

**POST-GOVERNMENT SERVICE EMPLOYMENT RESTRICTIONS
(INCLUDING THE PROCUREMENT INTEGRITY ACT)**

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POST-GOVERNMENT SERVICE EMPLOYMENT RESTRICTIONS (INCLUDING THE PROCUREMENT INTEGRITY ACT)

I. KEY REFERENCES

A. Statutes.

1. 18 U.S.C. § 208, Acts affecting a personal financial interest.
2. 18 U.S.C. § 207, Restrictions on former officers, employers, and elected officials of the executive and legislative branches.
3. Stop Trading on Congressional Knowledge Act (STOCK Act), Public Law 112-105.
4. 5 U.S. Code Chapter 53 Subchapter II Part III Subpart D, Executive Schedule Pay Rates.
5. 5 U.S. Code § 7302, Post-employment notification.
6. 41 U.S.C. §§ 2101-2107 (Formerly known as the Procurement Integrity Act).
7. Section 847 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, Public Law 110-181.
8. Section 1045 of the NDAA for FY 2018, Public Law 115-91.
9. Section 1117 of the NDAA for FY 2022, Public Law 117-81.
10. 37 U.S.C. § 908, Employment of reserves and retired members by foreign governments.
11. 50 U.S.C. § 3073a, Reporting of certain employment activities by former intelligence officers and employees.

B. Regulations.

1. 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
2. 5 C.F.R. Part 2637, Regulations Concerning Post Employment Conflict of Interests. These regulations only apply to employees who left Federal service before 1 January 1991. The Office of Government Ethics, however, continues to rely on them for issuing guidance for employees who left Federal service after 1 January 1991. Regulations providing guidance concerning 18 U.S.C. § 207 to these employees was last published in the 2008 edition of title 5 of the Code of Federal Regulations, revised as of January 1, 2008.

3. 5 C.F.R. Part 2640, Interpretations, Exemptions and Waiver Guidance Concerning 18 U.S.C. § 208 (Acts Affecting a Personal Financial Interest).
4. 5 C.F.R. Part 2641, Post-Employment Conflict of Interest Restrictions.
5. 5 C.F.R. Part 2641, App. B, Designation of Agency Separate Components for Purposes of 18 U.S.C. § 207(c).
6. 5 CFR Part 730, Requirement to Notify Senior Personnel of 18 U.S.C. § 207(c) post-employment restrictions.
7. 48 C.F.R. Chapter 1, Part 3, Federal Acquisition Regulations - Improper Business Practices and Personal Conflicts of Interest.
8. Defense Acquisition Regulations, 48 C.F.R. Chapter 2, Part 203 (Improper Business Practices and Personal Conflicts of Interest).
9. Department of Defense [Joint Ethics Regulation](#) (JER) (May 15, 2024).
10. [DoD Instruction 1000.32](#), "Prohibition of Lobbying Activity by Former Senior Officials" (March 26, 2020).
11. [DoD Instruction 1005.13](#), "Gifts, Decorations, and Employment from Foreign Governments" (January 15, 2025).

C. Miscellaneous:

1. *See* DoD Guidance, employee handouts, and ethics official resources on the DoD SOCO Website, <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Post-Government-Employment-and-Procurement-Integrity/>.
2. Office of Government Ethics (OGE) Legal Advisory PA-26-01 Effect of pay adjustments on Ethics Provisions for Calendar Year 2026. [https://www.oge.gov/web/oge.nsf/0/4EE8F9D0C6580EE485258D4D007A9FB1/\\$FILE/2026%20Calendar%20of%20Important%20Ethics%20Dates%20\(web\).pdf](https://www.oge.gov/web/oge.nsf/0/4EE8F9D0C6580EE485258D4D007A9FB1/$FILE/2026%20Calendar%20of%20Important%20Ethics%20Dates%20(web).pdf)
3. OGE Legal Advisory [LA-24-08: Applying the Senior Employee Post-Government Employment Restrictions to Employees Impacted by the Pay Freeze](#).
4. OGE Legal Advisory [DO-08-020: Final Post-Employment Rule](#).
5. OGE Legal Advisory [08x7: Guidance Concerning the Application of 18 U.S.C. § 207\(a\) and 18 U.S.C. § 207\(c\)](#).
6. OGE Legal Advisory [DO-06-029: "Particular Matter Involving Specific Parties," "Particular Matter," and "Matter"](#).

7. OGE Legal Advisory [05x6: Discussion of Certain Post-Government Employment Restrictions](#) (OGE guidance for determining when a particular matter involving specific parties comes into existence for purposes of 18 U.S.C. § 207(a) in Government procurement programs).
8. OGE Legal Advisory [05x3: Post-Government Employment Restrictions Applied to a Former Senior Employee Now Employed by a Government Contractor](#) (OGE discusses 18 U.S.C. § 207(c), "intent to influence," and the special knowledge exception in 18 U.S.C. § 207(j)(4)).
9. [OGE Legal Advisory 04x11](#). Summary of 18 U.S.C. § 207.
10. [OGE Legal Advisory DO-04-029](#), Seeking Employment.
11. [SOCO Advisory 22-01](#), Guidance Regarding Section 1117 of the NDAA for FY 2022.
12. [National Emergency Extension](#), 81 FR 60579 - Continuation of the National Emergency With Respect to Certain Terrorist Attacks. **Note:** The emergency provision in the statute was abolished in the NDAA for FY 2017 on December 23, 2016. *See*, Public Law 114-328, section 1111, Repeal of certain basis for appointment of a retired member of the Armed Forces to Department of Defense position within 180 days of retirement.

II. INTRODUCTION

- A. **Overview:** Generally, Federal personnel may not participate personally and substantially in a particular matter that, to their knowledge, will have a direct and predictable effect on the financial interests of a person or organization with whom the employee is *negotiating* or has any arrangement concerning prospective employment. *See* 18 U.S.C. § 208; 5 C.F.R. §§ 2635.402 and 2640.103. Even before employment negotiations begin, *seeking* employment raises impartiality concerns that require recusal (disqualification) from matters in which a prospective employer *is a party*. *See* 5 C.F.R. § 2635 Subpart F, and Section 1117 of the FY22 NDAA. Some employees will be required to formally notify their agency of any employment negotiations and agreement. *See*, 5 C.F.R. § 2635.607. Some of these rules apply to enlisted personnel through similar regulations, while other rules do not apply. *See, e.g.* JER §§ 2-101, 5-100, and 5-101, but cf. § 5-201. All *retired* members of the military, and some former military (including non-retirees) and civilian personnel who occupied certain positions in the intelligence community, will nonetheless have limitations on employment with or on behalf of foreign governments. *See, e.g.*, JER § 7-101 and 50 U.S.C. § 3073a. Political appointees may have additional restrictions when a President issues an "ethics pledge" or other ethics policies. Senior DoD officials must certify annually that they are aware of and have not violated the disqualification and employment restrictions that apply to DoD personnel. (*See*, JER § 7-300).
- B. DoD ethics officials must be competent in understanding and explaining when, to whom,

and how the rules related to seeking, negotiating, and post-Government employment apply. Especially for former senior personnel, these rules often interact to create multiple overlapping restrictions that change over time and may depend upon the type of post-Government employment a former senior employee is engaged in. DoD policy requires ethics officials to include these rules in annual ethics training. *See*, JER § 9-304.

- C. Written post-Government employment ethics opinions may be issued only by DoD ethics officials who have been delegated this authority in writing. *See*, JER § 7-103. Advice from a DoD ethics official must be tailored and based upon complete information. *See*, JER § 7-100(c) and § 7-104. A request for a written opinion that does not include specific information regarding the current or former DoD personnel's DoD duties, future employer, position, and duties to be performed is incomplete. *See*, JER § 7-104. Ethics officials cannot issue a meaningful post-Government employment opinion until an individual has at least a tentative offer of employment with a specific position and duties to enable application of the post-Government employment laws to a complete set of facts. However, while the details of a position are being worked out, personnel may provide a "self-certification" statement like the one available on [SOCO's website](#) to indicate whether they have been involved in certain procurement roles or actions.
- D. Many of the post-Government employment laws that apply specifically to DoD personnel have resulted from actual or perceived influence when former DoD personnel go to work in the defense industry. The laws attempt to balance the right of personnel to work, the benefit to the Government of having people knowledgeable about DoD's mission and programs working in the private sector, and the important public interest in preventing undue or improper influence on DoD decision-making. Congress and the media have historically taken an active oversight posture in ensuring compliance with these rules. *See, e.g.*, U.S. Government Accountability Office Report [GAO-21-104311](#), September 9, 2021. DoD ethics officials must be familiar with the regulations and policies regarding the release of ethics documents, including those related to post-Government employment. *See*, SOCO Advisory 20-06.

III. SEEKING AND NEGOTIATING EMPLOYMENT: IMPARTIALITY, FINANCIAL CONFLICTS OF INTEREST, AND NOTICE

- A. Introduction. The obligation of DoD personnel to recuse (disqualify) from matters that could affect a prospective employer begins when the employee starts *seeking* employment and continues through *negotiating* and concluding an arrangement for post-Government employment. DoD ethics officials advising personnel on these rules must be able to explain when a recusal is required and the point at which a violation would be criminal. Providing complete and competent advice requires the ethics official to be fully conversant in the statutory and regulatory definitions. DoD personnel will benefit from being provided with the handouts or other summary materials available on the SOCO website or those authored by the ethics office of their military service or Defense agency.
- B. Seeking Employment.

1. Even before employment negotiations begin, *seeking* employment raises impartiality concerns that require recusal (disqualification) from particular matters in which a prospective employer *is a party*. See, 5 C.F.R. § 2635 Subpart F, and Section 1117 of the FY22 NDAA.
2. An employee begins “seeking employment” if he or she has directly or indirectly:
 - a. Engaged in employment negotiations with any person. “Negotiations” means discussing or communicating with another person, or that person’s agent, with a view toward reaching an agreement for employment. This term is not limited to discussing specific terms and conditions of employment. 5 C.F.R. § 2635.603(b)(1)(i).
 - b. Made an unsolicited communication to any person or that person’s agent about possible employment. 5 C.F.R. § 2635.603(b)(1)(ii).
 - c. Made a response other than an unequivocal rejection to an unsolicited communication from any person or that person’s agent about possible employment. 5 C.F.R. § 2635.603(b)(1)(iii).
3. An employee has not begun “seeking employment” if he or she makes an unsolicited communication for the sole purpose of requesting a job application. 5 C.F.R. § 2635.603(b)(1)(ii).
4. An employee is no longer “seeking employment” under the following circumstances:
 - a. The employee unequivocally rejects the possibility of employment and all discussions have terminated. 5 C.F.R. § 2635.603(b)(2)(i). However, a statement by the employee that merely defers discussions until the foreseeable future does not reject or close employment discussions. 5 C.F.R. § 2635.603(b)(3).
 - b. Two months have passed since the employee has submitted an unsolicited résumé or employment proposal with no response from the prospective employer. 5 C.F.R. § 2635.603(b)(2)(ii).
5. Employee’s Requirement to Recuse.
 - a. Recusal requirement applicable to all Federal employees. The recusal standard in Subpart F of 5 C.F.R. § 2635 prohibits all personnel from participating in a particular matter that could have a “*direct and predicable effect*” on the financial interest of a prospective employer with whom the employee is seeking employment. Recusal is accomplished by not participating in the particular matter.
 - b. Addition requirement applicable to DoD personnel. Section 1117 of the FY22 NDAA (Pub. L. No. 117-81) creates a statutory seeking employment recusal

requirement that applies to DoD personnel in addition to the regulatory seeking employment recusal requirement for all Federal employees discussed above. Comparatively, the recusal standard in Section 1117 more narrowly prohibits DoD personnel from participating in a “*particular matter involving specific parties*” where a prospective employer is or represents a party to the matter. For the purposes of applying Section 1117, use the definition of “seeking employment” referenced above. *See* SOCO Advisory 22-01 for guidance on the application of Section 1117.

c. Documenting a Seeking Employment Recusal.

i. Appropriate oral or written notification of the employee's disqualification should be made to the employee's supervisor and coworkers to ensure that the employee is not involved in a particular matter involving specific parties from which he or she is disqualified and, at the negotiating stage of employment discussions, even matters of general applicability that could affect the financial interests of the prospective employer.

ii. Neither the OGE Government-wide standards at 5 C.F.R. §§ 2635.502(e) and 2635.604, nor Section 1117 of the FY22 NDAA require recusals to be in writing. With the revision of DoD's Supplemental Standards of Conduct Regulation at 5 CFR Part 3601 in 2023 and the publication of the revised JER in May 2024, DoD policy was changed by removing the requirement for a negotiating employment disqualification to be in writing. Nonetheless, where an employee is seeking employment with a company that engages in business with DoD it may be prudent to document the disqualification in writing. Templates are provided on the [SOCO website](#).

iii. Neither the OGE Government-wide standards nor Section 1117 limit an agency ethics official or a supervisor from requiring an employee to file a written recusal statement when the agency ethics official or a supervisor determines it is prudent to create a record of the employee's recusal. *See*, JER 2-200.

d. Withdrawal of Recusal. A recusal may be withdrawn when: (1) the DoD official or the prospective employer have rejected the possibility of employment and all discussions have terminated; or (2) two months have passed after submission of an unsolicited resume and there has been no indication of interest from the prospective employer.

e. Authorization to Participate.

i. When the agency designee determines that the DoD's interest in an employee's participation in a particular matter involving a person with whom the employee is *seeking* employment outweighs concerns about the appearance of impartiality in the matter, the agency designee may authorize the employee to participate. Any authorization should address both the statutory and regulatory provisions discussed below. While an authorization does not have to be issued

in writing, it is a best practice for agency designees and employees to create a written record of the authorization. DoD has defined “agency designee” in Appendix A of the Joint Ethics Regulation. Ethics officials must remind personnel that even if an authorization to participate while *seeking* employment is approved, a separate waiver determination would have to be made when employment discussions move from seeking to *negotiating* employment.

