

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

“Always do right. This will gratify some people and astonish the rest.”

Mark Twain

I. REFERENCES

A. Statutes.

1. 18 U.S.C. § 208, Acts affecting a personal financial interest.
2. 41 U.S.C. §§ 2101-2107, formerly known as the Procurement Integrity Act.
3. 18 U.S.C. § 207, Restrictions on former officers, employers, and elected officials of the executive and legislative branches.

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 2641, Post-Employment Conflict of Interest Restrictions.
4. 5 C.F.R. Part 2640, Interpretations, Exemptions and Waiver Guidance Concerning 18 U.S.C. § 208 (Acts Affecting a Personal Financial Interest).
5. GENERAL SERVS. ADMIN. (GSA), FEDERAL ACQUISITION REGULATIONS SYSTEM. 48 C.F.R. (referred to in the outline as 48 C.F.R. or as FAR) Part 3 (Improper Business Practices and Personal Conflicts of Interest).
6. DEFENSE ACQUISITION REGULATIONS SYSTEM, DEPARTMENT OF DEFENSE. 48 C.F.R. Part 203 (Improper Business Practices and Personal Conflicts of Interest).
7. National Defense Authorization Act for Fiscal Year 2004 (PL 08-136), § 1125.
8. Department of Defense Directive, JOINT ETHICS REGULATION (JER) (May 15, 2024)

C. Miscellaneous:

1. Summary of Post-Employment Restrictions of 18 U.S.C. § 207
[https://www2.oge.gov/web/oge.nsf/All%20Advisories/EC8FF946A89205F285257E96005FBD0A/\\$FILE/04x11.pdf?open](https://www2.oge.gov/web/oge.nsf/All%20Advisories/EC8FF946A89205F285257E96005FBD0A/$FILE/04x11.pdf?open)
2. Memorandum for Amy Comstock, Director, Office of Government Ethics from U.S. Department of Justice, Office of Legal Counsel, dated January 19, 2001.
(<https://www.justice.gov/file/19276/download>) (A one-man corporation is providing survey results to his former agency through others and his corporation. This could constitute a “communication” violating 207)
3. Post-Government Service Advice. See DoD Guidance on the DoD SOCO Website.
(<https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Post-Government-Employment-and-Procurement-Integrity/>)
 - a. Seeking Employment Restrictions (Rules When You Are Looking For a New Job)
 - b. Post-Government Employment Restrictions (Rules Affecting Your New Job After DoD) for Military Personnel E-1 through O-6 and Civilian Personnel Paid at less than 86.5% of the rate for Executive Schedule Level II (Non-Senior Employees)
 - c. Post-Government Employment Restrictions (Rules Affecting Your New Job After DoD) for Civilian Personnel Paid at or above 86.5% of the rate for Executive Schedule Level II and Flag and General Officers (Senior Employees)
 - d. Post-Government Employment Disqualification Statements
 - e. Procurement Integrity Act Restrictions (Rules When You Are Looking For a New Job & Rules Affecting Your New Job After Leaving DoD)
4. 5 C.F.R. 2641, App. B, DoD separate component designations for § 207(c) purposes: Department of the Army, Department of the Navy, Department of the Air Force, Defense Information Systems Agency, Defense Intelligence Agency, Defense Logistics Agency, Defense Threat Reduction Agency, National Geospatial-Intelligence Agency, National Reconnaissance Office, and the National Security Agency. *Id.*
5. Office of Personnel Management Notice of 18 U.S.C. 207(c) restrictions, 5 CFR 730.104.
6. Office of Government Ethics DAEO gram DO-04-029: Seeking Employment.)
<https://www2.oge.gov/Web/OGE.nsf/0c373046e722a7b085257f6b00420525/5fcb7d240063404785257e96005fbdbd?OpenDocument>
7. DoD components shall provide guidance on relevant Federal and DoD Post- Government service restrictions as part of out-processing. This information is included in the Joint Ethics Regulation, Chapter 7-101. Annual certification required to be signed by all public financial disclosure filers. JER Chapter 7-300. Post-employment is included in annual

ethics training pursuant to JER Chapter 9-304. (S.1, P.L. 110-81).

8. OGE Post-employment regulation, final rule (<https://www.govinfo.gov/content/pkg/FR-2008-06-25/pdf/E8-1333.pdf>)
 - a. National Emergency Extension.
<https://www.govinfo.gov/app/details/FR-2016-09-01/2016-21284> But note the emergency provision in the statute was abolished in the National Defense Authorization Act for Fiscal Year 2017 on December 23, 2016, section 1111, S. 2943-451.
<https://www.congress.gov/bill/114th-congress/senate-bill/2943/text>
 - b. January 21, 2009 Obama Executive Order and Pledge and OGE interpretation.
[https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/912EE96BCFEC4A0185257E96005FBB85/\\$FILE/DO-09-003.pdf?open](https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/912EE96BCFEC4A0185257E96005FBB85/$FILE/DO-09-003.pdf?open) (outlines Executive Order)

<https://www2.oge.gov/web/oge.nsf/Resources/DO-09-005:+Signing+the+Ethics+Pledge>
(signing of the Pledge)

[https://www2.oge.gov/web/oge.nsf/All%20Advisories/932CE93AEBEE302785257E96005FBB84/\\$FILE/029ce5b77e7d42928f551da8a94d21492.pdf?open](https://www2.oge.gov/web/oge.nsf/All%20Advisories/932CE93AEBEE302785257E96005FBB84/$FILE/029ce5b77e7d42928f551da8a94d21492.pdf?open)(who must sign the Pledge)

[https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/1231E7FF31E2E54985257E96005FBB7E/\\$FILE/DO-09-011.pdf?open](https://www2.oge.gov/web/oge.nsf/Legal%20Advisories/1231E7FF31E2E54985257E96005FBB7E/$FILE/DO-09-011.pdf?open) (ban coming into government under Pledge)

<https://www2.oge.gov/web/oge.nsf/Resources/DO-09-020:+Speeches+and+Paragraph+2+of+the+Ethics+Pledge;+Intergovernmental+Personnel+Act+Detail>ees (speeches under the Pledge)

<https://www.oge.gov/Web/OGEnsf/Resources/DO-10-004:+FAQs+on+Post-Employment+under+the+Ethics+Pledge>(post employment restrictions under the Pledge)
 - c. Biden Executive Order 13989 and OGE LA 21-05 February 23, 2021
[https://www.oge.gov/Web/oge.nsf/Legal%20Docs/DD9C58B2C02A3B0C85258686004AAA3/\\$FILE/LA-21-05.pdf?open](https://www.oge.gov/Web/oge.nsf/Legal%20Docs/DD9C58B2C02A3B0C85258686004AAA3/$FILE/LA-21-05.pdf?open)LA
9. Change in the “minimal value,” effective January 1, 2023, 41 CFR 102-42.10, www.gsa.gov/foreigngifts From GSA Bulletin-FMR-B-52, the current minimal value of \$480 was defined.
10. Section 1045 of the NDAA for Fiscal Year 2018.
<https://www.congress.gov/115/crpt/hrpt404/CRPT-115hrpt404.pdf>
11. DODI 1000.32, Prohibition of Lobbying Activity by former DoD Officials
<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100032p.PDF?ver=2020-03-26-142804-367>
12. Section 1117 of the NDAA for Fiscal Year 2022.

13. 50 U.S.C. § 3073A

II. INTRODUCTION

- A. The conflict of interest prohibitions of 18 U.S.C. § 208 as they apply to government personnel who are seeking outside employment.
- B. The coverage of what was formerly referred to as the Procurement Integrity Act.
- C. The procurement-related restrictions on seeking and accepting employment when leaving government service.
- D. The post-government service employment restrictions of 18 U.S.C. § 207

1. ROAD MAP

- a. Purpose of Restrictions
- b. Seeking Employment
- c. Federal Employment Restrictions
- d. Private Employment Restrictions
- e. Foreign Employment Restrictions

2. PURPOSE OF RESTRICTIONS

- a. Prevent Conflicts of Interest
- b. Promote Economy in Federal Government
- c. Expand Employment Opportunities in the Federal System
- d. Preserve the Public's Confidence in Government Integrity

3. RENDERING COMPETENT ADVICE

- a. Need Full Disclosure (Client Questionnaire)
- b. Who is the Client?
- c. Effect of Advice?

- d. OGE will audit whether counseling is provided, records are kept, and the advice is accurate.

III. FINANCIAL CONFLICTS OF INTEREST.

- A. 18 U.S.C. § 208; 5 C.F.R. § 2640.103. Prohibits an employee from participating personally and substantially in his or her official capacity in any particular matter in which he or she has a financial interest, if the particular matter will have a direct and predictable effect on that interest.
- B. Specifically, an employee may not work on an assignment that will affect the financial interest of someone with whom the employee either has an arrangement for employment or is negotiating for employment.

