotiating for employment outside of the Federal Government.
- As a general matter, you are not prohibited from, or even discouraged by, the ethics laws and regulations from seeking employment outside the Federal Government and negotiating with potential future employers.
- In certain circumstances, contacts with potential future employers may raise conflict of interest concerns and require you to recuse from working on certain matters.

- For purposes of the seeking employment ethics rules, *employment* is any form of non-Federal employment or business relationship involving the provision of personal services by the employee undertaken at the same time as, or subsequent to, Federal employment.

- *Employment* includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

DEFINITION OF EMPLOYMENT

5 C.F.R. §
2635.603(a)

SEEKING EMPLOYMENT BEGINS

5 C.F.R. §
2635.603(b)(1)(i)

- When you have directly or indirectly engaged in *negotiations* for employment with any person.
 - *Negotiations* are discussions or communications with another person, or an intermediary, conducted with a view toward reaching an agreement regarding possible employment.
 - *Negotiations* are not limited to discussions of specific terms and conditions of employment in a specific position.

SEEKING EMPLOYMENT BEGINS

5 C.F.R. §
2635.603(b)(1)(ii)

- When you make an unsolicited communication to any person or organization about possible employment with that person or organization.
 - Includes:
 - Communicating with agent or intermediary; and
 - Sending your resume.
 - Does not include:
 - Requesting a job application.

SEEKING EMPLOYMENT BEGINS

5 C.F.R. §
2635.603(b)(1)(iii)

- When you make a response other than rejection to an unsolicited communication from any person, or an intermediary, regarding possible employment with that person.
- Remember the *Open Door Rule* – Deferring employment discussions counts as seeking employment.

SEEKING EMPLOYMENT & SOCIAL MEDIA

Applying the rules discussed above, you are **not** considered to be seeking employment if:

- You **post** your resume on your social media account;
- Someone **views** your resume on your social media account;
or
- Someone sends you an **unsolicited message** on your social media account, even if it includes a job offer.
- *Remember: If **your response is anything other than a rejection**, then you are considered to be seeking employment.*

SEEKING EMPLOYMENT & SOCIAL MEDIA

You are **considered to be** seeking employment if you **contact a person or organization** concerning future employment on social media by:

- Sending a message directly to the organization;
- Uploading a resume or application to the prospective employer's social media account for recruiting employees; or
- Otherwise targeting the organization through a social media communication.

NOTIFICATION REQUIREMENTS WHEN SEEKING EMPLOYMENT



When seeking employment, you are not required to provide notification to your supervisor or co-workers.



When you are disqualified from participating in a particular matter as a result of seeking employment, you may need to notify the person responsible for your assignments.



Recommend consulting with the Departmental Ethics Office (DEO) and documenting your disqualification in order to establish compliance with the ethics requirements.