- ii. *Regulatory Authorization.* When an employee is *seeking* employment within the meaning of 5 C.F.R. § 2635.603(b)(1)(ii) or (iii) and is not *negotiating* for employment, the employee may participate in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of any such prospective employer only when the agency designee has authorized in writing the employee's participation in accordance with the standards set forth in 5 C.F.R. § 2635.502(d).
- iii. *Section 1117 Authorization.* When issuing an authorization under Section 1117 of the FY22 NDAA, agency designees should assess the factors set forth in 5 C.F.R. § 2635.502(d) and address both the statutory (Section 1117) and regulatory (5 C.F.R. § 2635.502) provisions in the authorization. *See* SOCO Advisory 22-01.

- 6. Procurement Integrity Considerations. The Procurement Integrity Act discussed below creates additional obligations and restrictions related to seeking and post-Government employment for certain personnel involved in acquisition and contracting.

C. Negotiating Employment.

- 1. Rule: DoD personnel may not participate personally and substantially in a particular matter that, to his or her knowledge, will have a direct and predictable effect on the financial interests of any person or organization with whom he or she *is negotiating or has any arrangement concerning* prospective employment. (18 U.S.C. § 208; 5 C.F.R. § 2635.604).
 - a. Applicability to Active Component and Reserve Component Enlisted and Officers and Title 32 National Guard Members.
 - i. Title 18 U.S.C. § 208 applies to Active and Reserve Component *officers*, and *officers* of the National Guard of the United States pursuant to 18 U.S.C. § 202.
 - ii. DoD has, by policy, applied the conflict of interest and impartiality rules for seeking and negotiating employment to Title 32 National Guard members and enlisted members of the Military Services. *See*, JER § Chapter 2, Section 1 and JER Chapter 5, Section 1.
 - b. Note that when discussions have moved from seeking to negotiating for employment the prohibition becomes broader and includes not just matters in

which a prospective employer is a party, but any particular matter that could have a direct and predictable effect (positive or negative) on the financial interests of the prospective employer or a discrete and identifiable class or group that includes the employer.

2. Key Terms Defined.

- a. Negotiating for employment. The term “negotiating” is interpreted broadly. *United States v. Schaltenbrand*, 930 F.2d 1554 (11th Cir. 1991). Negotiation for employment includes any discussion or communication with another person or such person’s agent with the mutual view of reaching an agreement regarding possible employment. It is not limited to just discussing specific terms and conditions of employment in a specific position. *See*, 5 C.F.R. § 2635.603(b)(1)(i).
- b. Financial Interests. Defined as a potential for gain or loss on interests such as stocks, bonds, leasehold interests, mineral and property rights, deeds of trust, liens, options, or commodity futures. *See*, 5 C.F.R. § 2635.403(c) and 5 C.F.R. § 2640.103(b). The financial interest of a person with whom the employee is negotiating for employment or has an arrangement concerning prospective employment is imputed to the employee. *See*, 5 C.F.R. §§ 2635.402(b)(2)(v) and 601; and 5 C.F.R. § 2640.103(c).
- c. Particular matters include matters that involve deliberation, decision, or action that are focused on the interests of specific persons or a discrete and identifiable class of persons. While the term “particular matter” does not include a broad agency policy, it would include 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. Particular matters may also include a contract, claim, application, judicial or other proceedings, request for ruling or other determination, controversy, investigation, or charge. *See*, 5 C.F.R. § 2635.402(b)(3) and 5 C.F.R. § 2640.103(a)(1). A “particular matter” may be found well before any formal proposal or agency action and can arise even in the context of preliminary, informal discussions *See*, OGE Legal Advisory 06x8.
- d. Participation means to take an action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or purposeful inaction in order to affect the outcome of a matter. *See*, 5 C.F.R. § 2635.402(b)(4). As personnel may participate in particular matters arising in agencies other than their own agency, when discussing potential conflicts of interest, DoD ethics officials should advise personnel to consider any work performed on an interagency detail, joint assignment, or other assignment outside of their own agency or military department.
 - i. Personal participation is direct participation. It also includes the direct and active supervision of the participation of subordinates in a matter. *See*, 5 C.F.R. § 2635.402(b)(4); 5 C.F.R. § 2640.103(a)(2).

- ii. Substantial participation means that the employee’s involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of the particular matter. A single act of approving or coordinating on a critical step may be substantial. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement of an administrative or peripheral issue. *See*, 5 C.F.R. § 2635.402(b)(4); 5 C.F.R. § 2640.103(a)(2).
 - e. Direct and predictable effect requires a close, causal link between any decision or action taken on the matter and any expected effect of the matter on the financial interest. *See*, 5 C.F.R. § 2635.402(b)(1); 5 C.F.R. § 2640.103(a)(3).
 - i. An effect may be direct even though it does not occur immediately. A particular matter that has an effect on the financial interest only because of its effects on the general economy is not a direct effect.
 - ii. There must also be a real, not speculative, possibility that the matter will affect the financial interest, but the size of the gain or loss is not relevant. *Note that the question is whether the matter will have an effect on the prospective employer’s financial interest, not whether the employee’s participation in that matter will have an effect.*
- 3. STOCK Act Notice. The STOCK Act, Pub. L. No. 112-105, §17, 2012, requires Public Financial Disclosure Report (OGE Form 278) filers to file a statement notifying their ethics counselor of any negotiation or agreement for employment or compensation within three business days after commencement of the negotiation or agreement. Notice is required regardless of whether the employer has interests that could be affected by performance or nonperformance of the employee’s duties. A sample STOCK Act notice can be obtained from the post-Government employment section of the [DoD SOCO website](#).
- 4. Recusal / Disqualification Requirement.
 - a. DoD personnel must recuse from participating in official matters that may affect the financial interests of a prospective employer with whom they are *seeking, negotiating, or have an arrangement for* employment. Recusal is accomplished by not participating in the particular matter. Personnel should work with their supervisor to disqualify themselves from any contact or actions affecting the company with whom the employee is negotiating employment or has an arrangement concerning prospective employment. 5 C.F.R. § 2635.402(c); 5 C.F.R. § 2640.103(d).
 - b. Documenting a Recusal.
 - i. **Writing is not required, but may be prudent.** With the revision of DoD’s Supplemental Standards of Conduct Regulation at 5 CFR Part 3601 in 2023

and the publication of the revised JER in May 2024, DoD policy was changed by removing the requirement for a negotiating employment disqualification to be in writing. Nonetheless, where an employee is negotiating employment with a company that engages in business with DoD it may be prudent to document the disqualification in an e-mail, electronic records system, or some other writing.

- ii. **Scope.** Where written notice of recusal for *seeking* employment has been filed and is limited to party matters, once personnel begin *negotiating* employment, ethics officials should advise them to revise the recusal by including particular matters of general applicability that could affect the financial interests of a prospective employer with whom they are *negotiating* employment. See, 5 C.F.R. § 2635, Subpart F.
- c. **Withdrawal of Recusal.** Conflicts of interest are always analyzed in the present tense. If an employee interviews for a position and decides not to work for that company, then he or she is free to later work on matters affecting that company. A recusal may be withdrawn when: (1) the DoD official or the prospective employer have rejected the possibility of employment and all discussions have terminated; or (2) two months have passed after submission of an unsolicited resume and there has been no indication of interest from the prospective employer.

5. Waiver.

- a. Personnel otherwise disqualified by 18 U.S.C. § 208(a) may be allowed to participate personally and substantially in a particular matter on a case-by-case basis after fully disclosing the disqualifying financial interest to the agency and receiving a *written* waiver. See, 18 U.S.C. § 208(b) and 5 C.F.R. § 2640, Subpart C.
- b. A waiver under 18 U.S.C. § 208(b)(1) shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making, such a decision. See, 5 C.F.R. § 2635.402(d)(2)(ii); 5 C.F.R. § 2640.301. **Practice Note:** Since most personnel will derive a substantial portion of their income from their employment, it is rare that a § 208(b)(1) waiver will apply under these circumstances.
- c. Waivers and exemptions for Special Government Employees (SGE) are addressed in 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2640.302. These provisions may be relevant to ethics officials advising SGEs such as members of Federal Advisory Committee Act boards and military reservists who have not been mobilized or activated.
- d. The waiver must be issued prior to the employee taking any action in the matter

or matters. That is, a violation cannot be cured by subsequently issuing a waiver. *See*, 5 C.F.R. § 2640.301(a)(5) and § 2640.302(a)(6).

- e. Consultation requirement. Any waiver of the provisions in 18 U.S.C. §§ 201-209 may only be issued after consulting with the Office of Government Ethics (OGE). Consultation with DoD SOCO is required prior to consulting with OGE. *See*, 5 C.F.R. § 2640.303 and JER § 2-201.
 - f. Drafting considerations. Ethics officials drafting waivers should be mindful of the legal requirements for protecting classified, privileged, or otherwise nonpublic information. OGE's note in 5 C.F.R. § 2640.301(a) discusses the level of detail that a waiver must include: "The disqualifying financial interest, the particular matter or matters to which the waiver applies, and the employee's role in such matters do not need to be described with any particular degree of specificity... The information contained in the waiver, however, should provide a clear understanding of the nature and identity of the disqualifying financial interest, the matters to which the waiver will apply, and the employee's role in such matters." **Practice Note:** Where a waiver is supported by privileged or classified information it may be necessary to include a separate legal opinion or classified annex with appropriate markings.
 - g. Public availability of waivers. A copy of an agency waiver issued pursuant to 18 U.S.C. 208 (b)(1) or (b)(3) shall be made available upon request to the public by the issuing agency in accordance with the procedures are described in 5 CFR § 2634.603. *See*, C.F.R. § 2640.304.
6. Procurement Integrity Considerations. The Procurement Integrity Act discussed below creates additional obligations and restrictions related to negotiating and post-Government employment for certain personnel involved in acquisition and contracting.

IV. POST-GOVERNMENT EMPLOYMENT RESTRICTIONS: ALL FORMER CIVILIAN EMPLOYEES AND MILITARY OFFICERS

A. Overview.

1. Mastering the rules. In addition to having a firm understanding of the criminal conflict of interest laws that apply to all Federal employees who represent others back to the Government after leaving Federal service, DoD ethics officials must comprehend a significant body of law that applies only to former DoD personnel. DoD ethics officials must be competent in understanding and explaining when, to whom, and how these limitations on post-Government employment apply. Complete advice requires, among other considerations, knowing what a person has worked on directly or had responsibility for supervising while in Government service, whether they held certain positions involving procurement, the limitations on foreign employment for retired military and even some former civilian employees, and

whether new employment will begin before leaving Federal service. Especially for former senior personnel, these rules often interact to create multiple overlapping restrictions that change over time. Some former employees may even be prohibited from providing behind the scenes assistance to a new employer for a period of time.