1. Definition of key terms.

- a. 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. 5 C.F.R. § 2635.403(c); 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 (5 C.F.R. § 2635.402(b)(2)(v); 5 C.F.R. § 2640.103(c)) is imputed to the employee.
 - b. Personally: Defined as direct participation, or direct and active supervision of a subordinate. 5 C.F.R. § 2635.402(b)(4); 5 C.F.R. § 2640.103(a)(2).
 - c. Substantially: Defined as an employee's involvement that is significant to the matter. 5 C.F.R. § 2635.402(b)(4); 5 C.F.R. § 2640.103(a)(2).
 - d. Particular Matter: Defined as a matter involving deliberation, decision, or action focused on the interests of specific persons, or an identifiable class of persons. However, matters of broad agency policy are not particular matters. 5 C.F.R. § 2635.402(b)(3); 5 C.F.R. § 2640.103(a)(1).
 - e. Direct and Predictable Effect: Defined as a close, causal link between the official decision or action and its effect on the financial interest. 5 C.F.R. § 2635.402(b)(1); 5 C.F.R. § 2640.103(a)(3).
- C. This statute does not apply to enlisted members, but the JER subjects enlisted members to similar regulatory prohibitions. See JER 2-101 (which also includes members of the National Guard). Regulatory implementation of 18 U.S.C. § 208 is found in the JER, Chapter 5.
 - D. Options for employees with conflicting financial interests.
 - 1. Disqualification: With the approval of his or her supervisor, the employee may disqualify to eliminate 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).

2. Waiver: An employee otherwise disqualified by 18 U.S.C. § 208(a) may be permitted to participate personally and substantially in a particular matter on a case-by-case basis after the employee fully discloses the financial interest to the agency and receives a written waiver. The criterion is whether the employee's conflicting financial interest is not so substantial as to affect the integrity of his or her service to the agency. 5 C.F.R. § 2635.402(d)(2)(ii); 5 C.F.R. § 2640.301(a).

Practice Note: Since most employees derive a substantial portion of their income from their employment, it is rare that a § 208(b)(1) waiver will apply under these circumstances.

E. Negotiating for employment. The term "negotiating" is interpreted broadly. United States v. Schaltenbrand, 930 F.2d 1554 (11th Cir. 1991).

1. Any discussion, however tentative, is negotiating for employment. Something as simple as going to lunch to discuss future prospects could be the basis for a conflict of interest. If the company does not do business with the Department, then that person may negotiate for employment with that company. No special action is required.
2. 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.
3. Disqualification and Waiver.
 - a. With the approval of his or her supervisor, the employee must disqualify or change duties to eliminate any contact or actions with the prospective employer. 5 C.F.R. § 604(a)-(b).
 - b. An employee may participate personally and substantially in a particular matter having a direct and predictable impact on the financial interests of the prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. § 208(b)(1) or (b)(3). The waivers are described in 5 C.F.R. § 2635.402(d) and 5 C.F.R. Part 2640 and generally cannot be waived because an "employment" interest is a rather substantial financial interest.
 - c. Disqualification. Please note that the STOCK Act, Pub. L. 112-105, §17, 2012, as amended, requires that the employee who files a public financial disclosure report file a notice of negotiation within three (3) days of negotiating a salary with a private sector entity regardless of whether the employer has interests that could be affected by performance or nonperformance of the employee's duties.

F. Violating 18 U.S.C. § 208 may result in imprisonment up to one year, or, if willful, five (5) years. 18 U.S.C. § 216. In addition, a fine of \$50,000 to \$250,000 is possible. See 18 U.S.C. §

3571.

G. Seeking Employment

1. The Office of Government Ethics (OGE) regulations contain additional requirements for disqualification of employees who are “seeking employment.” 5 C.F.R. §§ 2635.601 - 2635.606. “Seeking employment” is a term broader than “negotiating for employment” found in 18 U.S.C. § 208.
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 the goal of 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 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 following reasons:

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 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 lapsed after 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).
 - c. While seeking employment, the employee must disqualify or change duties to eliminate any contact or actions with the prospective employer. 5 C.F.R. § 604(a)-(b). Written notice of the disqualification is encouraged.

Statutory Restriction. 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.

IV. THE PROCUREMENT INTEGRITY ACT

- A. On January 4, 2011, the Procurement Integrity Act (PIA) was codified for the first time at 41 U.S.C. § 2101-2107. The codified statute does not have a name but will be referred to in this deskbook as “the Procurement Integrity Act.” Prior to January 4, 2011, the PIA was found at Pub. L. No. 104-106, §§ 4001-4402, 110 Stat. 186, 659-665 (1996). § 27, Office of Federal Procurement Policy Act (OFPPA) amendments of 1988, 41 U.S.C. § 423. Codification did not make any changes to the old PIA passed effective 1997.
- B. Background Information about the former PIA.
 - 1. Effective date: January 1, 1997 (this has not changed as a result of the codification).
 - 2. The basic provisions of the statute are set forth in FAR 3.104-3.
 - a. Prohibitions on disclosing and obtaining procurement information apply beginning January 1, 1997, to:
 - (1) Every competitive federal procurement for supplies or services,
 - (2) From non-federal sources,
 - (3) Using appropriated funds.
 - b. Requirement to report employment contacts applies beginning January 1, 1997, to competitive federal procurements above the simplified acquisition threshold (\$250,000).
 - c. Post-employment restrictions apply to former officials for services provided or decisions made on or after January 1, 1997.
 - d. Former officials who left government service before January 1, 1997, are subject to the restrictions of the Procurement Integrity Act as it existed prior to its amendment.
 - 3. Coverage. Applies to “persons,” “agency officials,” and former officials” as defined in the PIA.
 - 4. Department of Defense Guidance Regarding Procurement Integrity Law. Updated Guidance on the Application of the Procurement Integrity Act (PIA) and Regulations, dated July 12, 2011.
https://www.acq.osd.mil/asda/dpc/cp/cc/docs/io/ethics/updated_guidance_procurement_integrity_act.pdf
- C. Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source

Selection Information.

1. Restrictions on Disclosure of Information. 41 U.S.C. § 2102(a)(3). The following persons are forbidden from knowingly disclosing contractor bid or proposal information or source selection information before the award of a contract:
 - a. Present or former federal officials;
 - b. Persons (such as contractor employees) who are currently advising the Federal Government with respect to a procurement;
 - c. Persons (such as contractor employees) who have advised the Federal Government with respect to a procurement, but are no longer doing so; and
 - d. Persons who have or had access to such information by virtue of their office, employment, or relationship.
2. Restrictions on Obtaining Information. 41 U.S.C. § 2101(b). Persons (other than as provided by law) are forbidden from obtaining contractor bid or proposal information or source selection information before the award of a contract.
3. Contractor Bid or Proposal Information. 41 U.S.C. § 2101(2). Defined as any of the following:
 - a. Cost or pricing data;
 - b. Indirect costs or labor rates;
 - c. Proprietary information marked in accordance with applicable law or regulation; and
 - d. Information marked by the contractor as such in accordance with applicable law or regulation. If the contracting officer disagrees, he or she must give the contractor notice and an opportunity to respond prior to release of marked information. FAR 3.104-4(d). See Chrysler Corp. v. Brown, 441 U.S. 281 (1979); CNA Finance Corp. v. Donovan, 830 F.2d 1132 (D.C. Cir. 1987), cert. den. 485 U.S. 917 (1988).
4. Source Selection Information. 41 U.S.C. § 2101(7). Defined as any of the following:
 - a. Bid prices before bid opening;
 - b. Proposed costs or prices in negotiated procurement;
 - c. Source selection plans;
 - d. Technical evaluation plans;
 - e. Technical evaluations of proposals;

- f. Cost or price evaluations of proposals;
- g. Competitive range determinations;
- h. Rankings of bids, proposals, or competitors;
- i. Reports and evaluations of source selection panels, boards, or advisory councils; and
- j. Other information marked as source selection information if release would jeopardize the integrity of the competition.

D. Reporting Non-Federal Employment Contacts.

1. Mandatory Reporting Requirement. 41 U.S.C. § 2103(a). An agency official who is participating personally and substantially in an acquisition over the simplified acquisition threshold must report employment contacts with bidders or offerors. Reporting may be required even if the contact is through an agent or intermediary. FAR 3.104-5(a).
 - a. Report must be in writing. 41 U.S.C. § 2103(a)(1).
 - (1) Designated agency ethics official in accordance with 5 C.F.R. § 2638.201.
 - (2) Deputy agency ethics officials in accordance with 5 C.F.R. § 2638.204 if authorized to give ethics advisory opinions.
 - (3) Alternate designated agency ethics officials in accordance with 5 C.F.R. § 2638.202(b). See FAR 3.104-3 as defined at 3.104-1.
 - c. Additional Requirements. The agency official must:
 - (1) Promptly reject employment, 41 U.S.C. § 2103(a)(2)(A); or
 - (2) Disqualify him/herself from the procurement until authorized to resume participation in accordance with 18 U.S.C. § 208. 41 U.S.C. § 2103(a)(2)(B).
 - (a) Disqualification notice. Employees 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).
 - (b) Note: 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. Also, 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. 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).