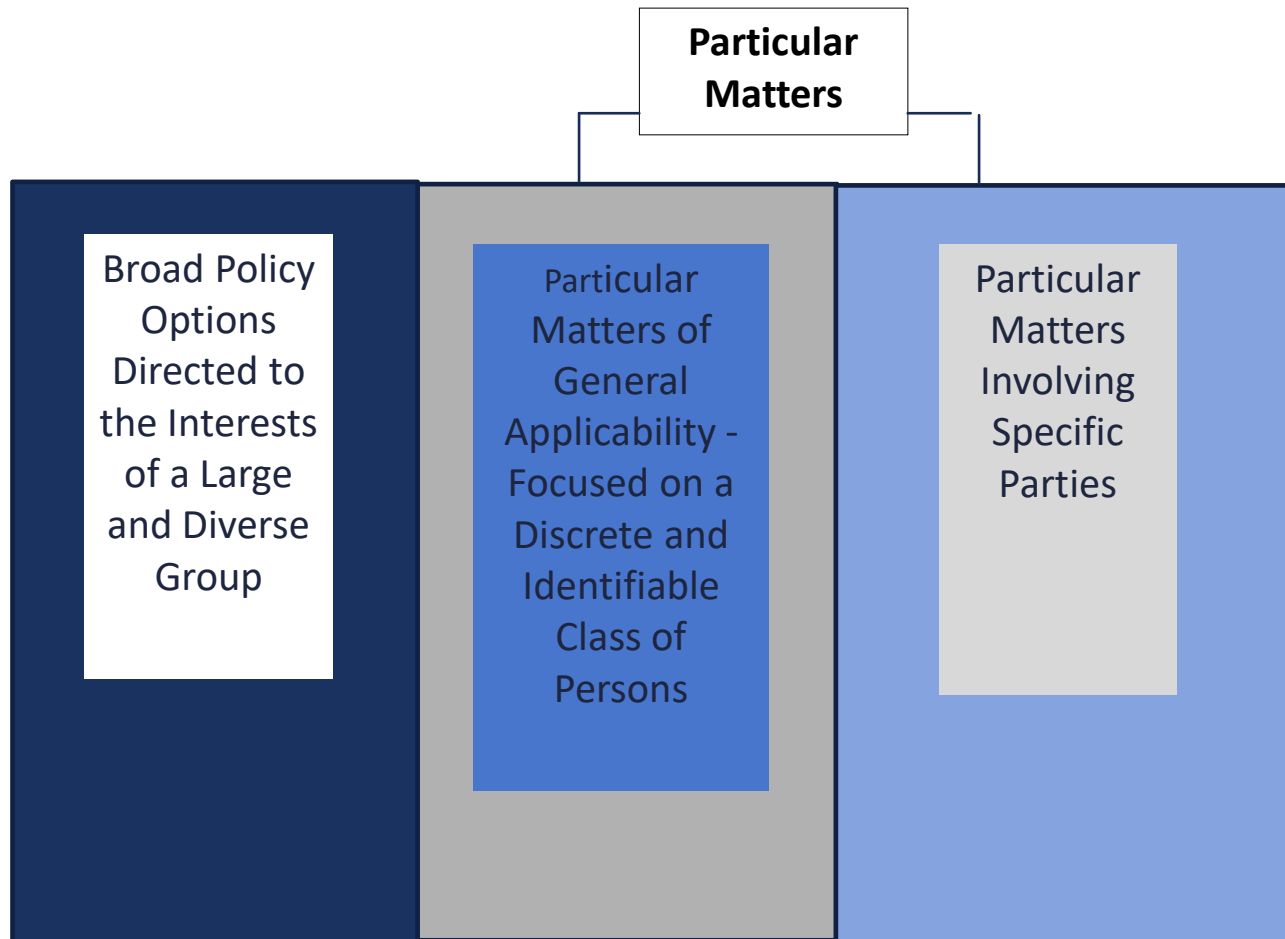
While you are seeking employment with a person or organization, you are prohibited from:

- participating personally and substantially
- in a particular matter that
- to your knowledge has a direct and predictable effect on the financial interests of your prospective employer.

Recusal is accomplished by not participating in the particular matter.

SEEKING EMPLOYMENT RECUSAL OBLIGATIONS

ETHICS MATTERS – THREE TYPES



IMPLEMENTING RECUSAL OBLIGATION


Are you seeking employment? If yes, then:




Can your official duties affect your prospective employer(s)? If yes, then:



Are you working on particular matters (grants, contracts, litigation, permits, legislation, rulemaking, etc.) involving your prospective employer(s)? If yes, then:



Will the particular matter(s) directly and predictably affect the financial interests of your prospective employer(s)? If yes, then:



You may not participate in the particular matter.

SEEKING & NEGOTIATING EMPLOYMENT GIFT ISSUES

- Generally, you may accept bona fide interview expenses from a potential employer, including meals, lodgings, and transportation, if they are customarily provided in connection with employment discussions. 5 C.F.R. § 2635.204(e)(3).
- Please note that if you are required to file a financial disclosure report and the expenses exceed the reporting threshold, you must report the expenses on your next financial disclosure report.

SEEKING EMPLOYMENT ENDS

5 C.F.R. §
2635.603(b)(2)

- When either you or the prospective employer rejects the possibility of employment and all discussions of possible future employment have ended (no deferment of discussions).
- When a prospective employer has expressed no interest within two months after sending a resume or employment proposal.