2. Written, tailored opinions.

- a. Written post-Government employment ethics opinions may be issued only by DoD ethics officials who have been delegated this authority in writing. *See*, JER § 7-103. In some cases, a written opinion is required, but DoD ethics officials must provide any DoD personnel with a written opinion upon receipt of a complete request. *See*, JER § 7-102 and § 7-104. Advice from a DoD ethics official must be tailored and based upon complete information. *See*, JER § 7-100(c), and § 7-104.
- b. DoD ethics officials will need to know the type of post-Government employment being considered. Industry and DoD work together to help ensure former DoD personnel comply with post-Government employment rules. *See, e.g.*, Defense Federal Acquisition Regulations (DFARS), 48 C.F.R. § 252.203-7005 and the Government Accountability Office's report on post-Government employment compliance, [GAO-21-104311](#), September 2021. It is permissible and often helpful for DoD ethics officials to speak with a prospective employer's compliance counsel or representative when the nature or scope of the future employment is not clear.
- c. Current and former DoD personnel may request an ethics opinion from the ethics official of the command or organization which they left or are leaving. However, the ethics official responsible for issuing the opinion may need to consult with other ethics officials where, for example, the former DoD personnel was detailed to another organization or agency in their last year of service. Military personnel leaving from a joint duty assignment may consult with an ethics official at either the joint command or their respective Military Service provided the latter have sufficient information to provide complete advice. *See*, JER § 7-100(d).

3. Educating personnel about the rules.

- a. DoD policy requires ethics officials to include post-Government employment rules in annual ethics training and briefings, and senior officials must certify their understanding annually. *See*, JER § 7-101 and § 9-304.
- b. Before, or as part of, appointment to a covered position and when service in a covered position is terminated, agencies must provide written notification to senior officials that they are subject to the post-Government employment conflict-of-interest restrictions in 18 U.S.C. § 207. *See*, 5 C.F.R. § 730.104. Senior officials must annually certify their understanding of the post-Government employment ethics rules. *See*, JER § 7-300. Agency ethics officials may customize the post-government employment handouts on the SOCO website with

their own agency ethics official's name, address and phone number for the agency personnel office to include with personnel actions for appointment to or termination from a senior position.

B. Criminal Conflict of Interest Representational Prohibitions

1. Overview.

- a. The bedrock of post-Government employment restrictions is 18 U.S.C. § 207. The statute is not designed to discourage government employees from moving to and from private positions. Such a “flow of skills” can promote efficiency and communication between the Government and the private sector and is essential to the success of many government programs. However, when former personnel “switch sides” the statute’s restrictions on their ability to communicate with the Government or their former agency on a particular matter helps prevent undue influence that could undermine public confidence in Government programs and operations.
- b. The criminal statute does not restrict personnel from accepting post-Government employment. Rather, 18 U.S.C. § 207 prohibits former personnel from engaging in certain communications and appearances before the federal government on behalf of others, and from working behind the scenes on certain trade or treaty negotiations or working for a foreign government or foreign political party. The length of these restrictions varies from one year for some communications or assistance, to a lifetime restriction on certain matters former personnel participated in personally and substantially.
- c. Some of the restrictions apply to any former Government personnel, regardless of their rate of pay, while other restrictions apply only to former senior officials or personnel who performed certain duties for the Government. Except for 18 U.S.C. § 207(b), which applies to ongoing trade or treaty negotiations former personnel participated in, § 207(f) which applies to former senior personnel assisting foreign governments, and § 207(l) which applies to discreet category of former employees detailed to Federal agencies from industry, the restrictions in 18 U.S.C. § 207 are representational in nature and do not limit behind the scenes work.
- d. For purposes of the criminal conflict of interest rules, “a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.” *See*, 18 U.S.C. § USC 207(g).
- e. The prohibitions in 18 U.S.C. §§ 203, 205, and 207 do not apply to Title 32 National Guard members or to enlisted members of the Military Services. *See* 18 U.S.C. §§ 202(a) and 207(a)(1), and JER § 5-201. However, other post-Government employment restrictions, such as those related to foreign government

employment, may apply to these personnel.

- f. Except for Title 32 National Guard members or enlisted members of the Military Services, personnel on “terminal” or administrative leave must also heed the representation restrictions of 18 U.S.C. §§ 203 and 205, which apply until they are separated from Federal service.
 - g. “Agency ethics officials are required by 28 U.S.C. § 535 to report any information they receive relating to a violation of the criminal code, title 18 of the United States Code.” Good faith reliance on the advice of an agency ethics official is a factor that may be considered by the Department of Justice in the selection of cases for prosecution. *See*, 5 C.F.R. § 2635.107(b). Ethics officials must also be aware of the non-discretionary requirement to report any suspected violation by current and former senior DoD personnel to the DoD Inspector General. *See*, JER § 8-201(d) and DoDI 5505.06, “Investigations of Allegations Against Senior DoD Officials.”
2. Lifetime Representational Restriction:
- a. **Basic prohibition of 18 U.S.C. § 207(a)(1).** No former civilian employee or military officer shall knowingly, with the *intent to influence*, make any *communication to or appearance* before an employee of the United States *on behalf of any other person* in connection with a *particular matter involving a specific party or parties*, in which he *participated personally and substantially* as an employee, and in which *the United States is a party or has a direct and substantial interest*. *See*, 5 C.F.R. § 2641.201(a). Recall that the prohibitions in 18 U.S.C. § 207 do not apply to Title 32 National Guard members or to enlisted members of the Military Services. *See* 18 U.S.C. §§ 202(a) and 207(a)(1), and JER § 5-201.
 - b. This representational restriction is often referred to as a “lifetime ban.” When the term “lifetime” is used, it refers to the lifetime of the particular matter. Advising on how this rule applies to a particular situation requires DoD ethics officials to have a complete understanding of the italicized terms in subparagraph 1 of this section. These terms are defined in 5 C.F.R. § 2641.201. DoD ethics officials will benefit from familiarizing themselves not only with the definitions, but also the interpretative guidance available in OGE’s regulations and various OGE legal advisories. *See, e.g.*, OGE LA-16-08.
 - c. Communication or appearance.
 - i. Communications may be oral or written. It is not necessary that any employee of the United States actually recognize the former employee as the source of the information. *See*, 5 C.F.R. § 2641.201(d)(1).
 - ii. Merely appearing may be enough to violate 18 USC § 207. “Although an appearance also may be accompanied by certain communications, an

appearance need not involve any communication by the former employee.” “Under some circumstances, a former employee's mere physical presence, without any communication by the employee concerning any material issue or otherwise, may constitute an appearance with the intent to influence an employee of the United States.” *See*, 5 CFR § 2641.201(d)(2) & (4).

- iii. While behind the scenes assistance would not violate 18 USC § 207(a), DoD ethics officials advising senior officials must consider the restrictions in Section 1045 of the FY18 NDAA on certain behind the scenes “lobbying activities” and the restrictions on political appointees that may apply when a President has issued an “ethics pledge.”

d. With the intent to influence.

- i. Communication or appearance is made with the intent to influence when the former officer or employee is seeking a Government ruling, benefit, approval, or other discretionary Government action; or where the communication or appearance would affect Government action in a matter which involves an actual or potential dispute or controversy. *See*, 5 C.F.R. § 2641.201(e)(1).
- ii. The Office of Government Ethics has found that certain communications, such as a routine status inquiry or request for publicly available documents, are not made with the intent to influence. *See*, 5 C.F.R. § 2641.201(e)(2). These are fact specific determinations. Even if the communication is largely factual, an intent to influence will be found if it is made in a context that involves an effort to seek discretionary Government action. *See*, 5 C.F.R. § 2641.201(e)(2)(ii).

e. To or before an employee of the United States. Refer to the discussion and examples in 5 C.F.R. § 2641.201(f).

- i. **Public commentary / Speaking before the Department.** Note that under the post-employment regulation, former personnel subject to 18 USC § 207(a)(1) may speak before Federal personnel at a public gathering or conference, seminar, or similar forum on behalf of another when (A) the event is not sponsored or co-sponsored by the former employee’s agency, an independent agency in the Executive, Legislative or Judicial branch, a Federal court, or court-martial; (B) the event is attended by a large number of attendees; and (C) a significant portion of the attendees are not employees of the United States. A former employee may engage in exchanges with any other speaker or with any member of the audience.) *See*, 5 C.F.R. § 2641.201(f)(3)

f. On behalf of any other person. Refer to the discussion and examples in 5 C.F.R. § 2641.201(g). The term excludes the former employee himself or any sole proprietorship owned by the former employee. However, some former DoD personnel may decide to form an LLC and offer, for example, consulting services in their post-Government employment. DoD ethics officials should advise

personnel that an LLC is a separate legal entity and consulting or other communications would be on behalf of the LLC or a client and therefore may be prohibited by the representational restrictions in 18 USC § 207.

- g. Particular matter involving a specific party or parties.
 - i. DoD ethics officials must comprehend the definitional distinctions in the conflict-of-interest laws between a matter, a particular matter, a particular matter involving specific parties, and matters of general applicability. *See*, OGE Legal Advisory DO-06-029 for a comprehensive discussion of these terms. Only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves 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. *See*, 5 C.F.R. § 2641.201(h)(1).
 - ii. For a discussion of when a particular matter begins, see 5 C.F.R. § 2641.201(h)(4). The “lifetime ban” in 18 USC § 207(a)(1) applies to the lifetime *of the particular matter*. To the extent that the particular matter is of limited duration, so is the coverage of the statute. Further, it is important to distinguish among particular matters. The statute does not apply to a broad category of programs when the specific elements may be treated as severable. Ethics officials may need to help former personnel determine whether a particular matter is a new matter or the same particular matter that they worked on while a Federal employee. This issue can arise, for example, when considering individual task orders on a Government contract. The discussion and examples in 5 C.F.R. § 2641.201(h)(5) guide ethics officials and former personnel in making this determination.
- h. Participated personally and substantially.
 - i. Personal participation means direct participation. “An employee can participate in particular matters that are pending other than in his own agency.” *See*, 5 C.F.R. § 2641.201(i)(2).
 - ii. To participate substantially means the participation was of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. *See*, 5 C.F.R. § 2641.201(i)(3).
- i. United States is a party or has a direct and substantial interest. “United States” includes all branches of the Federal Government. The particular matter may be one pending in a non-Federal forum, such as a State court. When it is not clear whether the United States is a party to or has a direct and substantial interest in a particular matter, the “designated agency ethics official (DAEO) for the former employee's agency shall have the primary responsibility for coordinating this

determination.” See, 5 C.F.R. § 2641.201(j)(2)

3. Two-Year Representational Restriction for Matters Under Official Responsibility

- a. **Basic prohibition of 18 U.S.C. § 207(a)(2).** For two years after Government service terminates, no former personnel shall knowingly, *with the intent to influence*, make any communication to or appearance before *an employee of the United States on behalf of any other person* in connection with a particular matter involving a specific party or parties, in which *the United States is a party or has a direct and substantial interest*, and which such person knows or reasonably should know was actually *pending under his official responsibility within the one-year period prior to the termination* of his Government service. 5 C.F.R. § 2641.202.
- b. Advising on how this rule applies to a particular situation requires DoD ethics officials to have a complete understanding of the terms italicized in the paragraph above. These terms are defined in 5 C.F.R. § 2641.201 and explained in the section above on 18 U.S.C. § 207(a)(1).
- c. “Official responsibility” means direct administrative or operating authority to approve, disapprove, or otherwise direct Government action. It may be intermediate or final, and either exercisable alone or with others, and either personally or through subordinates. The term includes supervising a person who actually participates in the matter or who has been assigned to participate in the matter within the scope of his official duties. Authority over only ancillary or non-substantive aspects of a matter, such as budgeting, equal employment, scheduling, or format requirements does not, ordinarily, constitute official responsibility for the matter as a whole. See, 5 C.F.R. § 2641.202(j).

4. Trade or Treaty Negotiations: One-Year Representational and Behind the Scenes Restriction.

- a. Basic prohibition of 18 U.S.C. § 207(b). For one year after leaving Government service, former officers and employees may not, based on information that they had access to and that is exempt from disclosure under the Freedom of Information Act, knowingly *represent, aid or advise* any person regarding ongoing trade or treaty negotiations in which the officer or employee participated personally and substantially during their last year of Government service. See, 5 C.F.R. § 2641.203(a).
 - i. This restriction begins upon separating or retiring from government service and, unlike the restrictions of provisions of 18 U.S.C. § 207(a)(1) or (2) discussed above, prohibits former officers and employees from even providing “behind-the-scenes” assistance on the basis of “covered information” to any person or entity.
 - ii. This restriction applies only if the former official was personally and

substantially involved in ongoing trade or treaty negotiations within the last year of his government service. It is not necessary for the former official to have had contact with foreign parties in order to have participated personally and substantially in a trade or treaty negotiation.

