

From: [Fugh, Justina](#)
To: [Hoffer, Melissa](#)
Subject: Confirmation of post employment conversation
Date: Tuesday, December 27, 2022 4:45:00 PM
Attachments: [LA-22-07.pdf](#)

Hi Melissa,

This note confirms our 12/20/22 conversation about post-employment. You're soon leaving EPA to join the cabinet of the Commonwealth of Massachusetts and have filed a negotiation notification form. You confirmed that you had appropriately recused yourself from participation in any particular matter that affected MA while you negotiating for employment. In our conversation, I advised you about your post-employment obligations under 18 USC 207 and also the Biden Ethics Pledge that you signed.

Biden Ethics Pledge

As a non-career SES appointee, you are a "senior official" for the purposes of two additional lobbying restrictions in [the Biden pledge](#), but I explained that you will benefit from an exception. Here are the rules:

- Paragraph 4: former "senior appointees" cannot represent another back to their former agency for TWO years; and
- Paragraph 5: former "senior appointees" cannot engage in lobbying activities nor materially assist another in lobbying this administration.

But I explained that neither of these additional restrictions will apply to you because, as a state employee, you will be exempt from 18 USC 207(c) pursuant to 5 CFR 2641.301(c)(1)(i). So long as you are not representing MA about a specific party matter that you either worked on personally and substantially or that was pending in OGC during your last year of federal service, you will be able to interact with EPA on behalf of MA on anything else. For your information, I've attached the Office of Government Ethics' recent guidance on the pledge post-employment restrictions.

Permanent Post-Employment Restriction under 18 USC 207(a)(1)

We discussed that you will be bound by the permanent restriction at 18 USC 207(a)(1) that will prohibit you from representing MA or anyone else back to the United States on the same specific party matters that you worked on personally and substantially. To remind, a "specific party matter" is an isolatable transaction between identified parties, such as a lawsuit, license, permit, grant application, or enforcement action. You will not be able to make any appearance or communication with the intent to influence a federal official on those same specific party matters but you may work "behind the scenes." This prohibition is permanent, meaning for your lifetime or the lifetime of the matter itself.

Two Year Post-Employment Restriction under 18 USC 207(a)(2)

As a person in a supervisory position, you will also be bound by this two year cooling off period. For any specific party matter that was pending in OGC during your last year of federal service (12/30/21 to 12/30/22), you cannot represent MA or anyone else back to the United States, even if you did not work on it personally and substantially. You will not be able to make any appearance or

From: [Fugh, Justina](#)
To: [Hoffer, Melissa](#)
Cc: [Payne, James \(Jim\)](#)
Subject: RE: Confidential
Date: Friday, December 16, 2022 1:43:00 PM
Attachments: [Departing EPA for PAS and non-career SES updated June 2022.docx](#)
[Negotiations Notification Form for digital signature.pdf](#)
[LA-22-07_PGE Restrictions under Biden Pledge.pdf](#)

Hi Melissa,

Oh, gosh, congratulations! Now, keep thinking fond thoughts about me because I have to give you a bunch of reminders and ethics tasks:

- Attached is the **negotiations notification form** that you are required to submit within 3 business days of entering negotiations with the new employer. Please fill it out now. The date to put down is the date that you and the new employer had a mutual meeting of the minds about your hire, even if things like job title, salary or start date weren't yet nailed down. The reason you are required to notify us so early is so you will recuse from participation in any particular matter that will affect (in this case) the Commonwealth of Massachusetts as a party or as a member of any affected class.
- I've attached our **chatty guide about post-employment** but we were planning on updating it next month to reflect the pay threshold change and to incorporate additional advice received from the Office of Government Ethics. We haven't done that yet (sigh), so I'm attaching it here for your information. That said, please note that you will be an employee of a state, which means that you will benefit from an exemption from 18 USC 207(c) of the post employment statute that exists for state employees. You will still be subject to other restrictions regarding specific party matters, so we will need to have a conversation.
- In fact, you're required to have a **post-employment discussion** with me or someone on my team before you leave. In addition, you're required to **file a termination 278** that covers CY 2022 up to the date of your departure. I'll assign that to you now. If you can complete it before you leave EPA, then you will still be able to use your EPA PIV card. If, instead, you want to do it after you leave, then I will need to have a personal email address. The due date for this last report will be 1/30/23.

Finally, your question about a quote. Janet already asked me about that last night (though she did not indicate on behalf of whom), and I told her that she may offer an official quote for the gaining organization to use in its own press release.

It's been a pleasure working with you, and we'll be talking more in the near term. After you leave EPA, please remember that you can always contact us with any post-employment question you may have.

Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 | phone 202-564-

1786

Send general ethics questions to ethics@epa.gov and someone will get back to you.

-----Original Message-----

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>

Sent: Friday, December 16, 2022 1:08 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Payne, James (Jim) <payne.james@epa.gov>

Subject: Confidential

Hi Justina,

I will be leaving EPA on December 30 for a job in governor-elect Healey's new administration starting January 5.

