

POST-GOVERNMENT SERVICE EMPLOYMENT RESTRICTIONS

(RULES AFFECTING YOUR NEW JOB AFTER DOD)

For Military Personnel E-1 through O-6 and
Civilian Personnel Paid at or below ES-4, or Equivalent

IMPORTANT NOTICE: This information was prepared to assist Department of Defense (DoD) personnel who receive their ethics support from the DoD Standards of Conduct Office (SOCO) and who are planning to leave Government service. It identifies statutes and regulations that restrict or otherwise affect activities of Government personnel after they leave Government service. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, DoD personnel should contact SOCO at (703) 695-3422 or by e-mail at soco@osdgc.osd.mil to discuss their particular situations. DoD personnel served by other ethics offices should consult with their ethics counselors. Of course, if you want, you may also consult with private counsel.

Advice from ethics counselors with respect to these matters is advisory only, and is provided in accordance with 5 C.F.R. 2635.107 and 41 U.S.C. 423 (Procurement Integrity Act). Ethics counselors are acting on behalf of the United States, and not as your personal representative. There is no attorney-client relationship created by the consultation.

Part 1: Employment Restrictions After Leaving DoD

Personal Lifetime Ban

1.1 **SIMPLIFIED RULE**: After you leave Government service, you may not represent someone else to the Government regarding *particular matters* that you worked on while in Government service.

1.1.1 **RULE**: Former Government officers and employees may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court in connection with a *particular matter* in which the officer or employee *personally and substantially* participated, which involved a *specific party* at the time of the participation and representation, and in which the U.S. is a party or has a direct and substantial interest. (18 U.S.C. 207(a)(1)) (This rule does not apply to former military enlisted personnel.)

1.1.1.1 "Particular Matter" - matters that involve deliberation, decision, or action that is focused on the interests of specific persons or a discrete and identifiable class of persons. These matters may include a contract, claim, application, judicial, or other proceeding, request for a ruling or other determination, controversy, investigation, or charge. A "particular matter" could even include legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable group of parties or organizations, e.g., DoD policy affecting only military aircraft manufacturers. For this statute, particular matters must also involve "specific parties." This means that identifiable parties exist. For example, a procurement may be a "particular matter," but it may not become one involving "specific parties" until the first bid is received.

1.1.1.2 "Personal and substantial" participation - This means that you are directly participating in the matter or that one or more of your subordinates, whom you are directing, is participating. Also, the participation must be of significance to the matter, which may be based on the amount and importance of your effort. One act, such as approving a critical step, may be substantial. Likewise, if you have to review and approve a certain step, and work would stop if you didn't approve, then your participation is substantial, even though it may have seemed like a paperwork exercise to you. On the other hand, an entire series of peripheral acts might not be substantial.

If you merely have knowledge of the matter, routine or superficial involvement, or involvement on a peripheral or administrative issue, you are not "substantially" involved. If you are not involved in the substantive merits, you may not be substantially involved, even though you put a lot of time into the matter. If you are merely responsible for reviewing the matter for compliance with administrative or budgetary considerations, you are also not substantially involved.

1.1.2 This ban remains for the lifetime of the "particular matter."

Official Responsibility 2 Year Ban

1.2 **SIMPLIFIED RULE:** For 2 years after leaving Government service, you may not represent someone else to the Government regarding *particular matters* that you did not work on yourself, but were pending under your responsibility during your last year of Government service.

1.2.1 **RULE:** For a period of 2 years after termination of Government service, former Government officers and employees may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court, in connection with a particular matter which the employee reasonably should have known was actually pending under his or her *official responsibility* within 1 year before the employee left Government service, which involved a specific party at that time, and in which the U.S. is a party or has a direct and substantial interest. (18 U.S.C. 207(a)(2)) (This rule does not apply to former military enlisted personnel.)

1.2.1.1 "Official responsibility" - direct administrative or operating authority to approve, disapprove, or otherwise determine, Government actions. It includes a

supervisor at any level having responsibility for the actions of a subordinate employee who actually participates in a matter.

1.2.2 Although you may have been disqualified from personally acting on a particular matter when you were in Government service, this section of the statute will still apply to you. (Example: Because you owned stock in IBM while in Federal service, you were disqualified from reviewing a particular contract with IBM, which was reviewed by one of your subordinates. Under this statute, because the particular matter was under your responsibility during your last year of service, you are prohibited from representing others regarding that contract.)

Trade or Treaty 1 Year Ban

1.3 **SIMPLIFIED RULE:** For *1 year* after leaving Government service, you may not aid, advise, or represent someone else regarding trade or treaty negotiations that you worked on during your last year of Government service.

1.3.1 **RULE:** For a period of 1 year after leaving Government service, former employees or officers may not knowingly represent, aid, or advise someone else on the basis of *covered information*, concerning any ongoing *trade or treaty negotiation* in which the employee participated personally and substantially in his last year of Government service. (18 U.S.C. 207(b)) (This rule does not apply to former military enlisted personnel.)

1.3.1.1 Trade negotiations are those undertaken pursuant to the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902). Treaties are international agreements that require the advice and consent of the Senate.