- iii. The treaty negotiations covered by this section are those that result in international agreements that require the advice and consent of the Senate. 18 U.S.C. § 207(b)(2)(B). The trade negotiations covered are those that the President undertakes under section 1102 of the Omnibus Trade and Competitiveness Act of 1988. 18 U.S.C. § 207(b)(2)(A).
 - iv. There are exceptions and waivers that allow a former officer or employee to act on behalf of certain entities or testify under oath. *See*, 5 C.F.R. § 2641.203(b).
5. Information Technology Exchange Program: One-Year Representational and Behind the Scenes Restriction. This restriction applies to a discreet subset of information technology employees assigned to Government agencies from the private sector under the authority of the Information Technology Exchange Program, 5 U.S.C. chapter 37. These former employees are prohibited, for one year, from knowingly representing, or aiding, counseling, or assisting in representing any person in connection with any contract with the agency(ies) to which they were assigned. *See*, 5 C.F.R. § 2641.207
6. Exceptions and Waivers to 18 U.S.C. § 207.
- a. The exceptions and authority to waive certain criminal post-Government employment restrictions are explained in OGE’s regulation at 5 C.F.R. § 2641.301. The regulation includes a helpful chart listing these exceptions and waivers and identifying the section(s) of 18 U.S.C. § 207 excepted or subject to waiver. The regulation also includes a list of miscellaneous statutory authorities that modify the scope of 18 U.S.C. § 207 as it would otherwise apply to former Federal personnel.
 - b. Included among the 10 exceptions and waivers is authority for a former employee to communicate with or appear before the Government when representing the United States or on behalf of an international organization in which the United States participates (for example, the United Nations or NATO). Ethics officials should familiarize themselves with these exceptions and waivers, paying particular attention to the specific criteria and approval processes that may be required.
 - c. The Joint Ethics Regulation establishes the DoD’s policy and procedures for obtaining the necessary authorization under 18 U.S.C. § 207(j)(5) and 5 C.F.R. § 2641.301(e) for exceptions to the restrictions in 18 U.S.C. § 207(a) for communications made solely to furnish “scientific and technological information.” *See*, JER 7-201.
7. Other Post-Government Employment Considerations.

- a. The Procurement Integrity Act discussed later in this chapter creates additional obligations and restrictions related to negotiating and post-Government employment for certain personnel who were involved in acquisition and contracting.
- b. In addition to the criminal restrictions in 18 U.S.C. § 207, all retired members of the military, and certain former military and civilian members of the Federal intelligence community, have additional restrictions under the Constitution's Emoluments Clause and 50 U.S.C. § 3073a, respectively, which are discussed in more detail later in this chapter.
- c. Where a President has issued an "Ethics Pledge" there may be additional post-government employment restrictions on former political appointees. On January 20, 2025, the Biden Ethics Pledge was revoked and a new Pledge has not been issued. *See*, EO 14148, "Initial Rescissions of Harmful Executive Orders and Actions."

V. POST-GOVERNMENT EMPLOYMENT RESTRICTIONS: FORMER SENIOR CIVILIAN EMPLOYEES AND SENIOR OFFICERS

- A. Overview. While still subject to the post-Government employment restrictions discussed above, former senior DoD officials have additional restrictions that apply irrespective of the matters they worked on while serving in the Federal government. These include criminal restrictions as well as post-Government employment rules that, if violated, can still result in administrative actions against the former senior employee or their employer.
 1. Ethics officials advising former senior DoD personnel must be able to explain how these rules often interact to create multiple overlapping restrictions that change over time. DoD ethics officials must understand concepts such as "componenting," which allows some former senior personnel to narrow the definition of "former agency" for purposes of these rules. Ethics officials must also be able to articulate how the representational and behind the scenes restrictions can overlap and how they differ in the scope of activities that are prohibited and the range of exceptions available to consider.
 2. Particularly because some of these restrictions are criminal, and because DoD policy and some laws require DoD ethics officials to memorialize their opinion in writing when requested, DoD ethics officials who have not previously advised a former senior official should consult with their Designated Agency Ethics Official when providing advice. *See*, JER Chapter 7. Ethics officials must also be aware of the non-discretionary requirement to report any suspected violation by current and former senior DoD personnel to the DoD Inspector General. *See*, JER § 8-201(d) and DoDI 5505.06, "Investigations of Allegations Against Senior DoD Officials."
 3. If a former DoD senior official who participated personally and substantially in an acquisition with a value in excess of \$10M will be receiving compensation from a

defense contractor within two years of leaving DoD, the former DoD official is *required* to request a written opinion regarding the applicability of the post-Government employment restrictions to the activities he/she will undertake on behalf of the defense contractor. The DoD official must obtain this written opinion prior to accepting compensation from the contractor. See the discussion below regarding how a former senior official who is subject to the requirements of Section 847 of the FY2008 NDAA must request a written ethics opinion.

B. Former Senior Personnel: One- and Two-Year *Criminal Representational* Restrictions.

1. **One-year restriction for all former *senior* officials.** For a period of one year after leaving a senior position, former *senior officials* may not make any communication or appearance on behalf of any other person, with intent to influence official action, before any officer or employee of *the agency or agencies in which the official served* within one year prior to leaving the senior position, in connection with any matter. *See*, 18 U.S.C. § 207(c). In addition to the other definitions in 18 U.S.C. § 207 discussed above, DoD ethics officials advising former senior officials must understand how to determine if an employee is “senior” within the meaning of this rule and the agency or agencies that the senior official is restricted from contacting.
 - a. **“Senior Position.”** 18 U.S.C. § 207(c) defines “senior position” to include former military personnel who served in the grade of O-7 and above, and former civilian personnel whose rate of basic pay equals or exceeds 86.5 percent of the annual rate of basic pay for level II of the Executive Schedule (EL II) (**\$195,231 in 2025**). *See*, 18 U.S.C. §207(c)(2) and OGE Legal Advisory LA-25-01.
 - i. Noncareer officials can qualify as senior employees based on their rate of basic pay. Currently, the pay rates for certain senior political officials remain frozen at least through March 14, 2025, pursuant to the American Relief Act, 2025. In years prior to 2024, the pay rate cap exceeded the senior employee pay threshold, thus qualifying noncareer officials whose pay was administratively set at the maximum under the pay rate cap as senior employees. Since 2024, however, the pay rate cap has been set below the senior employee pay threshold. As a result, DoD ethics officials should determine the former employee’s actual rate of pay when advising a former noncareer senior official to determine whether they are “senior” for purposes of 18 U.S.C. § 207. *See* OGE LA-24-08 (“Applying the Senior Employee Post-Government Employment Restrictions to Employees Impacted by the Pay Freeze”) and OGE LA-25-01 (“Effect of Pay Adjustments on Ethics Provisions for Calendar Year 2025”).
 - b. **Former agency.**
 - i. For purposes of 18 U.S.C. § 207(c) only, and 5 C.F.R. § 2641.204, the Director of the Office of Government Ethics may designate agency “components” that are distinct and separate from the “parent” agency and from each other. *See*, 5 C.F.R. § 2641.302(a). To date, DoD requested, and OGE approved, designating the 11 DoD departments and agencies listed in Appendix B to 5

C.F.R. Part 2641 as separate components from DoD as a whole for purposes of determining the agency or agencies in which the official served within one year prior to leaving the senior position.

- ii. Former Presidentially appointed, Senate confirmed (PAS) officials are not eligible to benefit from componenting. *See*, 5 C.F.R. § 2641.302(b). That is, the former agency of a former DoD PAS official includes *all of DoD*, (i.e. the Office of the Secretary of Defense (OSD), the Military Departments, and any DoD Agency or organization).
 - iii. All other former DoD senior officials are eligible for componenting. The “former agency” of a non-PAS former DoD senior official is any of the following components in which the official served one year before leaving the senior position: OSD, the Military Departments, DISA, DIA, DLA, NGA, NRO, DTRA, NSA, and DARPA. *See*, Appendix B to 5 C.F.R. Part 2641.
 - iv. Ethics officials advising former senior DoD personnel must be sure to understand all of the designated components to which the personnel was assigned during their last year of service, as it is possible, and not uncommon, for a senior official to be “dual-hatted” or otherwise serving in more than one DoD component at a time. For General and Flag Officers assigned outside of their Military Department during their last year of service, the term agency includes both the component where they were assigned and the officer’s Military Department.
 - v. Ethics officials advising former senior DoD officials must also consider the restrictions in Section 1045 of the FY18 NDAA discussed below. Section 1045 prohibits certain communications with “covered executive branch officials” in DoD, and sometimes even officials in agencies outside of DoD, regardless of the DoD agency in which the former DoD senior official served. That is, former senior officials may not apply “componenting” for purposes of the restrictions under Section 1045.
- c. **Communication With Intent to Influence.** The “cooling off” periods that apply to former senior officials regardless of the matters they participated in or were responsible for help prevent influence and access gained during government service from being used for improper and unfair advantage in subsequent dealings with the DoD.
- i. A former senior official who allows his employer to submit a report attributable to the former official, or who signs a pleading, or who attends (even without participating in) a conference call may be found to have engaged in a communication with the intent to influence. *See*, “*Communications*” *Under 18 U.S.C. § 207*, Department of Justice Office of Legal Counsel memorandum to OGE of January 19, 2001 (<https://www.justice.gov/file/19276/download>).

- ii. Even communications and appearances by former senior employees while they are performing training services under a contract may, depending upon the facts, be made with the intent to influence and a careful factual analysis is required. *See*, [OGE Advisory Opinion 07x12](#), “Training Services and the Intent to Influence under 18 U.S.C. § 207(c)”.
 - iii. *Public commentary permitted.* Former DoD senior officials may address a public gathering or a conference, seminar, or similar forum where the audience includes personnel from their former agency if the event (a) is not sponsored or co-sponsored by the former senior official’s former agency; (b) the event is attended by a large number of people; and (c) a significant portion of the attendees are not employees of the former senior officials’ former agency. The former senior official may engage in exchanges with any other speaker or with any member of the audience. *See*, 5 C.F.R. § 2641.204(g)(4).
2. **Two-year restriction on former *very senior* officials.** 18 U.S.C. § 207(d) prohibits a former DoD “very senior employee”, for two years after serving in that position, from communicating to or appearing before, with the intent to influence, (a) any officer or employee of any DoD department or agency and (b) all employees listed by position on the Executive Schedule in all agencies of the Executive Branch, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former very senior employee seeks official action by any official or employee. *See*, 18 U.S.C. § 207(d)); 5 C.F.R. § 2641.205(a).
- a. The statute defines “very senior” to include “any person who . . . is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level 1 of the Executive Schedule.” 18 U.S.C. § 207(d)(1)(B).
 - i. In the Department of Defense, the prohibition in 18 U.S.C. § 207(d) applies to former Secretaries of Defense, but not the Secretaries of the Military Departments. *See*, 5 U.S.C. § 5312 (Executive Schedule Pay Rates).
 - ii. DoD ethics officials could encounter former employees who were compensated at or above the rate of pay for level 1 of the Executive Schedule. For example, former employees who were Highly Qualified Experts or appointed under the Intergovernmental Personnel Act (IPA). The Department of Justice has determined that 18 U.S.C. § 207(d) only applies if such former employees received a rate of basic pay of *exactly* the amount of level 1 of the Executive Schedule. The two-year cooling off period in 18 U.S.C. § 207(d) would not apply to former IPAs, HQEs or other employees who were compensated below or above this amount. *See*, SOCO Advisory 24-01, “Determining Whether and Employee is “Very Senior” for Purposes of 18 U.S.C. §207(d)(1)(B),” April 2, 2024; and “*Who Qualifies as a “Very Senior” Employee Under 18 U.S.C. § 207(d)(1)(B),*” Department of Justice Office of Legal Counsel memorandum for the Department of Health and Human Services, January 19, 2017 (<https://www.justice.gov/olc/file/1078066/download>).

- b. The two-year period is measured from the date when the employee ceases to serve in a very senior employee position, not from the termination of Government service, unless the two events occur simultaneously. *See*, 18 U.S.C. § 207(d)); 5 C.F.R. § 2641.205(c).
 - c. Prohibited communications include those made to all employees listed by position on the Executive Schedule in all agencies of the Executive Branch (that is, a communication made to an official described in 5 U.S.C. §§ 5312-5316). Such communications can include communication to a subordinate of such official with the intent that the information be conveyed directly to the official and attributed to the former very senior employee. *See*, 5 C.F.R. § 2641.205(g).
 - d. The Department of Justice has noted that the “prohibition in section 207(d) is broader than the so-called “cooling off” prohibition in... section 207(c), which applies to “senior” employees. Section 207(c) bars communications only with individuals in the senior employee’s former agency and applies only for one year following the employee’s departure... Moreover, section 207(c)(2)(C) allows the Director of OGE to waive the prohibition for some classes of senior employees if he makes particular findings, and section 207(h) allows [the OGE Director] to narrow section 207(c)’s scope in another respect... Section 207(d), on the other hand, is not subject to waiver or narrowing.” *See*, “*Who Qualifies as a “Very Senior” Employee Under 18 U.S.C. § 207(d)(1)(B)*,” Department of Justice Office of Legal Counsel memorandum for the Department of Health and Human Services, January 19, 2017 (<https://www.justice.gov/olc/file/1078066/download>).
3. **One-year restriction for former *senior* officials representing or aiding foreign entities.**
- a. For one year after leaving Federal service, former senior military and civilian personnel may not 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. *See*, 18 U.S.C. § 207(f) and 5 C.F.R. § 2641.206(a). Unlike other restrictions in the statute, 18 U.S.C. § 207(f) prohibits not only communications or appearances by a former senior official, but even behind the scenes assistance to a foreign entity. The term “foreign entity” as defined in 18 U.S.C. § 207(f)(3) does not, on its face, include foreign commercial corporations. However, as with the Constitution’s Emoluments Clause restrictions discussed below, prospective employment with a foreign corporation controlled by or exercising the functions of a foreign sovereign may warrant further inquiry.
 - b. The reach of section 207(f) is broader than other provisions in section 207 in that 207(f) even prohibits former senior officials from making representational contacts with Members of Congress. *See*, OGE Legal Advisory DO-04-031 of October 5, 2004, which includes the Department of Justice Office of Legal

Counsel's "Memorandum of Renée Lettow Lerner, Deputy Assistant Attorney General, for Marilyn L. Glynn, Acting Director, Office of Government Ethics," June 22, 2004.