Jeff will announce this to OGC Monday, and between now and then it is close hold.

I wanted to let you know so that I can be sure to timely complete any necessary steps and obtain the agency's advice on any recusal issues going forward.

The Commonwealth will announce my appointment Monday and would like a quote from Janet. Please let me know if you have any concerns.

On a personal note, I wanted to let you know how much I appreciate you and your leadership in OGC. Your job is not an easy one and you do it dauntlessly, with great skill and humor. I was always reassured knowing you were there to ensure compliance with our ethical obligations.

Thanks,
Melissa

Sent from my iPhone

From: [Fugh, Justina](#)
To: [Hoffer, Melissa](#)
Cc: [Payne, James \(Jim\)](#)
Subject: RE: Confidential
Date: Friday, December 16, 2022 3:16:00 PM
Attachments: [Negotiations Notification Form for digital signature.pdf](#)

I'm working all next week, so see what works for you:

- MONDAY – free all day
- TUESDAY – Free from noon to 2 pm, also from 3 to 5 pm
- THURSDAY – free from 9 am to 2 pm

But please complete the attached negotiation notification form as soon as you can.

Justina

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From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Friday, December 16, 2022 3:03 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: Re: Confidential

That all sounds good. If you let me know a few times you are available to meet next week, I will set that up. I am out Wednesday 12/21 and will probably work a half day Friday 12/24.

Thanks,
Melissa

Sent from my iPhone

On Dec 16, 2022, at 1:43 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Melissa,

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within 3 business days of entering negotiations with the new employer. Please fill it out now. The date to put down is the date that you and the new employer had a mutual meeting of the minds about your hire, even if things like job title, salary or start date weren't yet nailed down. The reason you are required to notify us so early is so you will recuse from participation in any particular matter that will affect (in this case) the Commonwealth of Massachusetts as a party or as a member of any affected class.

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Sent: Friday, December 16, 2022 1:08 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Payne, James (Jim) <payne.james@epa.gov>

Subject: Confidential

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Thanks,
Melissa

Sent from my iPhone

From: [Fugh, Justina](#)
To: [Hoffer, Melissa](#)
Subject: RE: Please review your termination 278 and sign it if it looks okay to you
Date: Friday, December 30, 2022 2:12:00 PM

Yep, I got it.
All the best to you in your new adventure!
Justina

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From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Friday, December 30, 2022 12:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Please review your termination 278 and sign it if it looks okay to you

Thanks, Justina. Signed and submitted—let me know if you receive it and thanks again.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, December 30, 2022 10:57 AM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Please review your termination 278 and sign it if it looks okay to you

Oh, drat, now I have to think out loud. This report that you're filing now covers only CY 2022. Since you did not **(b) (6)**, you do not have to report anything. Sorry about that. I am working with David Uhlmann about his report since he has to be renominated, so I'm getting my reporting period years confused!

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Friday, December 30, 2022 10:33 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Please review your termination 278 and sign it if it looks okay to you

Thank you—will take a look now. On your first bullet below, did you mean 2022? Recall I **(b) (6)** for part of 2021.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, December 30, 2022 10:19 AM

To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>

Subject: RE: Please review your termination 278 and sign it if it looks okay to you

Hi there,

Here's what I've fixed:

- Because you did not (b) (6), I have deleted those entries entirely. You no longer have to report (b) (6)
- You have to report your new job in Part 3, so I've added that information for you, but please check it over and make any necessary edits
- That (b) (6) had previously been reported on Part 6, but I moved it to Part 2 to make it easier for you to see.
- I removed the (b) (6) from Part 7

One more check, please, and then you can submit.

Hooray!

Justina

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From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>

Sent: Friday, December 30, 2022 9:57 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: Please review your termination 278 and sign it if it looks okay to you

Importance: High

Hi Justina,

Are we all set with this? I can sign this morning as soon as you send it back—thanks.

From: Hoffer, Melissa

Sent: Thursday, December 29, 2022 11:20 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: Please review your termination 278 and sign it if it looks okay to you

Importance: High

Hi Justina,

There is an error in the accounts, I couldn't figure out how to create a new parent, so the information is below. I also corrected the (b) (6).

I do (b) (6)

(b) (6) I made that change, all other values remain the same (interest, etc.)

HOLDINGS

(b) (6)

If you can make these changes in the morning, I can sign while my PIV card is still active. I'd really like to have this off my plate before I turn into a pumpkin!

Thanks again—very much—for your help.

Melissa

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Thursday, December 29, 2022 7:05 PM

To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>

Cc: (b) (6)

Subject: Please review your termination 278 and sign it if it looks okay to you

Hi Melissa,

If you still have access to your EPA equipment and PIV card, then please look at your termination report and see if it looks okay to you. One thing to check is Part 6, line 3 and whether you received any (b) (6). If you no longer have access to your EPA equipment, then let me know, and next week, I'll ask to change the account to your personal email address instead.

Almost done with this annoying chore!

Justina

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