ETHICS RULES FOR NEGOTIATING EMPLOYMENT



The line between seeking employment and negotiating employment can be difficult to determine (and they can start at the same time).



Err on the side of caution when determining when seeking employment ends and negotiating for employment begins.

NEGOTIATING
EMPLOYMENT
ETHICS RULES

NEGOTIATING EMPLOYMENT BEGINS

- When you have directly or indirectly engaged in *negotiations* for employment with any person.
 - *Negotiations* are discussions or communications with another person, or an intermediary, conducted with a view toward reaching an agreement regarding possible employment.
 - *Negotiations* are not limited to discussions of specific terms and conditions of employment in a specific position.

NOTIFICATION REQUIREMENTS WHEN NEGOTIATING EMPLOYMENT – OGE 278e FILERS



If you file an OGE 278e, you are required to provide the DEO with written notice of any and all employment negotiations **within 3 business days** of the beginning of such negotiations.



You must also file a written notice if you have entered into an agreement for future employment outside the Federal Government **within 3 business days** of entering into the agreement.



Notice: <https://www.doi.gov/ethics/forms/STOCK-act-notification>

NEGOTIATING EMPLOYMENT RECUSALS

- Once you start negotiating employment, a criminal ethics statute, 18 U.S.C. § 208(a), requires your disqualification from any particular matter that has a direct and predictable effect on the financial interests of person with whom you are either negotiating or have entered into an arrangement for future employment.
- 5 CFR § 2635.606 – Restates the recusal requirement in 18 U.S.C. § 208(a) based on an arrangement concerning prospective employment or otherwise after negotiations.

IMPLEMENTING RECUSAL OBLIGATION


Are you negotiating employment? If yes, then:




Can your official duties affect your prospective employer(s)? If yes, then:



Are you working on particular matters (grants, contracts, litigation, permits, legislation, rulemaking, etc.) involving your prospective employer(s)? If yes, then:



Will the particular matter(s) directly and predictably affect the financial interests of your prospective employer(s)? If yes, then:



You may not participate in the particular matter.

NEGOTIATING EMPLOYMENT ENDS

- When either you or the prospective employer rejects the possibility of employment and all negotiations for possible future employment have ended.
- When any arrangement for future employment is terminated.
- When you leave employment with the Federal Government.



ETHICS RULES FOR POST-GOVERNMENT EMPLOYMENT



POST-GOVERNMENT EMPLOYMENT ETHICS

OVERVIEW

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- After you leave your position at the DOI, there are a series of post-employment ethics rules that will apply to your activities as well as to the work that you may do for a future employer.
 - These rules do not bar you from accepting employment with any private or public employer.

POST-GOVERNMENT EMPLOYMENT ETHICS

OVERVIEW

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- Rules include:
 - limitations on potential appearances and communications that you may make as a representative of a third party back to the federal government; and
 - limitations on other types of assistance that you may provide to third parties.

POST-GOVERNMENT EMPLOYMENT ETHICS

OVERVIEW

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- The purpose behind these rules is to prevent you from “switching sides” on a matter in which you were involved when you worked for DOI.
 - Limitations are personal to you and are not imputed to others, including any future employer.

POST-GOVERNMENT ETHICS RESTRICTIONS

- There are two primary post-employment representation provisions in 18 U.S.C. § 207 that will apply to you once you leave the DOI, each provision applies to distinct conduct and remains effective for a specified period of time:
 - 18 U.S.C. § 207(a)(1) – Lifetime Ban on Switching Sides:
 - Covers all employees for lifetime of particular matter.
 - 18 U.S.C. § 207(a)(2) – Official Responsibility Ban:
 - Covers managers/supervisors for two years after departure.