2. Both officials and bidders or offerors who engage in prohibited employment contacts are subject to criminal and civil penalties and administrative actions.
3. Participating personally and substantially means active and significant involvement in:
 - a. Drafting, reviewing, or approving a statement of work;
 - b. Preparing or developing the solicitation;
 - c. Evaluating bids or proposals, or selecting a source;
 - d. Negotiating price or terms and conditions of the contract; or
 - e. Reviewing and approving the award of the contract. FAR 3.104-1.
4. The following activities are generally considered not to constitute personal and substantial participation:
 - a. Certain agency-level boards, panels, or advisory committees that make recommendations regarding approaches for satisfying broad agency-level missions or objectives;
 - b. General, technical, engineering, or scientific effort of broad applicability and not directly associated with a particular procurement;
 - c. Clerical functions in support of a particular procurement; and
 - d. Below listed activities for OMB Circular A-76 cost comparisons:
 - (1) Participating in management studies;
 - (2) Preparing in-house cost estimates;
 - (3) Preparing "most efficient organization" (MEO) analyses; and
 - (4) Furnishing data or technical support to be used by others in the development of performance standards, statements of work, or specifications. FAR 3.104-1.

(Note that 18 U.S.C. § 208 may preclude participation even if the FAR would appear to allow it. Both have to be considered before making a determination. See 48 C.F.R. § 3.104-3(c)(4) (FAR 3.104-3(c)(4)).

E. Post-Government Employment Restrictions.

1. A one-year ban prohibits certain persons from accepting compensation from the awardee. “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. The ban applies to both competitively awarded and non-competitively awarded procurements. FAR 3.104-3(d).
2. The one-year ban applies to persons who serve in any of the following seven positions on a contract in excess of \$10 million:
 - a. Procuring Contracting Officer (PCO);
 - b. Source Selection Authority (SSA);
 - c. Members of the Source Selection Evaluation Board (SSEB);
 - d. Chief of a financial or technical evaluation team;
 - e. Program Manager;
 - f. Deputy Program Manager; and
 - g. Administrative Contracting Officer (ACO).
3. The one-year ban also applies to anyone who “personally makes” any of the following seven types of decisions:
 - a. The decision to award a contract in excess of \$10 million;
 - b. The decision to award a subcontract in excess of \$10 million;
 - c. The decision to award a modification of a contract or subcontract in excess of \$10 million;
 - d. The decision to award a task order or delivery order in excess of \$10 million;
 - e. The decision to establish overhead or other rates valued in excess of \$10 million;
 - f. The decision to approve issuing a payment or payments in excess of \$10 million; and

g. The decision to pay or settle a claim in excess of \$10 million.

4. The Ban Period.

- a. If the former official was in a specified position (source selection type) on the date of contractor selection, but not on the date of award, the ban begins on the date of selection.
- b. If the former official was in a specified position (source selection type) on the date of award, the ban begins on the date of award.
- c. If the former official was in specified position (program manager, deputy program manager, administrative contracting officer), the ban begins on the last date of service in that position.
- d. If the former official personally made certain decisions (award, establish overhead rates, approve payment, settle claim), the ban begins on date of decision. FAR 3.104-4(d)(2).

5. In “excess of \$10 million” means:

- a. The value or estimated value of the contract including options;
- b. The total estimated value of all orders under an indefinite-delivery, indefinite-quantity contract, or a requirements contract;
- c. Any multiple award schedule contract, unless the contracting officer documents a lower estimate;
- d. The value of a delivery order, task order, or order under a basic ordering agreement;
- e. The amount paid, or to be paid, in a settlement of a claim; or
- f. 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.

6. The one-year ban does not prohibit an employee from working for any division or affiliate that does not produce the same or similar product or services

7. Ethics Advisory Opinion. Agency officials and former agency officials may request an advisory opinion as to whether he or she would be precluded from accepting compensation from a particular contractor. FAR 3.104-6(a).

E. 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. A new contract clause advises contractors of the potential for cancellation or rescission of a contract, recovery of any penalty prescribed by law, and recovery of any amount expended under the contract. 48 C.F.R. § 52.203-8. Another clause advises the contractor that the Government may reduce contract payments by the amount of profit or fee for violations. 48 C.F.R. § 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 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.
- F. Private Employment Restrictions. 41 U.S.C. § 423 repealed 10 U.S.C. §§ 2397 and 281, and 37 U.S.C. § 801. DD Form 1787, a form completed by private employers about former employees and sent to DoD is no longer required. (41 U.S.C. § 423 was replaced by 41 U.S.C. §§ 2101-

07).

V. GIFTS FROM PROSPECTIVE EMPLOYERS AND DISQUALIFICATION WHEN SEEKING EMPLOYMENT

Travel, meals, and reimbursements for job interviews. Government employees may accept travel expenses to attend job interviews if such expenses are customarily paid to all similarly-situated job applicants. 5 C.F.R. §§ 2635.602(b)(3) and 2635.204(e)(3). Personnel who file financial disclosure reports (OGE Form 278 and OGE Form 450) must report such payments on their financial disclosure report.

VI. TERMINAL LEAVE

- A. May work while on terminal leave.
- B. Financial disclosure form filers (OGE Form 450/278) must obtain agency designee approval if employer will be prohibited source.
- C. Active duty officers may not accept outside employment that will interfere with duty performance or require separation from service. 10 U.S.C. § 973(a).
- D. 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. (OGE opinion 98 x 5.)
<https://www.oge.gov/Web/OGE.nsf/Resources/98x5:Use+of+Government+Employee+Resume+by+Contractor>
- E. Cannot hold a civil office during terminal leave.
 - 1. Civil office statute: 10 U.S.C. § 973.
 - 2. Active Duty Military Officers may not hold Civil Office
 - a. Federal/State/Local
 - b. Exercise Sovereign Power
 - c. USA/DA/City Attorney/County Clerk
 - 3. Note that DoD Directive 1344.10, § 4.2.4.1, states as follows: "Any enlisted member on active duty may seek, hold, and exercise the functions of a nonpartisan civil office as a notary public or member of a school board, neighborhood planning commission, or similar local agency, provided that the office is held in a non-military capacity and there is no interference with the performance of military duties."

4. A military officer may not accept “civil office” with a state or local government, nor may an officer perform the duties of such civil office while on terminal leave. 10 U.S.C. § 973(b). 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.” In the Matter of Major Robert C. Crisp, USAF, 56 Comp. Gen. 855 (1977). By regulation, DoD Directive 1344.10, this prohibition applies to enlisted personnel, but does not apply to civilian personnel.
5. If not a “civil office” may receive pay for Federal position and military pay and allowances during terminal leave. 5 U.S.C. § 5534a; DoD Directive 1344.10.
6. Cannot act as an agent for another before any federal agency. 18 U.S.C. §§ 203/205. Military officers working on terminal leave (like all federal employees) are prohibited by 18 U.S.C. §§ 203 and 205 from representing their new employer to the Government. This makes problematic the increasingly common practice of contractor personnel physically working in government offices or meeting with government personnel in the contractor’s office. Being present in government offices on behalf of a contractor, or meeting government officials in a contractor’s workplace is inherently a representation. Of course, military officers on terminal leave may begin work with the contractor, but only “behind the scenes” at a contractor office or otherwise away from the government workplace or from Government officials. Enlisted members are not subject to 18 U.S.C. §§ 203 or 205.

VII. DUAL COMPENSATION LAWS

- A. § 651 of the NDAA for FY 2000 (P.L. 106-65) repealed 5 U.S.C. § 5532 in its entirety.
- B. No reduction in retired or retainer pay for retired members of the Armed Forces who are employed in federal civilian positions.

VIII. SIX-MONTH COOLING OFF PERIOD

- A. No civilian employment within DoD for six (6) months after leaving military service. 5 U.S.C. § 3326.
- B. Applies to all retired military members
- C. Waivers available from Secretary of hiring component
- D. Limitation lifted during national emergency. This exception was deleted by Congress in the National Defense Authorization Act for Fiscal Year 2017, § 1111, December 23, 2016. (S. 2943-451)

IX. REPRESENTATIONAL PROHIBITIONS

- A. 18 U.S.C. § 207 and its implementing regulations bar certain acts by former employees which

may reasonably give the appearance of making unfair use of their prior employment and affiliations.