- c. In addition to these criminal restrictions on foreign employment by former senior personnel, all retired members of the military, and certain former military and civilian members of the Federal intelligence community, have additional restrictions under the Constitution's Emoluments Clause and 50 U.S.C. § 3073a, respectively, which are discussed in more detail later in this chapter.

C. Exceptions and Waivers to 18 U.S.C. § 207(c), (d), & (f).

1. As discussed above, OGE's regulation at 5 C.F.R. § 2641.301 describes exceptions and authority to waive certain criminal post-Government employment restrictions. These exceptions and waivers may allow a former senior official to, for example, communicate with or appear before their former agency on behalf of a state or local government, a hospital, or an accredited university; or to make uncompensated statements based upon their own special knowledge. *See*, 5 C.F.R. § 2641.301(c) and (d).
2. Some of the exceptions and waivers are applicable to any of the prohibitions of 18 U.S.C. § 207, whereas as others are more limited. Compare, for example, the scope of 5 C.F.R. § 2641.301(a) or (b) with § 2641.301(c) or (f). It is especially important to note, then, that not all of the exceptions and waivers available for former senior officials remove the restrictions that would apply under 18 U.S.C. § 207(a) if the former senior official participated personally and substantially in, or had responsibility for, a particular matter. For example, communicating or appearing on behalf of a university on a matter the former senior official participated in would not be excepted, whereas the exception for furnishing scientific and technical information includes not only communications or appearances covered by 18 U.S.C. § 207(a), but also those covered by § 207(c) and § 207(d). *See, e.g.*, 5 C.F.R. § 2641.301(c) and (e).
3. The Joint Ethics Regulation establishes the DoD's policy and procedures for obtaining the necessary authorization under 18 U.S.C. § 207(j)(5) and 5 C.F.R. § 2641.301(e) for exceptions to the restrictions in 18 U.S.C. § 207(a), (c) and (d) for communications made solely to furnish "scientific and technological information." *See*, JER 7-201.

D. Other Post-Government Employment Considerations.

1. Section 1045 of the National Defense Authorization Act of 2018 discussed below imposes both representational and behind the scenes restrictions that DoD ethics officials must consider when advising current and former senior DoD personnel.
2. The Procurement Integrity Act discussed later in this chapter creates additional obligations and restrictions related to negotiating and post-Government employment

for certain personnel who were involved in acquisition and contracting.

3. In addition to the criminal restrictions in 18 U.S.C. § 207, all retired members of the military, and certain former military and civilian members of the Federal intelligence community, have additional restrictions under the Constitution’s Emoluments Clause and 50 U.S.C. § 3073a, respectively, which are discussed in more detail later in this chapter.
4. Where a President has issued an “Ethics Pledge” there may be additional post-government employment restrictions on political appointees. On January 20, 2025, the Biden Ethics Pledge was revoked and new Pledge has not been issued. See, EO 14148, Initial Rescissions of Harmful Executive Orders and Actions.

VI. REPRESENTATIONAL AND LOBBYING RESTRICTIONS ON FORMER SENIOR DOD OFFICIALS: SECTION 1045 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2018

A. Overview.

1. *Section 1045 of the fiscal year 2018 NDAA created a confusing patchwork of DOD-specific restrictions for “covered individuals” who are former DOD officers in the grade of O–7 and above, or an equivalent civilian level. The applicability of the restrictions depends upon the subject and nature of the proposed contact; the appointment status of the person to whom the contact is directed; and the agency within which the intended recipient works. By contrast, 18 U.S.C. § 207 bars communication with all Federal personnel in the former senior official’s prior agency without regard to the appointment status of the person to whom the contact is directed.*

Former DoD General Counsel,
Statement to the Senate Armed Services
Committee, Subcommittee on Personnel, April 26,
2023, <https://www.congress.gov/event/118th-congress/senate-event/LC74337/text> at pp 57-58.

2. DoD Ethics Officials advising former senior DoD personnel must understand and be able to explain how Section 1045 of the FY18 NDAA differs in application from the bright line representational restrictions of 18 U.S.C. § 207(c). Whereas 18 U.S.C. § 207(c) bars communication with, or appearance before, *any* DoD personnel in the former senior DoD official’s former DoD agency without regard to that person’s appointment status, Section 1045 only bars communications with certain “covered executive branch officials.” Importantly, unlike 18 U.S.C. § 207(c), Section 1045 prohibits former senior DoD officials from even some behind the scenes work related to “lobbying activities” with “covered executive branch officials outside of DoD” pertaining to “a matter with respect to DoD.”

- B. **Simplified Rule:** This legislation prohibits former senior civilian employees and general or flag officers participating in *lobbying activities with respect to DoD*.

C. Rule: Section 1045 restricts *lobbying activities with respect to DoD* by certain senior civilian officials and officers. Departing flag and general officers and senior civilian equivalents are prohibited from lobbying *covered executive branch officials in DoD* or *covered executive branch officials* outside of DoD pertaining to *a matter with respect to the DoD* for a one or two-year period after departure, depending on seniority.

D. Duration:

1. **Military officers in grades O-7 and O-8 and senior civilian equivalents** are subject to this prohibition for 1 year after their retirement or separation date in that grade.
2. **Military officers in grades O-9 and O-10 and very senior civilian equivalents** are subject to this prohibition for 2 years after their retirement or separation date in that grade.

E. Definitions (For a complete list of terms, see the Glossary in DoD Instruction 1000.32):

1. *Senior civilian equivalents*: Career and non-career SES and Defense Intelligence SES at Tiers one and two.
2. *Very senior civilian equivalents*: Career and non-career SES and Defense Intelligence SES at Tier three and above and all Presidential Appointees confirmed by the Senate (PAS).
3. *Lobbying activities with respect to the DoD*: Lobbying contacts and other lobbying activities with *covered executive branch officials* outside of the DoD pertaining to *a matter with respect to the DoD*. Some behind-the-scenes assistance is prohibited.
4. Lobbying contacts with *covered executive branch officials in the DoD*: These lobbying contacts include “communications” which is much broader than mere “lobbying”. The definition includes any oral or written communication (including an electronic communication) to a covered executive branch official that is made on behalf of a client with regard to the formulation, modification, adoption, administration, or execution of *any other program, policy, or position of the U.S. Government*, as well as the nomination or confirmation of a person for a position subject to confirmation by the Senate. Behind-the-scenes assistance is not prohibited.
5. *Covered executive branch officials*: the President, Vice President, any officer or employee in the Executive Office of the President; PAS officials; military officers on active duty in the grade of O-7 and above; any non-career official serving in a confidential or policy making position, (e.g., non-career SES or Schedule C appointee). **DoD ethics officials should note that career members of the Senior Executive Service (SES) are not covered executive branch officials for purposes of applying the restrictions in Section 1045.**

6. *Covered executive branch officials in DoD*: Has the same meaning as *covered executive branch officials*, but does not include the President, Vice President, or any officer or employee in the Executive Office of the President.
 7. *A matter with respect to the DoD*: A matter in which the DoD is an identifiable party, such as contract or litigation proceedings. A matter is not considered to be with respect to the DoD simply because the DoD may benefit from or be affected in some way by the matter.
- F. No Separate Components. Unlike 18 U.S.C. § 207(c), Section 1045 does not include authority to divide the DoD into separate components. Section 1045 restricts lobbying contacts with a covered executive branch official in *any* agency or organization of the DoD.
- G. Exceptions and Waivers to Section 1045 of the FY18 NDAA. There are two sources of exceptions to Section 1045. First, all exceptions available pursuant to Section 207 of Title 18, U.S.C. apply in the same manner to communications covered by Section 1045. Second, Section 1045 uses the definition of lobbying contact in the Lobbying Disclosure Act, which excludes a number of types of communications. *See*, DoD Instruction 1000.32, “Prohibition of Lobbying Activity by Former Senior Officials,” at p. 7. However, unlike 18 U.S.C. § 207, Section 1045 does not grant any authority to waive restrictions in the absence of an applicable exception.
- H. For a more detailed explanation of this post-government employment restriction, see DoD Instruction 1000.32, “Prohibition of Lobbying Activity by Former Senior Officials.” <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100032p.PDF?ver=2020-03-26-142804-367>. At the direction of Congress, DoD commissioned a study of the impact DoD-specific ethics restrictions may have on recruiting and retention. This report provides background on the purpose of Section 1045 and the way it operates in relation to other post-Government employment laws that apply to former DoD personnel. *See*, Institute for Defense Analyses, “Effect of Certain Ethics Requirements on DoD Hiring, Retention, and Operations,” April 2024, pp. 30-45. <https://www.ida.org/research-and-publications/publications/all/e/ef/effects-of-certain-ethics-requirements-on-dod-hiring-retention-and-operations>

VII. RESTRICTIONS UNDER A PRESIDENTIAL ETHICS PLEDGE

- A. Where a President has issued an “Ethics Pledge” there may be additional post-government employment restrictions on former political appointees. These restrictions may include not only representational restrictions, but even behind the scenes “lobbying activities.” On January 20, 2025, the Biden Ethics Pledge was revoked and a new Pledge has not been issued. *See*, EO 14148, Initial Rescissions of Harmful Executive Orders and Actions.
- B. For a historical overview of the various Presidential ethics pledges since 1993, including a comparison of their various restrictions, see Congressional Research Service Report R44974 of April 28, 2025 (“Ethics Pledges and Other Executive Branch Appointee

Restrictions Since 1993: Historical Perspective, Current Practices, and Options for Change”). OGE has also published comparisons of some of these ethics pledges.

VIII. PROCUREMENT INTEGRITY CONSIDERATIONS IN SEEKING AND POST-GOVERNMENT EMPLOYMENT

A. Overview and Background.

1. In light of the substantial resources that Congress has entrusted to the DoD it is not surprising that DoD personnel involved in procurement have additional obligations in seeking and post-Government employment. The Procurement Integrity Act places additional notice and disqualification requirements on personnel seeking employment and some officials are even prevented from engaging in certain employment for a period of time after leaving DoD. All DoD personnel are obligated to protect procurement information.
2. On January 4, 2011, the Procurement Integrity Act (PIA) was codified for the first time at 41 U.S.C. § 2101-2107 without making any changes to the law.
 - a. The codified statute does not have a name but will be referred to in this deskbook as “the Procurement Integrity Act.”
 - b. Prior to January 4, 2011, Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) was commonly referred to as the Procurement Integrity Act. That 1988 act was passed in response to an investigation into fraud in the defense contracting industry known as "Operation Ill Wind" and “was substantially amended in 1996, when the President signed Pub. L. No. 104-106.” See, Department of Justice Criminal Resource Manual at Section 928, <https://www.justice.gov/archives/jm/criminal-resource-manual-928-procurement-integrity-act>, and Pub. L. No. 104-106, §§ 4001-4402, 110 Stat. 186, 659-665 (1996). Although the act created new requirements, it removed a requirement that former Department of Defense (DOD) personnel report employment with major defense contractors, which DoD had implemented through DD Form 1787. See, 10 U.S.C. 2397, Repealed. Pub. L. No. 104-106, div. D, title XLIII, §4304(b)(1), Feb. 10, 1996, 110 Stat. 664. See also, GAO Report, “Extent of Compliance With DOD's Requirement to Report Defense-Related Employment,” NSIAD-85-98, June 10, 1985. Congress had previously, in 1994, repealed restrictions on retired pay for former military officers engaged in contracting with the DoD. See, 37 U.S.C. § 801, Repealed. Pub. L. No. 103-355, title VI, §6001(a)(1), Oct. 13, 1994, 108 Stat. 3362)
3. The basic statutory and related prohibitions, restrictions, and requirements are set forth in the Federal Acquisition Regulation, FAR 3.104. This includes prohibitions on *any* personnel, other than as provided by law, from disclosing and obtaining bid and source selection information prior to the award of a contract; the requirement for personnel participating in a Federal procurement in excess the simplified acquisition threshold (currently \$250,000) to report being contacted by an offeror about

employment; and the restriction on certain former procurement officials accepting employment or other compensation from a prime contractor that has been awarded a competitive or sole source contract in excess of \$10 million. *See*, FAR 3.104-3.