Elements of 18 U.S.C. § 207(a)(1) and (2)

Lifetime Ban

Official Responsibility Ban

18 U.S.C. § 207(a)(1)

18 U.S.C. § 207(a)(2)

- (Former) Employee
- Knowingly Makes
 - **Communication or Appearance**
 - **With the Intent to Influence**
- To or Before an Employee of U.S. Government
 - On Behalf of Any Other Person
- U.S. Government is a Party or Has a Direct and Substantial Interest
 - **About a Particular Matter Involving Specific Parties**
 - Same Particular Matter

**Participated Personally
and Substantially**

**Pending Under Official
Responsibility (within
one year before termination)**

- You make a *communication* when you impart or transmit information of any kind, including facts, opinions, ideas, questions or direction, to an employee of the U.S. Government.
- You can make a *communication* orally, in written correspondence, by electronic media, or by any other means.
- *Communications* for purposes of the post-government restrictions, include only those for which you intend that the information conveyed will be attributed to you.

DEFINITION OF COMMUNICATION

5 C.F.R. §
2641.201(d)(1)

- You make an *appearance* when you are physically present before an employee of the U.S. Government, in either a formal or informal setting.
- Although your *appearance* also may be accompanied by certain communications, your appearance need not involve any communication in order to trigger the post-employment restrictions.

DEFINITION OF APPEARANCE

5 C.F.R. §
2641.201(d)(2)

BEHIND-THE-SCENES ASSISTANCE PERMITTED

- You are not prohibited from providing assistance to a future employer, provided that your assistance does not involve a communication to or an appearance before an employee of the U.S. Government.
 - Attorneys may have other restrictions on behind-the-scenes assistance based on their specific bar rules. Seek advice from the bar as appropriate.
 - Your ability to provide behind-the-scenes assistance may be limited if you are above a certain pay threshold and performed duties under the Outer Continental Shelf Lands Act.

- A communication or appearance is made with the *intent to influence* when you make it for the purpose of:
 - Seeking a U.S. Government ruling, benefit, approval, or other discretionary Government action; or
 - Affecting U.S. Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

DEFINITION OF INTENT TO INFLUENCE

5 C.F.R. §
2641.201(e)(1)

- A communication or appearance is **NOT** made with the *intent to influence* when you make it for the purpose of:
 - Purely social contacts;
 - Routine requests not involving a potential controversy; or
 - Making factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary U.S. Government action, etc.

DEFINITION OF INTENT TO INFLUENCE

5 C.F.R. §
2641.201(e)(2)

- A *particular matter involving specific parties* is a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.

DEFINITION OF PARTICULAR MATTER INVOLVING SPECIFIC PARTIES

5 C.F.R. §
2641.201(h)

DEFINITION OF PARTICIPATE

5 C.F.R. §
2641.201(I)(I)

- To *participate* means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or to purposefully forbear in order to affect the outcome of a matter.
- You can *participate* in particular matters that are pending other than in your own agency.

DEFINITION OF PARTICIPATE

5 C.F.R. §
2641.201(I)(I)

- You do not *participate* in a particular matter merely because you had knowledge of its existence or because it was pending under your official responsibility.
- You also do not *participate* in a particular matter unless you do so in your official capacity.

DEFINITION OF PERSONALLY

5 C.F.R. §
2641.201(i)(2)

- You participate *personally* in a particular matter if you participate:
 - Directly, either individually or in combination with other persons; or
 - Through direct and active supervision of the participation of any person you supervise, including a subordinate.

DEFINITION OF SUBSTANTIALLY

5 C.F.R. §
2641.201 (i)(3)

- You participate *substantially* in a particular matter if your involvement is of significance to the particular matter.
- Your participation in a particular matter may be *substantial* even though it is not determinative of the outcome.
- If you participate in the substantive merits of a particular matter, then your participation may be *substantial* even though your role, or the aspect of the particular matter in which you are participating, may be minor in relation to the particular matter as a whole.

DEFINITION OF SUBSTANTIALLY

5 C.F.R. §
2641.201 (i)(3)

- In order for your participation to be considered *substantial*, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.
- A finding of *substantiality* will be based not only on the effort devoted to a particular matter, but also on the importance of the effort.

DEFINITION OF SUBSTANTIALLY

5 C.F.R. §
2641.201(i)(3)

- While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be *substantial*.
- Participation in peripheral aspects of a particular matter or in aspects not directly involving the substantive merits of a particular matter (such as reviewing budgetary procedures or scheduling meetings) is not *substantial*.