- B. A former employee involved in a particular matter while working for the Government must not “switch sides” after leaving government service to represent another person on that matter.
- C. 18 U.S.C. § 207 does not bar a former employee from working for any public or private employer after government service. The statute is not designed to discourage government employees from moving to and from private positions. Rather, such a “flow of skills” promotes efficiency and communication between the Government and the private sector and is essential to the success of many government programs. The statute bars only certain acts detrimental to public confidence.
 - 1. 18 U.S.C. § 207 applies to all former officers and civilian employees whether or not retired, but does not apply to enlisted personnel because they are not included in the definition of “officer or employee” in 18 U.S.C. § 202. Note: Employees on terminal leave must also heed the representation restrictions of 18 U.S.C. §§ 203/205, which apply to current government employees.
 - 2. 18 U.S.C. § 207(a)(1) imposes a lifetime prohibition on the former employee against communicating or appearing before any agency of the Government, with the intent to influence, regarding a particular matter, on behalf of anyone other than the Government, when:
 - a. The Government is a party, or has a direct and substantial interest in the matter;
 - b. The former officer or employee participated personally and substantially in the matter while in his official capacity; and
 - c. At the time of the participation, specific parties other than the Government were involved. 5 C.F.R. § 2641.201(a).
 - d. Note that when the term “lifetime” is used, it refers 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.
- D. An appearance may include a mere physical presence. 5 C.F.R. § 2641.201(d)(2) and (e)(4).
- E. Communication is defined at 5 C.F.R. § 2641.201(d)(1) (not necessary that any employee of the United States actually recognize the former employee as the source of the information).
- F. Behind the scenes assistance is defined at 5 C.F.R. § 2641.201(d)(3) (assistance does not involve a communication to or an appearance before an employee of the United States).

- G. Intent to influence does not include: making a routine request not involving a potential controversy such as requesting publicly available documents; making factual statements in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action, such as conveying factual information regarding matters that are not potentially controversial during the regular course of performing a contract; signing a tax return of another as a preparer; signing an assurance that the former employee will be the principal investigator for the direction and conduct of the research; filing a Securities and Exchange Form 10-K; making a communication, at the initiation of the Government, concerning work performed or to be performed under a Government contract or grant, during a routine Government site visit to premises owned or occupied by a person other than the United States where the work is performed or would be performed, in the ordinary course of evaluation, administration, or performance of an actual or proposed contract or grant; or purely social contacts. 5 C.F.R. § 2641.201(e)(2).
- H. For a discussion as to when a particular matter begins, note 5 C.F.R. § 2641.201(h)(4).
- I. For determining if the particular matter involving specific parties is the same matter, note 5 C.F.R. § 2641.201(h)(5).
- J. Personally (means direct) and substantially (means of significance to the matter) 5 C.F.R. § 2641.201(i)(2) and (3).
- K. Speaking before the Department —note that under the post-employment regulation, former personnel subject to § 207(a)(1) may speak before Federal personnel at a public gathering or conference, seminar, or similar forum on behalf of another when: the event is not sponsored or co-sponsored by the former employee's agency; an independent agency in the Executive, Legislative or Judicial branch; Federal court, or court-martial; the event is attended by a large number of attendees; and a significant portion of the attendees are not employees of the United States. 5 C.F.R. § 2641.201(f)(3) (Note: a former employee may engage in exchanges with any other speaker or with any member of the audience.)
- L. 18 U.S.C. § 207(a)(2) prohibits, for two years after leaving federal service, a former employee from communicating or appearing before any agency of the Government, with the intent to influence, regarding a particular matter, on behalf of anyone other than the Government, when:
1. The Government is a party, or has a direct and substantial interest in the matter;
 2. The former officer or employee knew or should have known that the matter was pending under his official responsibility during the one-year period prior to leaving federal service; and
 3. At the time of the participation, specific parties other than the Government were involved. 5 C.F.R. § 2641.202(a).
- M. 18 U.S.C. § 207(b) prohibits former officers and employees, for one year after leaving federal service, from knowingly representing, aiding or advising an employer or any entity regarding

ongoing trade or treaty negotiations based on information that they had access to and that is exempt from disclosure under the Freedom of Information Act. 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 officials from providing “behind-the-scenes” assistance on the basis of the covered information to any person or entity. 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 that the former official have had contact with foreign parties in order to have participated personally and substantially in a trade or treaty negotiation. 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). A negotiation becomes “ongoing” at the point when both: (1) the determination has been made by competent authority that the outcome of the negotiation will be a treaty or trade agreement, and (2) discussions with a foreign government have begun on a treaty. 5 C.F.R. § 2641.203(a).

- N. 18 U.S.C. § 207(c) prohibits, for one year after service in a “senior position” (military personnel O-7 and above, and 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) (\$172,395 in 2021) from communicating to or appearing before the employee’s former agency, with the intent to influence, regarding a particular matter, on behalf of anyone other than the Government, when:
1. The communication or appearance involves the department or agency the officer or employee served within the one-year period prior to his termination from a senior position; The communication or appearance is on behalf of any other person (other than the Government). 5 C.F.R. § 2641.204(a). 18 U.S.C. § 207(h) permits DoD to be divided into separate components for purposes of the restrictions imposed by § 207(c). DoD separate components are listed in Appendix B to 5 C.F.R. § 2641. At present, the DoD separate components are: Air Force; Army; Navy; Defense Information Systems Agency; Defense Intelligence Agency; Defense Logistics Agency; National Geospatial-Intelligence Agency; Defense Threat Reduction Agency; National Security Agency; and the National Reconnaissance Office. Note: Civilian Political Appointees confirmed by the Senate are not eligible to benefit from the separate component designations. 5 C.F.R. § 2641.302(b).
 2. Generals and Admirals who retire from agencies other than their respective military services are considered to have been detailed to those agencies and they are prohibited by § 207(c) from communicating back to both their agency and military service. (See 18 U.S.C. § 207(h)).
 3. Thus, a Navy Admiral in a Navy billet is prohibited from communicating, as an official action, with Navy officials. However, the officer may communicate with representatives of other services and OSD provided that the officials are not Navy officials and OSD is not the agency that the Admiral was detailed.

- O. 18 U.S.C. § 207(d), specifically bans the Secretary of Defense (a “very senior employee”) from communicating or appearing, for two years, before: (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. (18 U.S.C. § 207(d)); 5 C.F.R. § 2641.205(a).
- P. Speaking before the Department during the one-year “cooling off”—note that under the post-employment regulation, former personnel subject to § 207(c) may speak before personnel from their former department at a public gathering or conference, seminar, or similar forum when: the event is not sponsored or co- sponsored by the former senior employees’ former agency; the event is attended by a large number of attendees; and a significant portion of the attendees are not employees of the former senior employees’ former agency. 5 C.F.R. § 2641.204(g)(4). (Note: a former employee may engage in exchanges with any other speaker or with any member of the audience.)
- Q. 18 U.S.C. § 207 does not prohibit an employee from working for any entity, but it does restrict how a former employee may work for the entity.
1. With the exception of §§ 207(b) and (f), the statute does not bar behind the scenes involvement. However, there is a January 19, 2001, opinion from the Department of Justice suggesting that a former employee who is the sole proprietor of a business “working behind the scenes” may constitute “communication with the intent to influence” government decisions. (<https://www.justice.gov/file/19276/download>).
- R. 18 U.S.C. § 207(f) prohibits former senior employees (Admirals, Generals, and 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) (\$191,944 in 2024) for a period of one year after leaving their senior employee position from:
1. Representing foreign entities before any official of the Government with the intent to influence that official regarding his or her official duties, or
 2. Aiding or advising a foreign entity with the intent to influence a government official regarding his or her official duties. This type of behind-the-scenes participation is not permitted. A “foreign entity” includes foreign governments, foreign political parties, and groups exercising de facto political jurisdiction over a country. Foreign commercial corporations are generally not considered “foreign entities” unless they exercise the functions of a sovereign. 5 C.F.R. § 2641.206(a).
 3. NOTE: The Office of Government Ethics issued DAEO gram DO-04-031 on October 5, 2004, attaching an Office of Legal Counsel opinion dated June 22, 2004, concerning the question of whether 18 U.S.C. § 207(f) covers post- employment contacts with members of Congress. The OLC opinion concludes that section 207(f) does cover representational contacts with members of Congress.
[https://www.oge.gov/Web/OGE.nsf/0/45D77C05C182CF01852585BA005BED2D/\\$FILE/do-04-031.pdf](https://www.oge.gov/Web/OGE.nsf/0/45D77C05C182CF01852585BA005BED2D/$FILE/do-04-031.pdf)

S. Exceptions in 18 U.S.C. § 207.

1. State and Local Governments and Institutions, Hospitals, and Organizations. The restriction in 18 U.S.C. §§ 207(c) and (d) does not apply to appearances, communications, and representations by a former senior employee or very senior employee when carrying out official duties as an employee of a state or local government, an employee of certain accredited degree-granting institutions of higher education, or an employee of a nonprofit, tax-exempt hospital or a medical research institution if the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization. 18 U.S.C. § 207(j)(2); 5 C.F.R. § 2641.301(c). This is also referred to as the “university” exception if it meets the criteria mentioned. However, note that you must be an employee or part time employee. This exception does not apply if you are a consultant or independent contractor. 5 C.F.R. § 2641.301(c)(2)
2. Special Knowledge. This exception provides that the restriction in §§ 207(c) and (d) does not apply to a former senior employee or very senior employee who makes a statement, which is based on his own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received. 18 U.S.C. § 207(j)(4); 5 C.F.R. § 2641.301(d).
3. Scientific or Technological Information. § 207 provides an exception from its provisions for communications made solely for the purpose of furnishing scientific or technological information. The exception does not apply to trade and treaty negotiations and on restrictions on former senior employees representing aiding and advising foreign entities. 18 U.S.C. § 207(j)(5); 5 C.F.R. § 2641.301(e). Procedures for using this exception include obtaining a certificate of exception after consulting with the Office of Government Ethics and publication in the Federal Register. *Id.* At DoD, the procedures are set forth in 9-300 of DoD Directive 5500.07-R, which does not require publication in the Federal Register.
4. Testimony. A former employee may give testimony under oath or make a statement required to be made under penalty of perjury. Former personnel may give expert opinion testimony, however, only if given pursuant to a court order or if not otherwise subject to the lifetime bar (18 U.S.C. § 207(a)) as it relates to the subject matter of the testimony. 18 U.S.C. § 207(j)(6); 5 C.F.R. § 2641.301(f).