B. Procurement Integrity Restrictions and Obligations While Seeking Employment.

1. **Mandatory Reporting of Non-Federal Employment Contacts.** 41 U.S.C. § 2103(a). Any DoD personnel participating *personally and substantially* in a procurement for a contract in excess of the simplified acquisition threshold (\$250,000) must report, in writing, any employment contacts with bidders or offerors. *See*, 41 U.S.C. § 2103(a) and FAR 3.104-3(c).
 - a. Reporting may be required even if the contact is through an agent or intermediary. *See*, 41 U.S.C. § 2103(a), FAR 3.104-3(c), FAR 3.104-5(a).
 - b. The report must be in writing to both the official's supervisor and to Designated Agency Ethics Official or designee. *See*, 41 U.S.C. § 2103(a), FAR 3.104-3(c).
 - i. *Agency ethics official* means the designated agency ethics official described in 5 CFR § 2638.201 or other designated person, including deputy ethics officials described in 5 CFR § 2638.204 to whom authority to issue ethics advisory opinions has been delegated, and alternate designated agency ethics officials described in 5 CFR § 2638.202(b). *See*, FAR 3.104-1.
 - ii. "Agencies must retain reports of employment contacts for 2 years from the date the report was submitted." FAR 3.104-3(c)(3).
2. **Permissible Responses to an Offer of Employment.** DoD personnel subject to 41 U.S.C. § 2103(a) may respond to an offer of employment from bidders or offerors by either:
 - a. Promptly rejecting employment. *See*, 41 U.S.C. § 2103(a)(2) and FAR 3.104-3(c); or
 - b. Disqualifying themselves from the procurement until authorized to resume participation in accordance with 18 U.S.C. § 208. *See*, *Id.*
 - i. Personnel who disqualify themselves must submit a disqualification notice to the head of the contracting activity (HCA) or designee, with copies to the contracting officer, source selection authority, and immediate supervisor. FAR 3.104-5(b).
 - ii. An official must remain disqualified unless and until such time as the HCA, in consultation with the agency ethics official, authorizes the official to resume participation in the procurement. Note, however, that 18 U.S.C. § 208 requires employee disqualification from participation in a particular matter if the

employee has certain financial interests in addition to those which arise from employment contacts. *See*, FAR 3.104-5(c). DoD personnel who do not reject employment must also consider the recusal requirements under Section 1117 of the FY22 NDAA and 5 C.F.R. § 2635.502.

3. **Definitions.** *See*, FAR 3.104-1.

- a. *Participating personally* means participating directly and includes the direct and active supervision of a subordinate's participation in the matter.
- b. *Participating substantially* means that an official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome.
- c. *Personal and substantial* participation is active and significant involvement in *any* of the following activities directly related to the procurement:
 - Drafting, reviewing, or approving the specification or statement of work;
 - Preparing or developing the solicitation;
 - Evaluating bids or proposals;
 - Selecting a source;
 - Negotiating price or terms and conditions of the contract; or
 - Reviewing and approving the contract award.
- i. Participation solely in the following activities is *not personal and substantial* participation:
 - Agency-level boards, panels, or advisory committees that review program milestones or evaluate and recommend alternate technologies or approaches for broad agency-level missions or objectives;
 - General, technical, engineering, or scientific effort with broad application not directly associated with a particular procurement, although such effort may be subsequently incorporated into a particular procurement;
 - Clerical functions supporting the conduct of a particular procurement;
 - OMB Circular A-76 management studies, preparation of in-house cost estimates, preparation of most efficient organization" analyses, and furnishing data or technical support be used by others in developing performance standards, statements of work, or specifications; and
 - Reviews conducted solely to determine compliance with regulatory, administrative, or budgetary procedures.
- d. *Seeking employment* includes making an unsolicited communication regarding potential future employment, engaging in negotiations for employment, or responding to an unsolicited communication regarding possible employment other

than an immediate and clear rejection. Seeking employment does *not* include requesting a job application, but does include forwarding a resume. For a period of two months after sending a resume, an official is considered to be seeking employment unless the official or the company rejects the possibility of employment prior to that time. *See*, FAR 3.104-3(c)(2) and 5 CFR § 2635.603(b).

4. Penalties.

- a. Both officials and bidders or offerors who engage in prohibited employment contacts are subject to criminal and civil penalties and administrative actions. FAR 3.104-8
 - i. An official who refuses to cease employment discussions is subject to administrative actions in accordance with 5 C.F.R. § 2635.604(d) (annual leave, leave without pay, or other appropriate administrative action) if the disqualification interferes substantially with the official's ability to perform his or her assigned duties. FAR 3.104-8(c). *See*, Smith v. Dep't of Interior, 6 M.S.P.R. 84 (1981) (employee who violated conflict of interest regulations by acting in official capacity in matters affecting his financial interests is subject to removal).
- b. Conduct that complies with the PIA may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. DoD procurement personnel must consider their obligations *under* both 18 U.S.C. § 208 and the PIA. *See*, FAR 3.104-3(c)(4).

C. Procurement Integrity Post-Government Employment Restrictions.

1. **One-year restriction on Accepting compensation from a DoD contractor.**

- a. Rule: For one year after the designated date applicable to their former position or role, personnel who served in certain procurement positions or roles *may not* accept *compensation* from a contractor (prime contractor) that has been awarded a competitive or sole source contract in excess of \$10 million. *See*, 41 U.S. Code § 2104 and FAR 3.104-3(d).
- b. Former Officials Subject to the Compensation Ban. The one-year ban applies to personnel in any of the positions or roles listed below.
 - i. Personnel who served in any of the following seven positions on a contract in excess of \$10 million:
 - Procuring Contracting Officer (PCO);
 - Source Selection Authority (SSA);
 - Members of the Source Selection Evaluation Board (SSEB);
 - Chief of a financial or technical evaluation team;

- Program Manager;
 - Deputy Program Manager; and
 - Administrative Contracting Officer (ACO).
- ii. Personnel who personally made any of the following seven types of decisions:
- The decision to award a contract in excess of \$10 million;
 - The decision to award a subcontract in excess of \$10 million;
 - The decision to award a modification of a contract or subcontract in excess of \$10 million;
 - The decision to award a task order or delivery order in excess of \$10 million;
 - The decision to establish overhead or other rates valued in excess of \$10 million;
 - The decision to approve issuing a payment or payments in excess of \$10 million; and
 - The decision to pay or settle a claim in excess of \$10 million.
- c. Designated Start Date Applicable to Former Position or Role. See, FAR 3.104-3(d)(2).
- i. Procuring contracting officer, source selection authority, member of source selection evaluation board, or chief of financial or technical evaluation team:
- If the official served in one of the positions listed above on the date the contractor was selected, but not on the date of award of the contract, then the date the contractor was selected is the designated date.
 - If the official served in one of the positions listed above on the date of award of the contract, then the date of award is the designated date.
- ii. Program Managers, Deputy Program Managers, and Administrative Contracting Officers:
- The designated date is the last date of service in the position.
- iii. Officials who personally made any of the following decisions, the designated date is the date of decision:
- Award contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess of \$10,000,000.
 - Establish overhead or other rates valued in excess of \$10,000,000.
 - Approve issuance of a contract payment in excess of \$10,000,000.
 - Pay or settle a claim in excess of \$10,000,000.
- d. “Compensation” means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Indirect compensation is compensation paid to another entity

specifically for services rendered by the individual. FAR 3.104-1.

- e. In “excess of \$10 million” means:
 - (1) The value or estimated value of the contract, at the time of award, including options;
 - (2) The total estimated value of all orders under an indefinite-delivery, indefinite-quantity, or a requirements contract;
 - (3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;
 - (4) The value of a delivery order, task order, or order under a Basic Ordering Agreement;
 - (5) The amount paid, or to be paid, in a settlement of a claim; or
 - (6) The estimated monetary value of negotiated overhead or other rates when applied to the government portion of the applicable allocation base. *See*, FAR 3.104-3.
- f. The one-year ban on compensation does not prohibit an employee from working for any division or affiliate that does not produce the same or similar product or services as the entity of the contractor that is responsible for a contract in excess of \$10 million. *See*, 41 U.S. Code § 2104(b) and FAR 3.104-3(d)(3).

2. Requirement to Request a Written Ethics Opinion.

- a. Overview. Whereas the Procurement Integrity Act and Federal Acquisition Regulations provide for a written ethics opinion *if requested*, Section 847 of the FY08 NDAA, implemented through the Joint Ethics Regulation, *requires* a written ethics opinion for certain former DoD personnel who worked on procurements in excess of \$10M.
- b. Procurement Integrity Act General Rule. “An official or former official of a Federal agency who does not know whether he or she is or would be precluded by 41 U.S.C. § 2104 (*see*, (d)) from accepting compensation from a particular contractor *may* request advice from the appropriate agency ethics official before accepting such compensation.” *See*, FAR 3.104-6 (emphasis added).
 - i. The request for an advisory opinion must be in writing, signed and dated.
 - ii. The official or former official requesting the opinion must include all relevant information reasonably available to them about their involvement in the procurement and employment with the contractor involved in the procurement.

- c. DoD Rule (Section 847 of the FY08 NDAA, Pub. L. No. 110-181). Current and former DoD PAS officials, military officers in the grade of O-7 and above, career members of the SES, non-career members of the SES, Schedule C employees, and officials subject to the restrictions of § 2104 of the Procurement Integrity Act (41 U.S.C. § 2104) must request a written ethics opinion if:
 - (a) Within two years of leaving DoD service, the individual expects to receive compensation from a defense contractor; *and*
 - (b) Within the two-year period prior to their departure from DoD, the individual participated “personally” and “substantially” (as those terms are defined in 5 C.F.R. § 2641.201(i)) in an acquisition in excess of \$10M. *See*, JER 7-102 and Defense Federal Acquisition Regulations (DFARS) 203.171-3.

Personnel to whom the requirement for requesting a written opinion applies must submit the request in the AGEAR system, as discussed below.

- d. Complete Information Required. Ethics officials cannot issue a meaningful post-government employment opinion until an individual has at least a tentative offer of employment with a specific position and duties to enable application of the post-employment laws to a complete set of facts.
 - i. *DD Form 2945*. Except for personnel required to submit a request using the “After Government Employment Advice Repository” (AGEAR) system discussed below, DoD personnel must include a DD Form 2945 with their request for a written post-Government employment opinion. *See*, JER 7-104
 - ii. *Self-Certification Statement*. While the details of a position are being worked out but not yet sufficient to provide a written ethics opinion, personnel may provide a prospective employer with a “self-certification” statement like the one available on SOCO’s website to indicate whether they have been involved in certain procurement roles or actions.
- e. An ethics official must issue an opinion within 30 days of receiving complete information from the personnel requesting the opinion. *See*, FAR 3.104-6(c) and JER 7-104(a) and (c).
- f. “Safe Haven” Reliance on Written Opinions. “If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated 41 U.S.C. 2104. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in

good faith.” FAR 3.104-6(d).

D. Penalties and Sanctions.

1. Criminal Penalties: Violating the prohibition on disclosing or obtaining procurement information may result in confinement for up to five years and a fine if done in exchange for something of value, or to obtain or give a competitive advantage. 41 U.S.C. § 2105(a).
2. Civil Penalties: The Attorney General may take civil action for wrongfully disclosing or obtaining procurement information, failing to report employment contacts, or accepting prohibited employment. 41 U.S.C. § 2105(b).
 - a. Civil penalty is up to \$50,000 (individuals) and up to \$500,000 (organizations) plus twice the amount of compensation received or offered.
 - b. If violations occur, the agency shall consider cancellation of the procurement, rescission of the contract, suspension or debarment, adverse personnel action, and recovery of amounts expended by the agency under the contract. Government contracts that exceed the simplified acquisition threshold advise contractors of the potential for these penalties. See, FAR 3.104.9, 52.203-8, and 52.203-10.
 - c. A contracting officer may disqualify a bidder from competition whose actions fall short of a statutory violation, but call into question the integrity of the contracting process. See Compliance Corp., B-239252, Aug. 15, 1990, 90-2 CPD ¶ 126, aff’d on recon., B-239252.3, Nov. 28, 1990, 90-2 CPD ¶ 435; Compliance Corp. v. United States, 22 Cl. Ct. 193 (1990), aff’d, 960 F.2d 157 (Fed. Cir. 1992) (contracting officer has discretion to disqualify from competition a bidder who obtained proprietary information through industrial espionage not amounting to a violation of the Procurement Integrity Act); see also NKF Eng’g, Inc. v. United States, 805 F.2d 372 (Fed.Cir. 1986)(contracting officer has authority to disqualify a bidder based solely on appearance of impropriety when done to protect the integrity of the contracting process).
 - d. *Limitation on Protests*. 41 U.S.C. § 2106. No person may file a protest, and GAO may not consider a protest, alleging a PIA violation unless the protester first reported the alleged violation to the agency within 14 days of its discovery of the possible violation. FAR 33.102(f).
 - e. Contracting Officer’s Duty to Take Action on Possible Violations.
 - (1) Determine impact of violation on award or source selection.
 - (2) If there is no impact, forward information to individual designated by agency. Proceed with procurement, subject to contrary instructions.