- *Official responsibility* means 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 scope of your *official responsibility* is determined by those functions assigned by statute, regulation, Executive order, job description, or delegation of authority.

DEFINITION OF OFFICIAL RESPONSIBILITY

5 C.F.R. §
2641.202(j)(1)

- All particular matters under consideration in an agency are under the *official responsibility* of the agency head.
- Similarly, particular matters under the *official responsibility* of one or more intermediate supervisors who supervise a person, including a subordinate, who actually participates in the particular matter or who has been assigned to participate in the particular matter within the scope of his/her official duties.

DEFINITION OF OFFICIAL RESPONSIBILITY

5 C.F.R. §
2641.202(j)(1)

- If you are a nonsupervisory employee, you do not have *official responsibility* for your own assignments under 18 U.S.C. § 207(a)(2).
- The authority to direct government action concerning only ancillary or nonsubstantive aspects of a particular matter, such as budgeting, equal employment, scheduling, or format requirements does not, ordinarily, constitute *official responsibility* for the particular matter as a whole.

DEFINITION OF OFFICIAL RESPONSIBILITY

5 C.F.R. §
2641.202(j)(1)

- A particular matter is actually *pending* under your official responsibility if it has been referred to you for assignment or has been referred to or is under consideration by any person you supervise, including a subordinate.
- A particular matter remains *pending* even when it is not under “active” consideration.
- There is no requirement that the particular matter must have been *pending* under your official responsibility for a certain length of time to trigger the ban.

DEFINITION OF PENDING

5 C.F.R. §
2641.202(j)(2)

KNOWLEDGE OF OFFICIAL RESPONSIBILITY

- Under 18 U.S.C. § 207(a)(2), a communication or appearance is not prohibited unless, at the time of the proposed post-employment communication or appearance, you know or reasonably should know that the particular matter was actually pending under your official responsibility within the one-year period prior to your termination from government service.
- It is not necessary that you knew during your government service that the matter was actually pending under your official responsibility.

POST-GOVERNMENT RESTRICTIONS FOR SENIOR EMPLOYEES

- 18 U.S.C. § 207(c) – “Senior” Employee Cooling-Off
 - Covers senior employees for one year after departure from the DOI.
 - Broader than the restrictions in 18 U.S.C. § 207(a)(1) and (a)(2).
 - *Note:* Additional restrictions for “very senior” employees in 18 U.S.C. § 207(d).

“SENIOR” EMPLOYEE

Specific positions -
defined in
18 U.S.C. § 207

Threshold - rate of
basic pay is equal to or
greater than 86.5% of
the rate for Level II of
the Exec. Schedule

For 2022 =
\$176,201.00

GS-15 and under -
not “senior”
employees

Elements of 18 U.S.C. § 207(c)

One Year Ban

- (Former) Senior Employee May NOT
 - Knowingly Make
 - Appearance or Communication
 - Intent to Influence
 - To or Before an Employee of Former Agency
- Where Employee Served in Any Capacity One Year Prior to Terminating Senior Service
 - On Behalf of Any Other Person
 - Any Matter*
- On Which Former Employee Seeks Official Action

Ban Commences at the End of Senior Service

*Some appointees to BIA, BLM, BOR, NPS, OSMRE, USFWS, and USGS are only limited from matters involving their respective component. All other appointees are limited from matters involving DOI generally.

EXEMPTIONS TO POST-GOVERNMENT RESTRICTIONS

- Certain activities performed on behalf of the U.S., the District of Columbia, or as an elected official of a State or local government. 18 U.S.C. § 207(j)(1)(A).
- Certain activities performed on behalf of tribal organizations. 18 U.S.C. § 207(j)(1)(B).

EXEMPTIONS TO POST-GOVERNMENT RESTRICTIONS

- Former “senior” or “very senior” employees are not prohibited by 18 U.S.C. § 207(c) or (d), from making a communication or appearance on behalf of an agency or instrumentality of a State or local government, hospital or medical research organization, or accredited, degree-granting institution of higher education, provided the communication or appearance is made in carrying out official duties as an employee.