T. Contract advice by former details. Personnel from a private organization assigned to an agency under the Information Technology Exchange Program, 5 U.S.C. § 3701, cannot, within one year after the end of that assignment, knowingly represent or aid, counsel or assist in representing any other person (except the United States) in connection with any contract with that agency.

X. LOBBYING ACTIVITY RESTRICTIONS AND THE PRESIDENT’S PLEDGE

- A. President Biden's Executive Order 13989 provides the following additional restrictions to all civilian political appointees
- a. Upon leaving Government service, they may not lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that they register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
 - b. For those political appointees subject to the one year cooling off period under 18 U.S.C. § 207(c), it is extended to two years including communicating with senior White House Staff.
 - c. For a period of 1 year following the end of the political appointee's appointment, they will not materially assist others in making communications or appearances that they are prohibited from undertaking by (a) holding themselves out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

XI. FOREIGN GOVERNMENT EMPLOYMENT (U.S. CONSTITUTION)

- A. Since retired military personnel are subject to recall, they are prohibited by the Emoluments Clause of the Constitution (Art. 1, § 9, Clause 8) from being employed by foreign governments without the consent of Congress. Congress has given consent.
https://dodsoco.ogc.osd.mil/Portals/102/emoluments_clause_applications_1.pdf
- B. 37 U.S.C. § 908 allows foreign government employment with approval of the Service Secretary and Secretary of State. Note that these waivers often take three or four months to be approved, so plan accordingly.
1. U.S. Army Human Resources Command (AHRC-PDR)
1600 Spearhead Division Avenue
Fort Knox, KY 40122-5402. Telephone 502-613-8957/8983
 2. Guidance for Air Force Personnel on this subject is found in Air Force Instruction 36-2913, Retirees (Regular and Retired Reserve): Contact the AFPC Airman and Family Sustainment Branch (AFPC/DPFFF);
550 C Street West Suite 25
Joint Base San Antonio-Randolph, Texas 78150-4713. Telephone: COM 210-565-2273 or DSN 665-2273. E-mail application/questions: afpc.retiree@us.af.mil
- Retired Reserve members awaiting pay and members assigned to the Inactive Status List Reserve Section: Contact the Air Reserve Personnel Center Reserve Service Programs Branch(ARPC/DPAMR)
1840 E. Silver Creek Ave, Bldg 390
Buckley AFB CO 80011

3. For the Navy, submit written request to Chief of Naval Personnel/OPNAV N1
Attn: Legal Counsel
701 S. Courthouse Road
Arlington, VA 22204
Or email to: navyfge.fct@navy.mil
 4. For the Marines, a retired Marine Corps member should write to: Headquarters United States Marine Corps; Separation and Retirement Branch; Manpower and Reserve Affairs (MMSR-6) ; 3280 Russell Road, Quantico, VA 22134-5103 Telephone is 703-784-9310/9311
 5. Retired officers who represent a foreign government or foreign entity may be required to register as a foreign agent. 22 U.S.C. § 611; 28 CFR § 5.2. The Registration Unit, Criminal Division, Department of Justice, Washington, D.C. 20530, (202) 233-0776, can provide further information.
 6. Under the International Traffic In Arms Regulation, retired officers must consult with the Department of State.
 7. Note that a military member may be able to work for a “newly democratic nation” but must comply with 10 U.S.C. § 1060. Otherwise, note the potential of losing citizenship if a retired member decides to work for a foreign government not under § 1060.
- C. This Constitutional requirement applies to employment by corporations owned or controlled by foreign governments, but does not apply to independent foreign companies.
1. When seeking employment outside of the DoD contractor community, a military retiree should always ask, “Is this company owned or controlled by a foreign government?” See “Applicability of the Emoluments Clause to Non- Government Members of ACUS,” 17 Op. O.L.C. 114 (October 28, 1993).
- D. 8 U.S.C. § 1481(a)(3)(B). The DoD Financial Management Regulation also addresses employment by a foreign government, in Vol. 7B, Ch 5. Vol. 7B, Ch. 6, addresses loss of citizenship after retirement if working for a foreign government. Suspension of pay due to employment by a foreign government is addressed in Vol. 7B, Ch. 13.
http://comptroller.defense.gov/Portals/45/documents/fmr/current/07b/Volume_07b.pdf

XII. MISCELLANEOUS PROVISIONS

- A. Use of Title. 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 2-304.
- B. Wearing the Uniform. Retirees may only 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. AR 670-1, para. 29-4; Air Force Instruction 36-2903, Dress and Personal Appearance of Air Force Personnel, June 8, 1998, Chapter 6 and Table 6.1; and Navy Uniform Regulations, Chapter Six, Section 10: Reserve/Retired.

- C. OGE Form 278s. Termination Public Financial Disclosure Reports must be filed within 30 days of leaving a covered 278 position (date of retirement for Flag and General Officers).
- D. Non-public Information. All former officers and employees must protect non-public information such as trade secrets, classified information, and procurement sensitive information after leaving federal service. 18 U.S.C. §§ 794 and 1905.
- E. Gifts from Foreign Governments. Military retirees and their immediate families may not retain gifts of more than \$480 in value from foreign governments. 5 U.S.C. § 7342.
- F. JER requires post employment and disqualification issues to be included in annual ethics training.
- G. JER requires that all public financial disclosure filers certify annually that they are aware of the post-government service restrictions and the PIA post-government service restriction. (automatic in the FDM system)
- H. JER requires that ethics officials provide post-government service employment guidance during out processing.
- I. OPM Notice. The Office of Personnel Management requires that Departments notify all public filers subject to 18 U.S.C. § 207(c) what the restrictions are, restrictions regarding 18 U.S.C. § 207(f), and the penalties for violating 18 U.S.C. § 207. 5 C.F.R. Part 730. The post-government employment handouts on the SOCO web site customized to your agency, along with the ethics official's name, address and phone number, should be given to your personnel office so that it can include this information in its notice.

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

- A. *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 post-government employment opinion. For purposes of section 847, a “covered DoD official” is a current or former DoD official who, within two years after leaving DoD service, expects to receive compensation from a defense contractor, and 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 while serving in an Executive Schedule position; in an Senior Executive Service position; or in a general or flag officer position compensated at the rate of pay for grade O-7 or above; or 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. These opinions must be rendered within 30 days after receiving a complete request. DoD must maintain a central database of the § 847 post- government service requests and opinions for not less than five (5) years. The Inspector General shall conduct periodic reviews to ensure opinions are provided and retained.

- B. The central database is the After Government Employment Advisory Repository (AGEAR). DoD employees meeting the 847 criteria, and seeking a post-government employment opinion, must enter information (no CAC required) into DD Form 2945 at: <https://www.fdm.army.mil/AGEAR>. Ethics counselors access AGEAR at: <https://www.fdm.army.mil/AGEAREO>.

1. All 847 opinions must be done through AGEAR.

XIV. SUMMARY OF SECTION 1045 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2018

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

- B. RULE: Effective December 12, 2017, Congress enacted additional post-government employment restrictions for senior personnel departing DoD after that date. 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.

- C. Duration:

1. Military officers in grades O-9 and O-10 and *very senior civilian equivalents* departing service after December 12, 2017, are prohibited from engaging in *lobbying activities with respect to DoD* for two years after date of retirement or separation.
2. Military officers in grades O-7 and O-8 and *senior civilian equivalents* departing service after December 12, 2017, are prohibited from engaging in *lobbying activities with respect to DoD* during the one-year period after date of retirement or separation.

- D. Definitions:

1. *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.
2. *Senior civilian equivalents*: Career and non-career SES and Defense Intelligence SES at Tiers one and two.