- (3) If impact on procurement, forward information to the HCA or designee. Take further action in accordance with HCA's instructions. FAR 3.104-7.

IX. THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008, SECTION 847 AND AGEAR

- A. Requirement to Request Opinion Through AGEAR System. The National Defense Authorization Act of 2008, Public Law 110-181, section 847, requires that "covered Department of Defense officials" must request, and the ethics officials must provide, a written post-government employment opinion. *See*, JER 7-102 and Defense Federal Acquisition Regulations (DFARS) 203.171-3
- B. "Covered DoD Official." For purposes of section 847, a "covered DoD official" is a current or former DoD official who,
- a. within two years after leaving DoD service, expects to receive compensation from a defense contractor, *and*
 - b. who, within the two year period prior to his or her departure from DoD participated personally and substantially in an acquisition in excess of \$10M
 - c. while serving
 - i. in an Executive Schedule position;
 - ii. in a Senior Executive Service position; or
 - iii. in a general or flag officer position compensated at the rate of pay for grade O-7 or above; or
 - iv. who served as a program manager, deputy program manager, procuring contracting officer, source selection authority, member of the source selection evaluation board, or a chief of a financial or technical evaluation team for a contract in excess of \$10M.
- C. Requesting and Providing an Opinion in AGEAR. Current and former DoD personnel subject to Section 847 of the FY 2008 NDAA must complete their request for a written legal opinion online, using the After Government Employment Advisory Repository (AGEAR), which includes an electronic version of the DD Form 2945. The law requires DoD to retain opinions in AGEAR for not less than five years. *See*, Section 847(b) of Pub. L. No. 110-181 and JER § 7-104(b).
1. Current and former personnel, and DoD ethics officials may access AGEAR (no CAC required) at: <https://www.fdm.army.mil/>. This website includes a [link](#) to a helpful "EO AGEAR FAQs" document for DoD ethics officials.
 2. Ethics officials must provide an opinion within 30 days. *See*, Section 847(a)(3) of Pub. L. No. 110-181 and JER § 7-104(a).
 3. A request that does not include specific information regarding the current or former DoD personnel's DoD duties, future employer, position, and duties to be performed is incomplete. The 30-day clock for completion of the written opinion will not start until the requestor submits a complete request. *See*, JER § 7-104(c).

- D. Periodic Inspection of AGEAR. The NDAA for FY23 repealed the requirement for the DoD Inspector General to conduct periodic reviews to ensure opinions were being properly requested and retained. *See*, Section 821 of Pub. L. No. 117-263 (James M. Inhofe National Defense Authorization Act for Fiscal Year 2023). However, the Designated Agency Ethics Officials in the Department of Defense should review opinions in AGEAR as part of their obligation to periodically assess subordinate ethics programs. *See*, 5 C.F.R. § 2638.104(c)(2) and (16) and JER § 1-101.
- E. Penalties. Section 847 provides for administrative actions and penalties against a former covered official and the DoD contractor employing the former official. *See*, Section 847(a)(5) of Pub. L. No. 110-181. These actions may include rescission of this contract, suspension, or debarment. *See*, DFARS 203.171-3.

X. FOREIGN GOVERNMENT EMPLOYMENT

- A. Overview: In addition to the post-Government employment restrictions on foreign government employment in 18 U.S.C. § 207 discussed above, DoD ethics officials must be familiar with other post-Government foreign employment restrictions and obligations that can apply to former military and civilian personnel.
- B. Emoluments Clause of the Constitution (Art. 1, § 9, Clause 8)
 - 1. Prohibition for retired military personnel. In addition to current Federal employees and active and reserve members of the military, military retirees are also prohibited by the Emoluments Clause of the Constitution (Art. 1, § 9, Clause 8) from being employed by foreign governments without the consent of Congress. The Emoluments Clause prohibits not only direct employment with a foreign government, but also with entities under foreign government control. *See*, SOCO White Paper, “Application of the Emoluments Clause to DoD Civilian Employees and Military Personnel,” (Hereinafter, “SOCO Emoluments Clause White Paper”), https://dodsoco.ogc.osd.mil/Portals/102/emoluments_clause_applications_1.pdf
 - 2. Approval Requirement. Congress has provided consent for military retirees to accept certain foreign employment. *See*, 37 U.S. Code § 908(a). Military retirees must obtain prior approval for employment with or compensation from a foreign government by submitting a request to the Secretary of State through the Secretary of the Military Department. *See*, 37 U.S. Code § 908(b). Military retirees may accept payment for speeches, travel, meals, lodging, or registration fees, or non-cash awards, with approval of the Secretary of the Military Department. *See*, 37 U.S. Code § 908(c). Each military service has established procedures for requesting approval, which often takes three to four months. Ethics officials should consult regulations and guidance published by each military service.
 - 3. Forfeiture of Retired Pay. Military retirees who fail to obtain the approval provided for in 37 U.S.C. § 908 may be subject to suspension, forfeiture and recoupment of all or part of their retired pay during the period of foreign government employment.

Some employment can even result in relinquishment of U.S. citizenship. See, [DoD Financial Management Regulation](#) Vol. 7b, Ch. 5, Ch. 6, and Ch. 13. See also, 8 U.S.C. § 1481.

4. Requirement for Ethics Officials to Address. *Ethics* Officials advising current and former military members on PGE restrictions must specifically address the Emolument Clause prohibitions. See, JER 7-101(b).
- C. Other Laws Limiting Post-Government Foreign Employment. The following is a non-exhaustive list of other laws that limit post-Government employment with a foreign government:
1. Prohibition on former members of the armed forces accepting post-service employment with certain foreign governments. Former members of the military (active and reserve, *whether separated or retired*) are prohibited from “direct or indirect employment by, representation of, or any provision of advice or services relating to national security, intelligence, the military, or internal security to” the government of “a country of concern (as defined in section 1(m) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a(m)))”; or a country the Secretary of Defense determines acts as a proxy or passthrough for services for a country of concern; or any company, entity, or other person the activities of which are directly or indirectly supervised, directed, controlled, financed, or subsidized, in whole or in major part, by a government of a country of concern. See, 10 U.S. Code § 989
 2. Covered intelligence positions (50 U.S.C. § 3073a). DoD officials who occupy a “covered intelligence position” (as defined in the National Security Act of 1947) may be subject to reporting requirements and other restrictions that limit the support they are permitted to provide to the government of a foreign country after departing Federal service. DoD ethics officials do not make determinations concerning the applicability of these provisions. DoD officials are advised to reach out to the appropriate DoD Security Office to obtain additional guidance.
 3. Foreign Agents Registration Act (FARA). Any person who represents a foreign government or foreign entity may be required to register with the Department of Justice (DoJ) as a foreign agent. DoD ethics officials do not advise on FARA. make determinations concerning the applicability of these provisions. Any present or prospective agent of a foreign principal may request an advisory opinion from DoJ. See, 22 U.S.C. §§611-621, 28 CFR § 5.2. Contact and other information is available on the DoJ National Security Division’s [FARA website](#).
 4. International Traffic in Arms Regulations (ITAR). The Department of State (DoS) implements the [Arms Export Control Act \(AECA\)](#) and Executive Order 13637 through the ITARS (22 CFR parts 120-130). DoD ethics officials do not advise on the ITARS. Former DoD personnel or their private counsel may request an advisory opinion from the DoS [Director of Defense Trade Controls](#).

5. Military service of retired members with newly democratic nations: consent of Congress. Congress has consented to allow retired military members to accept employment with a “newly democratic nation” by complying with the procedure and other with 10 U.S.C. § 1060.

XI. OTHER RESTRICTIONS AND PROVISIONS

A. Administrative Leave and Terminal Leave.

1. Federal ethics rules including criminal conflict of interest laws, continue to apply to civilian and military personnel who work during periods of administrative or terminal leave. For specific guidance on the 2025 civilian employee Deferred Resignation Program, see the [2025 SOCO Deferred Resignation Guidance](#) available on the SOCO website and [OGE’s “Deferred Resignation Program and Other Extended Leave Statuses– Frequently Asked Questions,”](#) August 2025.
2. Compensation restrictions. A criminal statute prohibits Federal personnel from receiving pay from a non-Federal source for performing their official duties. *This criminal statute applies even when the receipt of outside compensation does not create a conflict of interest and would not cause actual injury to the United States.* This law may, for example, bar DoD personnel from working for a contractor to finalize a study that the individual completed as a DoD employee. *See*, 18 U.S.C. § 209.
3. Representation restrictions. Criminal statutes prohibit Federal civilian employees and military officers from representing any non-federal entity, employer, or client before any Federal department, agency, or court with or without compensation. *See*, 18 U.S.C. §§ 203 & 205. Enlisted members are not subject to 18 U.S.C. §§ 203 & 205.
 - a. For example, in most instances, DoD personnel would not be able to serve as an onsite federal contractor in a government workplace or meet with government personnel in the contractor’s office since doing so necessarily entails representing the contractor to DoD officials. Where military officers on terminal leave begin work with the contractor they may only do so “behind the scenes” at a contractor office or otherwise away from the government workplace or from Government officials.
 - b. Including a current government employee’s resume in a solicitation by a contractor to an agency may be permissible where the employee had no responsibility for the subject procurement, never had responsibility for the contractor, did not have any role in preparing the contractor’s proposal, does not work for the procuring agency, and has brought to the attention of his superior and the agency ethics official his intentions regarding use of the resume. *See*, [OGE Informal Opinion 98 x 5](#).
 - c. Ethics officials should review SOCO Advisory 06-13 of December 2, 2026 for a discussion of the applicability of 18 U.S.C. §§ 203 & 205 to personnel who are

“moonlighting” or working while on terminal leave.

4. Prior Approval for Employment. DoD personnel who file a financial disclosure form (OGE Form 450/278) must obtain agency designee approval before engaging in a business activity or compensated outside employment with a prohibited source. *See*, 5 C.F.R. § 3601.106.
 5. Prohibition on Interference with Duties. Active-duty officers may not accept outside employment that will interfere with performance of duties or require separation from service. *See*, 10 U.S.C. § 973(a).
 6. Prohibition on Military Personnel Holding Civil Office During Terminal Leave. The civil office statute at 10 U.S.C. § 973 prohibits active-duty military officers from holding certain Federal, state, and local civil offices. A “civil office” is a position in which some portion of a state’s sovereign power is exercised. For example, a county clerk position is considered a “civil office.” These restrictions apply even while on terminal leave. *See*, In the Matter of Major Robert C. Crisp, USAF, 56 Comp. Gen. 855 (1977). DoD Policy in DoD Directive 1344.10 extends certain civil office prohibitions to enlisted personnel.
- B. Duty to Protect Non-Public Information. All current and former military and Federal civilian personnel must protect non-public information such as trade secrets, classified information, and procurement sensitive information even after leaving federal service. *See*, 18 U.S.C. §§ 794 and 1905.
- C. Military Retiree Six-Month Cooling Off Period for Employment in DoD.
1. A retired member (officer or enlisted) of the armed forces may not be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) for 180 days (six-months) immediately after retirement unless authorized by the Secretary concerned or under certain special pay authority. *See*, 5 U.S.C. § 3326.
 2. Congress repealed the national emergency exception to this six-month cooling off period. *See*, § 1111 of the National Defense Authorization Act for Fiscal Year 2017, December 23, 2016 (Public Law No: 114-328).
 3. Military Department directives explain the procedure for obtaining the necessary approval from the Secretary concerned or his/her designee. Military retirees being considered for Federal employment with DoD during this cooling off period should direct questions to the applicable hiring authority or human resource office.
- D. Dual Compensation Permitted. There is no longer a reduction in retired or retainer pay for retired members of the uniformed services who are employed in federal civilian positions. *See*, § 651 of the NDAA for FY 2000 (Pub. L. No. 106-65), repealing 5 U.S.C. § 5532 in its entirety.