PRACTICAL TIPS FOR 18 U.S.C. § 207

- DEO has a continuing obligation to provide you with post-government ethics advice even after you leave government service.
- As a practical matter, in order for the DEO to provide specific and tailored guidance on the application of the post-employment restrictions, we rely on you to provide information about the issues, actions, and decisions that you participated in while at the DOI or which were pending under your official responsibility.

PRACTICAL TIPS FOR 18 U.S.C. § 207

- We encourage you to carefully review and identify the issues, actions, and decisions that you participated in while at the DOI or which were pending under your official responsibility while you are in the best position to identify them.
- The DEO may be limited in our ability to conduct searches of records or otherwise confirm the scope of your participation in issues, actions, and decisions after you have terminated government service. As a result, if the needed information is not available, we may only be able to provide broad post-employment guidance.

RESTRICTIONS UNDER THE ETHICS PLEDGE

- Ethics Pledge Paragraph 4: Extends 18 U.S.C. § 207(c) representational restrictions with former agency for a period of 2 years following the end of appointment and expands scope to also prohibit same communications with senior White House Staff.
- Ethics Pledge Paragraph 5: Prohibits Senior and Very Senior Appointees from “materially assist[ing]” others behind the scenes in making communications or appearances they are barred from making directly for one year. (“Shadow Lobbying” Ban)

RESTRICTIONS UNDER THE ETHICS PLEDGE

- Ethics Pledge Paragraph 6:
 - Prohibition on engaging in lobbying activities before any covered executive branch officials or non-career SES appointees.
 - Prohibition on future activity on behalf of a foreign government or foreign political party that would require registration under the Foreign Agents Registration Act of 1938.
 - Both prohibitions apply for the remainder of the term of the Administration or for 2 years following the end of the appointment, whichever is later.

ADDITIONAL CONSIDERATIONS

- 18 U.S.C. § 203 - Bars you from sharing in fees for representational services rendered by another during your Federal Government employment on matters in which the U.S. is a party or has a direct and substantial interest.
- If you enter into a partnership agreement or other arrangement involving equity participation (*i.e.* profit-sharing, bonuses, or other compensation tied to the company's actual profits), you may not receive or accept certain compensation.
- Does not apply to a fixed salary, nor do the prohibitions apply to payments that are fixed or based on your personal job performance, your seniority, or your position.

ADDITIONAL CONSIDERATIONS

- Procurement Integrity Act—
 - If you are participating in a procurement for a contract in excess of the simplified acquisition threshold (\$250,000) and you are contacted by a bidder regarding non-federal employment during the conduct of the procurement you must report the contact to your supervisor and the DAEO in writing; and either reject the offer; or disqualify yourself from the contracting activity. 48 C.F.R. § 3.104-3(c).

ADDITIONAL CONSIDERATIONS

- Procurement Integrity Act–
 - For a period of one (1) year after the applicable “designated date,” you may not accept compensation from a contractor that has been awarded a competitive or sole source contract in excess of \$10 million, if you served or acted as the program manager, procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team. 48 C.F.R. § 3.104-3(d), (f).