1.3.1.2 "Covered information" - agency records accessible to the employee but exempt from disclosure under the Freedom of Information Act.

1.4 **EXCEPTIONS:** There are exceptions to the restrictions of 18 U.S.C. 207, including acts pursuant to official government duties; and aiding, advising, or representing certain international organizations with prior Secretary of State certification. Restrictions under 18 U.S.C. 207(a) do not apply to communications that furnish scientific or technological information with prior, published certification by the Secretary of Defense. There are special rules regarding testimony under oath. Consult SOCO for specific guidance.

Part 2: Compensation Ban on Representation by Others

2.1 **RULE: COMPENSATION FOR REPRESENTATION TO THE GOVERNMENT BY OTHERS:** After you leave Government service, you may not accept compensation for representational services, which were provided by anyone while you were a Government employee, before a Federal agency or court regarding particular matters in which the Government was a party or had a substantial interest. This prohibition may affect personnel who leave the Government and share in the proceeds of the partnership or business for representational services that occurred before the employee terminated Federal service. (Examples: Lobbying, consulting, and law firms). (18 U.S.C. 203). (This rule does not apply to former enlisted military personnel.)

Part 3: Additional Restrictions for Retired Military Personnel and Reservists

3.1 **SIMPLIFIED RULE: FOREIGN EMPLOYMENT:** Unless you receive prior authorization from your Service Secretary, you may forfeit your military pay during the time you perform compensated services for a foreign government.

3.1.1 **RULE:** The U.S. Constitution prohibits retired military personnel and reservists from receiving pay from *foreign governments* without Congressional authorization. In some cases this includes receipt of pay from a U.S. contractor or subcontractor for providing services to a foreign government. In 37 U.S.C. 908, Congress authorizes the Secretary of State and Secretary of the appropriate military department to approve such receipt of pay. Each military service has implementing directives. Retired personnel and reservists who violate this Constitutional proscription may forfeit pay equal in amount to their foreign pay.

3.1.1.1 "Foreign Governments" - include educational and commercial institutions that are owned or controlled by foreign governments, as well as corporations that are owned by foreign governments and have a unity of interest with the government. Corporations that maintain a separate identity and are not mere agents or instrumentalities of the foreign government, even if owned by a foreign government, are not considered to be part of a foreign government.

3.2 **RULE: EMPLOYMENT BY DOD:** To avoid the appearance of favoritism, 5 U.S.C. 3326 prohibits the appointment of retired military personnel to civil service positions (including a nonappropriated fund activities) in any DoD component for 6 months after retirement.

3.2.1 The Secretary concerned may waive this prohibition.

3.2.2 DoD Directive 1402.1 requires the Secretary concerned to conduct intensive external recruitment before granting the waiver.

3.3 **RULES: EMPLOYMENT DURING TERMINAL LEAVE:**

3.3.1 **HOLDING A CIVIL OFFICE IN STATE OR LOCAL GOVERNMENT:** While on active duty (including terminal leave) military *officers* are prohibited by 10 U.S.C. 973(b) from holding a "civil office" with a state or local government.

3.3.2 **CIVILIAN POSITION IN THE U.S. GOVERNMENT:** Military personnel on terminal leave are authorized to accept a civilian position in the U.S. Government and receive the pay and allowances of that position as well as their military pay and allowances. (5 U.S.C. 5534a).

Part 4: Administrative Reminders

4.1 **FINANCIAL DISCLOSURE REPORT:** DoD personnel who have been filing an SF 278, "Public Financial Disclosure Report," (non-career employees and personnel paid at ES 1-4 or equivalent) must file a final report not later than the 30 days after termination. If, within that period, you accept another U.S. Government position subject to the filing requirement, no final report is required. You should give your new ethics official a copy of your last SF 278. If you file more than 30 days late, you are subject to a \$200 late filing fee. In addition, if you knowingly and willfully fail to file this report, we must refer your name to the Attorney General, who may sue you in U.S. District Court and subject you to substantial civil penalties.

4.2 **USE OF NONPUBLIC INFORMATION:** Even though you have left Government service, you still may not use nonpublic information to further your own private interests, or those of another, including your subsequent employer. Nonpublic information includes classified information, source selection data, information protected by the Privacy Act, proprietary information, and other information that has not been made available to the public and is exempt from disclosure.

4.3 **IF YOU ACCEPTED A BUY-OUT:** If you accepted a "buy-out" or separation payment, you have re-employment restrictions. Please contact your personnel office if you are unsure of those measures.

4.4 **QUESTIONS? PLEASE CALL US:** If you have questions, even *after* you leave Government service, please call the DoD Standards of Conduct Office: (703) 695-3422. Fax: (703) 697-1640. E-mail: soco@osdgc.osd.mil. We would much rather talk to you before you take action, than read adverse reports about you (from the IG or in the media) after you have taken the action.

4.5 Thank you for your service to your country.

(This guidance was produced by the DoD General Counsel's Office [Standards of Conduct Office], SOCO@OSDGC.OSD.MIL or (703)695-3422).

H:\html\rules1.wpd
May 2, 2013