3. *Lobbying activities with respect to the DoD* means:

- a. 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.
- b. Lobbying contacts with *covered executive branch officials in the DoD*. Behind-the-scenes assistance is not prohibited. These lobbying contacts include “communications” which is much broader than mere “lobbying”.
- e. *Covered executive branch officials*: the President, Vice President, any officer or employee in the Executive Office of the President; PAS officials; O-7 and above; Non-Career SES; and Schedule C. Career SES are not covered executive branch officials for purposes of applying the restrictions in Section 1045.
- f. *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.
- g. *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.

E. For purposes of the restrictions in §1045, separate agency components pursuant to Part 2641.302 of Title 5, Code of Federal Regulations does not apply.

F. 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>

XV. SECTION 304 OF THE NATIONAL SECURITY ACT OF 1947 (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.

XVI. SAMPLE DOCUMENTS

A. Sample documents can be found at: <https://dodsoco.ogc.osd.mil/>

Template Post-Government Employment Letter

Subject: Request for Written Opinion on Post-Government Employment Restrictions

Dear :

This responds to your request for a written opinion on the post-Government employment restrictions applicable to your prospective employment with [Name of Company]. This opinion covers only this organization and its subsidiaries; it does not relieve you of your responsibility to seek guidance regarding prohibitions or restrictions applicable to any other organization(s). My advice with respect to these matters is advisory only and is provided in accordance with 5 C.F.R. § 2635.107. I am providing this advice in my official capacity, on behalf of the United States, and not as your personal representative. There is no attorney-client relationship established between us. The information you have provided to me is not confidential and is necessary to provide written ethics advice. This opinion is based solely on the information provided in your [ethics questionnaire dated Month X, XXXX, supporting documentation, and subsequent email clarifications, together with any information provided by you during our verbal communications.]

There are a variety of post-Government employment restrictions that are applicable to all former Government employees; however, some of these restrictions will only apply to you based upon your appointment status, the duties you held as a Government employee, or whether or not you are considered a senior official. For the purposes of certain post-Government employment restrictions, a senior official is defined as a: (1) civilian employee whose annual rate of base pay is at or above 86.5% of the rate for Executive Schedule Level II; (2) Flag/General Officer; and (3) Presidential Appointee confirmed with advice and consent of the Senate. Based on the information you provided, the restrictions that apply exclusively to senior employees [will/will not] apply to you.

The following is a detailed analysis of the relevant restrictions and their applicability to your prospective post-Government employment with [Name of Company].

Summary of Applicable Restrictions

[Optional. If needed, use as BLUF to briefly state which restrictions apply and point to the applicable sections.]

Background Information

In your most recent position with the DoD, you served as a [Grade/Rank, Appointment Type, Position Title, & Organization] from [Month, Year] to [Month, Year]. You [departed/retired/intend to depart/retire] on [date]. During your tenure with the DoD, you were responsible for [Provide a full and complete description of the duties performed.]

*****For additional positions within the last five years use the format below for each position.**

From [Month, Year] to [Month, Year], you served as [Grade/Rank, Position Title] for

[Organization]. You advised that you [Provide a full and complete description of the duties performed.] [End Additional Positions***]

You indicated that your prospective position with [Name of Company] you will be working as a [Position Title]. Your duties will include [Provide a full and complete description of the duties to be performed].

Post-Government Employment Restrictions

Representation Bans Under 18 U.S.C. § 207

The primary source of post-Government employment restrictions for former Federal employees or officers is found at 18 U.S.C. § 207. The intent of this statute is to prevent former Federal employees or officers from exerting undue influence gained from Federal employment and using information gained while working for the Federal Government to unfairly benefit a new employer. Specifically, the statute prescribes criminal penalties for any employee or officer who, after terminating Federal employment, knowingly makes, with the intent to influence, any communication with or appearance before an employee of the Executive or Judicial Branch, on behalf of another in connection with a particular matter that either the employee participated personally or substantially or was under the employee's official responsibility during the employee's last year of service. In addition, there is a one year restriction that prohibits former senior employees from knowingly making, with the intent to influence, any communication with or appearance before an employee of their former agency, on behalf of another in connection with an official matter. While none of these Title 18 provisions bar any individual, regardless of rank or position, from accepting employment with any private or public employer after Federal service, § 207 prohibits individuals from engaging in certain activities on behalf of persons or entities other than the Federal Government, whether or not done for compensation. None of the § 207 restrictions bar self-representation.

For the purposes of the restrictions under § 207, the term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term does not encompass any matter before the Federal Government; only those matters that arise to particular matters. General rule-making is usually excluded from the term "particular matter," since general rule-making seldom involves specific parties. The provision further requires that the covered participation in a particular matter must have taken place at a time when the matter involved a non-Federal party (or parties) and also involve such a party or parties at the time of the proposed representation, although these can be different parties.

"Appearance" and "communication" are the terms contemplated by the act of representation, which should not be considered a formal representation as when an attorney represents a client. A communication occurs when you impart or transmit information of any kind -- including facts, opinions, ideas, questions or direction -- to an employee of the Executive or Judicial Branch, whether orally, in written correspondence, by electronic media, or by any other means. This includes those communications with respect to which you intend that the information conveyed will be attributed to you, although it is not necessary that the employee actually recognize you as the source of the information. An appearance occurs when you physically present yourself before an employee of the

Executive or Judicial Branch, in either a formal or informal setting. Although an appearance also may be accompanied by certain communications, an appearance need not involve any communication by you. Mere presence in a meeting may be considered an appearance. Behind-the-scenes or in-house assistance to a private employer is legally permissible. Although you are unable to telephone, sign your name to a letter addressed to, or attend a meeting with, a Federal official, you may legally tell your employer the name of the Federal employee to call or write, or with whom to meet.

Additionally, the restrictions under § 207 prohibit only those communications and appearances that are made to an employee of the Executive or Judicial Branch with the "intent to influence," which include any that may be interpreted as an attempt to persuade that employee to take action. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary Federal ruling, benefit, approval, or other action, or is made for the purpose of influencing Federal action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Federal action to be taken. Accordingly, the restriction is inapplicable to a communication or appearance involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information. The communication or appearance must be made on behalf of someone else. You may always represent yourself, including your sole proprietorship. However, you may not represent a business organization that has a separate legal identity, even if you own 100% of the interests in the entity. For example, if you incorporate a company and represent the corporate entity, then representing this entity is not considered self-representation and the following restriction is applicable to your representation of the corporate entity. Note that the restriction does not apply to communications or appearances before Congress.

[Use if Provision does NOT apply] *Lifetime Representational Ban.* Based on the information you provided, you did not participate personally and substantially in a particular matter that is still within its lifetime. Therefore, the restrictions under 18 U.S.C. § 207(a)(1) do not apply to you. **[End of Provision]**

[Use if Provision Applies] *Lifetime Representational Ban.* Title 18 U.S.C. § 207(a) places a permanent, lifetime ban on employees of the Federal Government, prohibiting them from representing others on particular matters in which they participated personally and substantially during their Federal service. The particular matter must be one in which (a) the Federal Government is a party or has a direct and substantial interest; (b) the person participated personally and substantially as an employee or officer of the Federal Government; and (c) there was a specific party involved at the time of such participation. The restriction remains for the lifetime of the particular matter. For example, when a contract is re-competed and awarded, the new contract is generally considered a new particular matter.

To participate "personally" means directly, and includes participation of a subordinate if actually directed by you in the matter. To participate "substantially" means that your involvement is either of significance to the matter or forms a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality may be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving may be substantial. In addition to approval, other acts may also be considered "substantial," such as participation in a critical step. Additionally, you should be

aware that 18 U.S.C. § 207(a) (1) generally bars former employees from testifying as an expert witness on the same official matter in which the former employee participated for the Government (18 U.S.C. § 207(j)(6)). This ban is applicable regardless of whether the former employee is compensated. Should you be asked to testify as an expert witness on behalf of any non-Federal entity, we recommend that you seek further ethics advice.

Based on the information you provided, you participated personally and substantially in [identify any particular matter(s) that have or are likely to have a nexus to the prospective employer and are still within their lifetime]. [Insert legal analysis concerning applicability of §207(a)(1) to the matter(s).] While the foregoing focuses on matters involving your prospective employer, you should note that the restrictions of 18 U.S.C. § 207(a)(1) prohibit you from representing [Name of Company], or any other non-Federal entity, to the Executive or Judicial Branch on a particular matter in which you participated personally and substantially for the lifetime of that particular matter. [End of Provision]

[Use if Provision does NOT apply] Two Year Representational Ban. Based on the information you provided, there were no particular matters were pending under your official responsibility during your last year of service. Therefore, the restrictions of 18 U.S.C. § 207(a)(2) do not apply to you. [End of Provision]

[Use if Provision Applies] Two Year Representational Ban. Under the provisions of 18 U.S.C. § 207(a)(2), you have a two year ban on attempting to influence employees of the Executive or Judicial Branch on behalf of another on matters that were pending under your official responsibility during your last year of Federal service. Your last year of service is the 12 month period immediately preceding your official separation date. The two-year ban begins to run when your Federal employment terminates and applies even if you did not personally or substantially participate in the matter. This ban applies to representing another party before the Executive or Judicial Branch, with the intent to influence. Behind-the-scenes or in-house assistance is legally permissible.