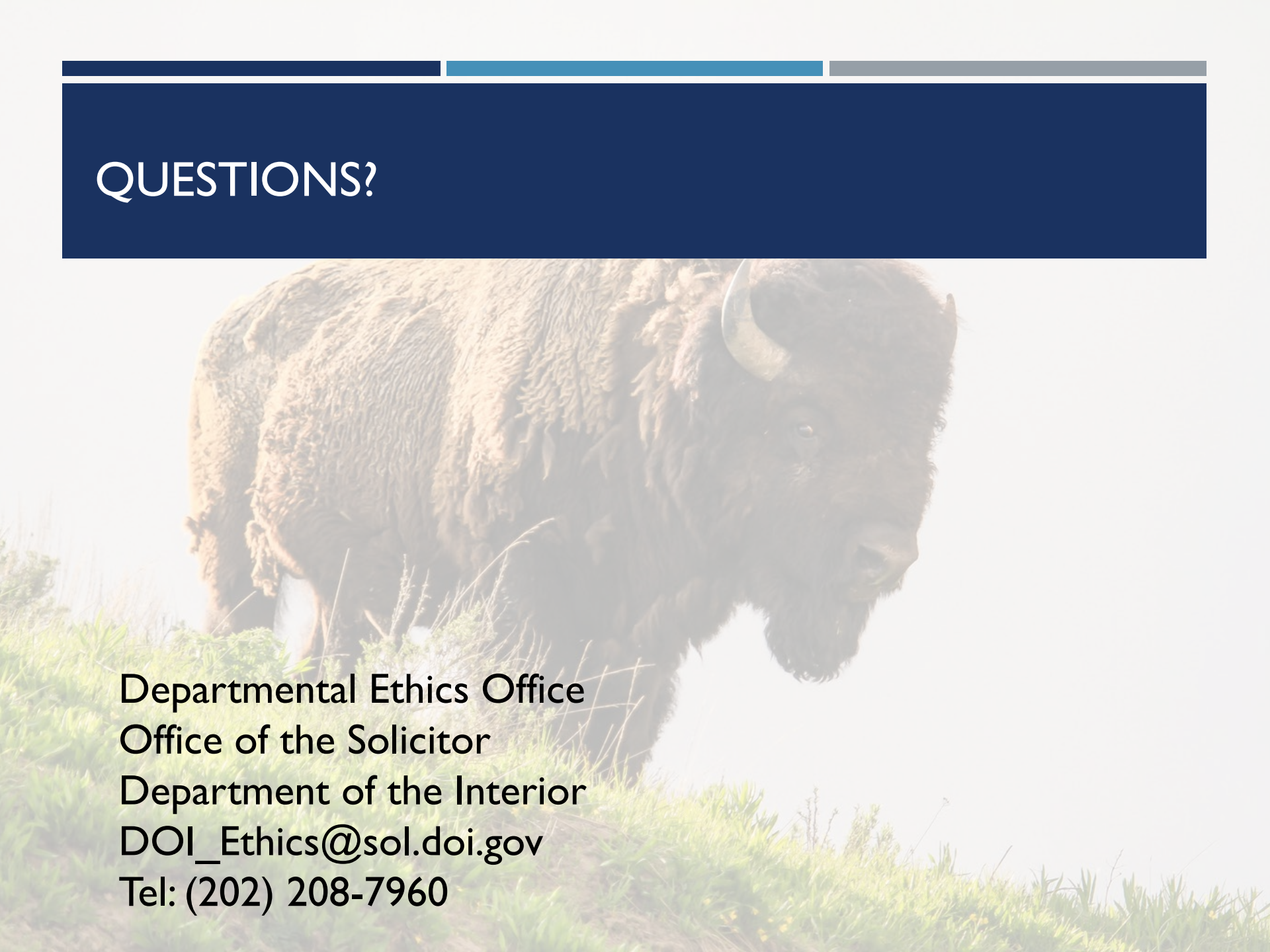
ADDITIONAL CONSIDERATIONS

- Outer Continental Shelf Lands Act (OCSLA) –
 - Applies if you directly/indirectly discharged duties/responsibilities under OCSLA and reached certain pay thresholds in your last year at DOI.
 - Limits “behind-the-scenes” activities on certain particular matters pending under your responsibility in your last year of service that would otherwise be permitted by 18 U.S.C. § 207 for 2 years.
 - Limits certain communications and representations back to the U.S. for 1 year.
- Bar/professional restrictions applicable to attorneys.

ADDITIONAL CONSIDERATIONS

- Non-public information:
 - Even after leaving DOI, you are prohibited from disclosing any classified or confidential information. 18 U.S.C. § 1905; 18 U.S.C. § 798; Executive Order 13526.
 - Consistent with this, you may not use non-public information in any teaching, speaking, and writing, or for any other unauthorized purposes.
 - Non-public information is information that: (1) is exempt from disclosure by statute, Executive order or regulation; (2) is designated as confidential or classified; or (3) has not been disseminated to the general public and is not authorized to be made available to the public upon request. 5 C.F.R. § 2635.703.

QUESTIONS?



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