- E. Gifts and Decorations from Foreign Governments. As discussed above, the Emoluments Clause of the Constitution prohibits military retirees from accepting gifts and decorations from foreign governments except with the consent of Congress. The Foreign Gifts and Decorations Act provides the consent of Congress to accept gifts of “minimal value” (currently \$525). *See*, 5 U.S.C. § 7342, was raised effective January 1, 2026, 41 C.F.R. § 102-42.10, www.gsa.gov/foreigngifts, GSA Bulletin-FMR-B-2025-01, and SOCO’s Emoluments Clause White Paper. With prior approval from the appropriate DoD official, military retirees may retain decorations offered or awarded for outstanding or unusually meritorious performance. If disapproved, the decoration becomes the property of the U.S. Government. *See*, 41 C.F.R. § 102-42.15 and DoD Instruction 1005.13 (Gifts, Decorations, and Employment from Foreign Governments).
- F. Use of Military Title and Uniform by Retirees.
1. Retired military members (not on active duty) may use military titles in connection with commercial enterprises as long as their retired status is clearly indicated, no appearance of DoD endorsement is created, and DoD is not otherwise discredited by the use. JER § 2-503.
 2. Military retirees may generally wear their uniform for funerals, weddings, military events (such as parades or balls), and national or state holidays. They may wear medals on civilian clothing on patriotic, social, or ceremonial occasions. Military retirees should consult applicable military service uniform regulations.
- G. Application of Post-Government Restrictions for DoD Attorneys Departing Federal Service. DoD attorneys considering post-Government employment must consider additional restrictions that can result from attorney professional responsibility rules and Federal law. These rules can affect both their ability to negotiate employment and the work and compensation that they may receive following Government service. For a detailed discussion of these considerations, see DoD SOCO’s, “[Frequently Asked Questions \(FAQs\) Regarding the Application of Post-Government Restrictions for DoD Attorneys Departing Federal Service](#),” (revised January 2024) under the “Post-Government Employment” tab on SOCO’s website.

XII. FINANCIAL DISCLOSURE REPORTING AND ANNUAL TRAINING CERTIFICATION

- A. Annual Training Certification. DoD Personnel who file the Public Financial Disclosure Report (OGE Form 278e) must certify annually that they are aware of and have not violated the disqualification and employment restrictions of 18 U.S.C. §§ 207 and 208, 41 U.S.C. §§ 2101-2107, Section 1045 of the FY 2018 NDAA (Public Law 115-404), and the Emoluments Clause restrictions on compensation from foreign governments. This certification is accomplished by signing the annual OGE Form 278e in the Integrity system. *See*, JER 7-300
- B. Termination Public Financial Disclosure Report (OGE 278).

1. Requirement to File. Personnel who file a Public Financial Disclosure Report (OGE 278) are required to file a Termination OGE 278 Report. This report is due 30 days after, but may be submitted as early as 15 days before, the filer’s official separation date. Filers have a continuing obligation to disclose any reportable changes that occur between the filing date and the official separation date. *See*, 5 C.F.R. § 2634.201(e).
2. Employment Agreements. Filers must report any agreement for future employment. *See*, 5 C.F.R. § 2634.306.
3. Reportable Gifts. Filers must report any gifts in excess of the reporting threshold (currently \$480 in 2025) customarily provided by a prospective employer in connection with bona fide employment discussions, such as travel expenses in connection with an interview trip. *See*, 5 C.F.R. § 2634.304(a), and the [Frequently Asked Questions](#) in Part 9 of OGE’s Public Financial Disclosure Guide.

XIII. REPORTING AND ENFORCEMENT OF VIOLATIONS

- A. Overview. “Agency ethics officials are required by 28 U.S.C. § 535 to report any information they receive relating to a violation of the criminal code, title 18 of the United States Code.” Good faith reliance on the advice of an agency ethics official is a factor that may be considered by the Department of Justice in the selection of cases for prosecution. *See*, 5 C.F.R. § 2635.107(b). Ethics officials must also be aware of the non-discretionary requirement to report any suspected violation by current and former senior DoD personnel to the DoD Inspector General. *See*, JER § 8-201(d) and DoDI 5505.06, “Investigations of Allegations Against Senior DoD Officials.” The Joint Ethics Regulation sets out the requirements for reporting, investigation, and referral of suspected criminal and administrative violations of the JER and other ethics-related laws and regulations. Penalties may include applicable criminal, civil, and administrative sanctions, including punishment under the UCMJ for military members. Many of the statutes that regulate the post-Government employment activities of former or retired DoD Personnel also provide for specific criminal and administrative sanctions. *See*, JER Chapter 8.
- B. Mandatory Reporting on Senior Officials. Credible allegations that a current *or former* senior official violated any statute or regulation, including rules related to seeking and negotiating employment, or post-Government employment, must be forwarded to the DoD IG, in accordance with DoDD 5505.06 (“Investigations of Allegations Against Senior DoD Officials”).
- C. Reporting and Investigation of Alleged Criminal Violations. The appropriate Defense Criminal Investigative Organization (DCIO) is responsible for investigating an alleged violation of 18 U.S.C. §§ 203, 205, 207, 208 or 209 and notifying the Department of Justice (DOJ), through the applicable assistant U.S. Attorney, in accordance with DoDI 5505.02. Ethics officials must inform their agency’s Designated Agency Ethics Official. *See*, JER Chapter 8, Section 2.
 1. When a referral is made to the DOJ the referring office or organization must include

the OGE Form 202, “Notification of Conflict of Interest Referral,” in the referral packet and must send a copy of the OGE Form 202 to the respective DAEO and DoD SOCO. *See*, JER Chapter 8, Section 2 and 5 C.F.R. § 2641.103.

2. Violating the criminal conflict of interest statutes discussed in this chapter as they related to negotiating or engaging in post-Government employment (18 U.S.C. §§ 203, 205, 207, or 208) may result in imprisonment up to one year, or, if willful, five (5) years. In addition, a fine of \$50,000 to \$250,000 is possible. *See*, 18 U.S.C. 18 U.S.C. §§ 216 and 3571.

D. Effect of Advice from an Ethics Official. Reliance on the oral or written advice of an agency ethics official or the OGE cannot ensure that a former employee will not be prosecuted for a violation of 18 U.S.C. § 207. However, good faith reliance on such advice is a factor that may be considered by the Department of Justice (DOJ) in the selection of cases for prosecution. The agency in which an individual served has the primary responsibility to provide oral or written advice concerning a former employee's post-employment activities. *See*, 5 C.F.R. § 2641.105(c). *See* also, JER §§ 7-100(b) and (d). DoD ethics officials must inform current and former DoD personnel that they have no attorney-client relationship and include this notice in any written post-Government employment opinion. *See*, 5 C.F.R. § 2641.105(e) and JER § 7-100(a).

E. Release of Post-Government Employment Opinions & Related Documents. *See*, JER § 7-105 and SOCO Advisory 20-06 (December 8, 2020) for guidance on release of post-Government employment opinions.

XIV. SAMPLE DOCUMENTS AND APPENDICES

A. DoD SOCO has created a wealth of sample documents and other resources under the “Post-Government Employment” tab on [SOCO’s website](#), as well as in their “Ethics Counselor Toolbox” page on this same website. Sample documents can be found at: <https://dodsoco.ogc.osd.mil/>. This includes model recusal / disqualification notices for senior and non-senior personnel, a post-Government employment self-certification form that employees can provide to prospective employers, and several handouts that DoD ethics officials may provide to personnel (**note**: DoD ethics officials should update these documents with their own ethics office contact information).

B. SOCO’s Model Post-Government Employment Opinion provided below is an excellent resource to help DoD ethics officials issue spot and provide appropriate guidance. DoD ethics officials must tailor this opinion based upon the specific facts relevant to the personnel they are advising. The most current version can always be found on [SOCO’s website](#).

APPENDIX A: POST-GOVERNMENT EMPLOYMENT RESTRICTIONS CHART

Post-Government Employment Restrictions								
Reference	Restriction	All Former	Former Senior Only	Participation in the Matter Required	Communication / Appearance	To	Behind the Scenes	Length
18 USC 207(a)(1)	PSPPMISP*	X		Yes	X	Any employee of the U.S.		Lifetime
18 USC 207(a)(2)	PMUOR*	X		No	X	Any employee of the U.S.		2-Yrs
18 USC 207(b)	Ongoing Trade/Treaty Negotiation	X		Yes	X	Anyone	X	1-Yr
18 USC 207(c)	Senior Cooling Off		X	No	X	Any employee of former agency		1-Yr
18 USC 207(d)	Very Sr. Cooling Off		X	No	X	Any employee of former agency		2-Yrs
18 USC 207(f)	Aiding/Advising Foreign Entity		X		X	Any employee of the U.S.	X	1-Yr
§ 1045 FY18 NDAA	Anti-Lobbying		X	No	X	"covered official"	X	1 or 2-Yrs
Procurement Integ	Procurement Officials	X		Yes (or role)	Compensation Ban			1-Yr
5 U.S.C. § 3326	Retired military cooling off from DoD employment	Retired Military			Compensation Ban	Retired military officer and enlisted		
Emoluments Cl	Foreign Employment	Retired Military		No	Compensation Ban	Retired military officer and enlisted		Lifetime (unless 37 U.S.C. 908 approval)
50 U.S.C. § 3073A	Foreign Employment	Covered Civ / Mil IC		No	Bans "Covered Post-Service Position" + Reporting Requirement	"covered intelligence position"		Permantent ban on employment with designated countries; 30-mo. for others.
*PSPPMISP (Pers & Substantial Partic. / Particular Matter Specific Parties); PMUOR (Particular Matter Under Official Responsibility)								
								Revised 9/2025

APPENDIX B: DOD COMPONENTS FOR PURPOSES OF 18 U.S.C. 207(C)

Reference: 5 C.F.R. § 2641.302(a) and Appendix B to Part 2641, Title 5

- Defense Advanced Research Projects Agency (DARPA) (effective April 6, 2021)
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Defense Information Systems Agency
- Defense Intelligence Agency
- Defense Logistics Agency
- Defense Threat Reduction Agency (effective February 5, 1999)
- National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency) (effective May 16, 1997)
- National Reconnaissance Office (effective January 30, 2003)
- National Security Agency

Reminders:

- Unless designated a separate component, a DoD agency is part of the DoD “remainder” (see chart next page).
- For PAS officials, there are no separate components. 18 U.S.C. § 207(c) restriction applies to communications or appearances with any part of DoD.
- Military personnel who last served on a Joint Assignment will have multiple components. Their “former agency is their last command plus their military service
- Does not apply to Section 1045 restrictions.

OSD 18 U.S.C. § 207(c) “Cooling-Off” Limitations
Applicable to all senior DoD officials, except PAS appointees*
Not applicable to Section 1045 restrictions

Separate Designated DoD Components before whom you <i>may</i> appear:	Remaining DoD/OSD entities before whom you <i>may not</i> appear:
<ul style="list-style-type: none"> ✓ Defense Advanced Research Project Agency ✓ Defense Information Systems Agency ✓ Defense Intelligence Agency ✓ Defense Logistics Agency ✓ Defense Threat Reduction Agency ✓ Department of the Air Force ✓ Department of the Army ✓ Department of the Navy ✓ National Geospatial-Intelligence Agency ✓ National Reconnaissance Office ✓ National Security Agency 	<ul style="list-style-type: none"> * Army-Air Force Exchange Service * Armed Services Board of Contract Appeals * Defense Acquisition University * Defense Commissary Agency * Defense Contract Audit Agency * Defense Contract Management Agency * Defense Finance and Accounting Service * Defense Innovation Unit * Defense Health Agency * Defense Human Resources Activity * Defense Media Agency * Defense Microelectronic Activity * Defense POW/MIA Office * Defense Counterintelligence and Security Agency * Defense Security Cooperation Agency * Defense Strategic Capabilities Office * Defense Technology Security Agency * DoD Education Activity * Chairman, Joint Chiefs of Staff (Joint Staff) <ul style="list-style-type: none"> * Africa Command * Central Command * Cyber Command * European Command * Northern Command * Pacific Command * Space Command * Special Operations Command * Southern Command * Strategic Command * Transportation Command * Missile Defense Agency * National Defense University * Office of DoD Inspector General * Office of the Secretary of Defense * White House Military Office * Washington Headquarter Services * Uniformed Services University of the Health Sciences

* Applies to “senior” personnel whose rate of *basic pay* is at or above 86.5% of the rate of Executive Schedule Level II, except appointees that are Presidentially-appointed and Senate confirmed (PAS). For PAS officials, the one year cooling-off ban extends to all of DoD, meaning all Military Departments and the other DoD components listed above.