"Official responsibility" is defined as the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, to approve, disapprove, or otherwise direct Government action. Accordingly, a matter is under your "official responsibility" if you had the power, either directly or through a subordinate, to approve, disapprove, or otherwise direct Federal action. Those areas assigned by statute, regulation, executive order, or job description usually determine the scope of an employee's official responsibility. All particular matters under consideration in an agency are under the official responsibility of the agency head, and each is under that of any intermediate supervisor having responsibility for the activities of a subordinate employee who actually participates in the matter.

A matter was "actually pending" under a former employee's official responsibility if the matter was in fact referred to or under consideration by persons within the employee's area of responsibility. It is important to note that unlike § 207(a)(1), this restriction is triggered simply by virtue of the fact that the particular matter was pending under your official responsibility. Therefore, you should be cautious in your post-Government employment activities in regard to this particular ban. This ban applies even if you had no personal knowledge of a particular matter, but should have reasonably known of a particular matter to which a specific party was identified, as long as it was pending under

your official responsibility during your last year with the Government (5 C. F. R. § 2641.202(a)).

Given your position and duties, it is likely that there were particular matters pending under your official responsibility during your last year of federal service. [*Insert legal analysis concerning applicability of §207(a)(2) and identify particular matters to the extent possible*]. Therefore, under 18 U.S.C. § 207(a)(2), you are banned for two years after your official separation date from representing [*Name of Company*], or any other entity, to the Executive or Judicial Branch on the particular matters that were pending under your official responsibility during your last year of service. As a practical matter, for two years following your departure, if you are asked to represent your prospective employer, or any other non-Federal entity to the Executive or Judicial Branch on any particular matter that may have been pending within the organization in which you served during your last year of service, you should either decline or verify whether or not the matter was pending under your area of responsibility during your last year of service. **[End of Provision]**

[Use if Provision Does NOT Apply] *One Year Trade or Treaty Assistance Ban.* Based upon the information that you provided, this ban governed by 18 U.S.C. §207(b) does not apply to your post-Government employment activities because you did not participate in an ongoing trade or treaty negotiation during your last year in Government service. **[End of Provision]**

[Use if Provision Applies] *One Year Trade or Treaty Assistance Ban.* Title 18 U.S.C. §207(b) provides that for a period of one year after leaving Federal service, former employees or officers may not knowingly represent, aid, or advise someone else on the basis of covered information, concerning any ongoing trade or treaty negotiation in which the employee participated personally and substantially in his or her last year of service. This one-year ban applies to all employees; it is not limited to senior officials. Trade negotiations are those undertaken pursuant to the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §2902). Treaties are international agreements that require the advice and consent of the Senate. "Covered information" is information found in agency records accessible to the employee but exempt from disclosure under the Freedom of Information Act. Based on the information you provided, this ban is applicable to your post-Government employment activities because [*insert legal analysis concerning applicability of §207(b)*] **[End of Provision]**

[*For Senior Employee Only– Remove for Non-Senior Personnel.]**

One Year Cooling-Off Period for Senior Employees. Title 18, U.S.C. § 207(c) prohibits former senior employees from contacting or appearing before any officer or employee of the agency where they worked during their last year of Federal service on behalf of someone else with the intent to influence any official matter for one year. During the one year period after your departure from your senior position, you may not communicate to or appear before any employee of your former agency with the intent to influence, on behalf of any other person and in connection with any matter in which official action by an employee of your former agency is sought. The restriction is measured from the date when you cease to be a senior employee, not from the termination of Federal service, unless the two occur simultaneously.

This restriction is designed to prevent any appearance that former senior officers are able to influence Federal decisions improperly because of their former senior positions. You should note that unlike the proscriptions found in 18 U.S.C. §§ 207(a)(1) and (2), which pertain to particular matters, 18 U.S.C. § 207(c) pertains to any matter in which official action by an employee of your former

agency is sought, including communications with or appearances before employees of your former agency. For example, you will be unable to attend meetings on behalf of your clients at which employees of your former employer are also in attendance, even though you do not speak.

In interpreting these restrictions, the Office of Government Ethics (OGE) advises that the prohibition against representational activities before a Government department, agency, or employee includes written or oral communications aimed at influencing the Government, but does not prohibit you from giving in-house, behind-the-scenes assistance concerning such matters to your new employer. See 5 C.F.R. § 2641.201(d)(3). OGE also advises that these restrictions do not apply to an appearance or communication by you to a Federal agency to request publicly available documents or purely factual information, or to provide such information. Finally, the restrictions do not prohibit purely social contacts with your former colleagues or appearing before the Government representing yourself.

Under this provision, your “former agency” is [Insert applicable component(s) here. Remember for service members departing from joint duty assignments to include both the Military Department and the joint duty component. No componenting for PAS officials] Therefore, you are prohibited from contacting or appearing before any officer or employee of [Former Component(s)] on behalf of [Name of Company], or any other party with the intent to influence an official matter for one year [from the date you no longer held your senior position].

Restriction on Representing or Aiding Foreign Entities. Title 18 U.S.C. § 207(f) is also a one year period applicable to senior officials. It prohibits senior officials for one year after terminating their services as senior officials from knowingly aiding, advising, or representing a foreign entity with the intent to influence a decision of an officer or employee of a department or agency of the United States, or a Member of Congress, in carrying out their official duties. The restriction is measured from the date when an employee ceases to be a senior employee, not from the termination of Federal service, unless the two occur simultaneously. Based upon the information that you provided, this ban [is/is not] applicable to your post-Government employment activities because [insert legal analysis concerning applicability of §207(f)]

Exceptions. There are exceptions to the restrictions in 18 U.S.C. § 207, including acts pursuant to official U.S. Government duties, and aiding, advising, and representing certain international organizations with prior Secretary of State certification. Additionally, if individuals are not compensated, they may make statements based on special knowledge. Restrictions based on 18 U.S.C. § 207(a) and (c), which apply to communications that furnish scientific or technical information, may be waived by the Secretary of Defense. None of the above restrictions prohibits you from accepting any employment with any person or organization. The restrictions apply only to specific post-Government employment activities -- such as representing, aiding, or advising another in connection with certain official matters -- not to the mere fact of being employed by any particular entity. Unless otherwise stated, the restrictions outlined above do not prohibit a former executive branch employee from representing others before Congress. Self-representation or the expression of personal views that are not advanced as agent or representative of another person, whether or not those views are specifically solicited by the Government, is permissible. The restrictions outlined above do not prohibit communications or contacts that are made without the intent to influence the Government, such as requests for the status of a matter or for publicly available information. Please consult this

office for further guidance.

Lobbying Ban under Section 1045 of the NDAA for FY 2018

There are two distinct restrictions under Section 1045; specifically, (1) lobbying contacts and other lobbying activities with covered executive branch officials¹ outside of the DoD pertaining to a matter with respect to the DoD;² and (2) lobbying contacts with covered executive branch officials in the DoD. Under the first restriction, you are prohibited from providing behind-the-scenes assistance to your prospective employer as well as participating in a lobbying contact directed towards a covered executive branch official outside of DoD pertaining to a matter with respect to DoD. Under the second restriction, you are prohibited from participating in a lobbying contact directed towards a covered executive branch official in DoD; behind-the-scenes assistance is permitted.

Restricted lobbying contacts include engaging in oral, written, or electronic communications on behalf of an employer with regard to the formulation, modification, or adoption of Federal legislation, rules, regulations, Executive Orders, or any other program, policy or position of the United States Government. Lobbying contacts also include communications with regard to the administration or execution of a Federal program or policy, including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license; and the nomination or confirmation of a person for a position subject to confirmation by the Senate. Restricted lobbying activities means efforts in support of lobbying contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in lobbying contacts, and coordination with the lobbying activities of others.

The definition of a lobbying contact in the Lobbying Disclosure Act (2 U.S.C. 1602) contains several exceptions which may be pertinent in determining whether your participation in a contact or behind-the-scenes assistance with a contact directed to a covered executive branch official is prohibited under Section 1045. These include (but are not limited to) communications compelled by a Federal contract, written responses to a request by a covered executive branch official, and requests for meeting or other administrative requests (absent any attempt to influence a covered executive branch official). Any behind the scenes assistance that is intended to support a communication that is excepted under the Lobbying Disclosure Act does not violate Section 1045. Similarly, any behind-the-scenes activity not directed at supporting a lobbying contact is not prohibited by Section 1045.

As a [*Grade/Rank*], this provision imposes a [*one year/two year*] restriction on engaging in lobbying activities with respect to DoD. This ban differs from the criminal provisions discussed above in that it applies across all DoD components during the applicable one or two-year cooling off period. For a more detailed explanation of this post-Government employment restriction, see DoD Instruction

¹ A “covered executive branch official” is defined as any person holding one of the following positions: (1) the President or Vice President; (2) any officer/employee in the Executive Office of the President; (3) officer/employee serving in a position in levels I-V of the Executive Schedule (e.g. Presidentially Appointed, Senate Confirmed); (4) member of uniformed services whose pay grade is at or above O-7 (Flag or General Officers); and (5) non-career officials in a confidential, policy-making position (i.e. non-career SES or Schedule C appointee). Career SES are not covered executive branch officials.

² “A matter with respect to DoD” is 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.

1000.32, “Prohibition of Lobbying Activity by Former Senior Officials” or contact this office for further guidance. [\[End Senior Employee Only Provisions***\]](#)

[\[***For Political Appointee Only– Remove for all others.\]](#)

Restrictions under President Biden’s Ethics Pledge

As a political appointee, you signed the Ethics Pledge set forth in Executive Order 13989, committing to additional ethics obligations including the following post-Government employment restrictions:

Upon leaving Government service, you may not lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that you register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

Your one year cooling off period under 18 U.S.C. § 207 (c) is extended to two years including communicating with senior White House Staff.

For a period of 1 year following the end of your appointment, you will not materially assist others in making communications or appearances that you are prohibited from undertaking by (a) holding yourself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

[\[End Political Appointee Provisions***\]](#)

Compensation Bans

[\[Use if Provision does NOT apply\]](#) *Under The Procurement Integrity Act.* Based on the information you provided, you did not serve in a covered position or take a covered action on a contract valued over \$10M involving your prospective employer within the last year; therefore, the compensation ban governed by 41 U.S.C. §2101-2107, does not apply to you. [\[End of Provision\]](#)

[\[Use if Provision Applies\]](#) *Under The Procurement Integrity Act.* In accordance with 41 U.S.C. §2101-2107, former agency personnel are prohibited from accepting compensation from a contractor as an employee, officer, director, or consultant for one year after having (1) served, at the time of selection of the contractor or the award of the contract, as procuring contracting officer, the source selection authority, a member of the source selection board, or the chief of a financial or technical evaluation team on a contract over \$10M; (2) served as the program manager, deputy program manager, or administrative contracting officer for a contract over \$10M; or (3) personally made the agency decision to award a contract, subcontract, modification, task order, or delivery order worth over \$10M, to establish overhead or other rates valued over \$10M for that contractor, to issue contract payments over \$10M, or to pay or settle a claim over \$10M with that contractor. A program manager for a contract is one who actively manages the program cost, performance, and schedule under the contract, regardless of the title given to the individual. A Federal official who fits within one of these categories, however, is not prohibited from accepting compensation from another division or affiliate of a contractor, so long as that division or affiliate does not produce the same or similar

products or services provided under the subject contracting action.

Based on the information you provided, you are prohibited from accepting compensation from [Name of Company] for one year from [date the restriction begins] because [insert legal analysis].
[End of Provision]

Under 18 U.S.C. § 203. Former employees are prohibited from sharing in any compensation for representational services before the Executive and Judicial Branches of the Federal Government, rendered personally or by another, at a time when the former employee was still employed by the Federal Government. Accordingly, after you leave Federal service, you may not accept compensation for representational services, which were provided by anyone while you were a Federal employee, before a Federal agency or court regarding particular matters in which the Federal Government was a party or had a substantial interest. This prohibition may affect you when you leave the Federal Government and share in the proceeds of a partnership or business for representational services that occurred before you terminated Federal service. Examples of such representational activities include lobbying, consulting, and legal representation.

*****For Emoluments -retired/retiring military personnel &reservists only – Remove for all others.]**

Restrictions under the Emoluments Clause

Article I, Section 9, Clause 8, of the Constitution of the United States, prohibits employment of all retired military members, both officer and enlisted and both Regular and Reserve, by a foreign government unless Congressional consent is first granted. [See 44 Comp. Gen. 130] Employment by educational or commercial institutions owned, operated, or controlled by a foreign government are included within the scope of this restriction. The penalty for violation is withholding your retirement pay in an amount equal to the foreign salary illegally received. [See 61 Comp. Gen. 306] Congress consented to the acceptance of civil employment with a foreign government by, among others, retired Regular military members and Reserve military members, if both the Secretary of the Military Department and the Secretary of State approve the employment. [See 37 U.S.C. 908] This approval is prospective only, so foreign civil employment should not be accepted until approval has been obtained.

Retired military members who wish to accept such employment should submit a written request for approval to the Secretary of their Military Department through appropriate channels. The request must fully describe the contemplated employment and the nature and extent of the involvement with the foreign government. A former military member desiring employment with a foreign government or any foreign business interest may be required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. § 611 et. seq. Any person who acts as an agent of a foreign principal must file a registration statement with the U.S. Attorney General. For more information on this restriction or to find out how to gain approval for potential foreign civil employment, contact the Judge Advocate General's Office for your Military Department. **[END Emoluments***]**

*****For Personnel Who Plan to Work on Transition or Annual Leave – Remove for all others]**

Restrictions during Transition and Annual Leave

Under the provisions of 18 U.S.C. § 205, you are prohibited from acting as an agent or spokesperson for any entity, other than the United States, before any Federal department or agency in connection with any covered matter in which the United States is a party or has a direct and substantial interest, while you are still a Government employee. A covered matter means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, or other particular matter. This restriction applies whether or not you are compensated. The covered matter does not have to be one with which you previously have been involved, or one that involves DoD. A second part of this section prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration of assistance in prosecution of a claim against the United States. Title 18, U.S.C. § 203 prohibits you from seeking, accepting, or agreeing to receive or accept compensation in exchange for representational services, rendered personally by you *or by another*, in relation to any particular matter, such as a contract or claim, in which the United States is a party or has a substantial interest, before any Federal department, agency, or other specified entity. “Representational services” means communications to or appearances before specified Federal entities, with the intent to influence the Government on behalf of the non-Federal entity.

These representational restrictions have been interpreted very broadly and, with respect to any matter where there is potential for conflict, a Federal employee who is acting in his *individual*, i.e., non-Federal, capacity is prohibited from representing a non-Federal entity to any Federal employee who is acting in his *official* capacity or before any Federal agency or tribunal. Examples of prohibited representation include: (1) arguing or speaking to (in the sense of urging, advocating, or intending to influence) any other Federal employee about a decision to take an action by the Federal agency, whether at a meeting or in a phone or personal conversation; (2) signing reports, letters, memoranda, bids, or other materials that are intended for submission to a Federal agency; and (3) signing agreements with a Federal agency. Merely delivering documents or answering direct requests for information without advocating a particular position is not prohibited. The concerned matter does not have to be one with which you previously have been involved or one that involves DoD.

As we discussed, you should be especially careful about these restrictions if you begin to work for your prospective employer while on transition or annual leave. Until your transition or annual leave ends, you should avoid any action which could raise the suggestion that you are representing another back to the Federal Government. For example, appearing in a Federal workplace during transition or annual leave, could be a violation if it involves representation in a covered matter in which the United States Government is a party or has a direct and substantial interest. [End Transition/Annual Leave***](#)

Restriction on Use of Non-Public Information

You remain bound not to disclose any non-public Government information that you may have obtained through your Federal employment. Nonpublic information includes classified information, source selection data, information protected by the Privacy Act, proprietary information, information protected by the Trade Secrets Act, and other information that has not been made available to the public and is exempt from disclosure.

Requirement under Section 847 of the NDAA for FY 2008

[Use if Provision does NOT apply] Based on the information you provided, you did not personally or substantially participate in an acquisition with a value in excess of \$10M while serving in a covered position during your last two years of service. Therefore, the requirement to receive a written opinion before accepting compensation from a defense contractor under Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) does not apply to you at this time. **[End of Provision]**

[Use if Provision Applies] Certain current or former DoD officials who, within two years of leaving DoD, expect to receive compensation from a defense contractor must request and receive a written opinion regarding the applicability of post-employment restrictions to activities that officials may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). It applies if you are a current or former DoD official who, within the two year period prior to your departure from DoD³, participated personally and substantially in an acquisition with a value in excess of \$10M while serving in: (1) an Executive Schedule position; (2) a Senior Executive Service position; (3) a general or flag officer position; or (4) in the position of program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team.

Based on the information you provided, you personally or substantially participated in an acquisition with a value in excess of \$10M while serving in one or more of the above positions during your last two years of service. Therefore, Section 847 does apply to you at this time. This letter satisfies the requirement of Section 847 to receive written guidance on your post-Government employment restrictions regarding **[Name of Company]**. If you leave your prospective position and obtain employment with any other defense contractor within the two year period following your resignation, you are required to receive another written post-Government employment opinion before accepting compensation from that defense contractor. **[End of Provision]**

[*For Departing Attorneys – Remove for all others]**

Additional Restrictions for Licensed Attorneys

Since you are a licensed attorney, I recommend that you check with your state bar to see if there are any professional conduct rules that apply to you, as they can sometimes be more restrictive than the Federal post-Government employment restrictions discussed in this opinion. **[END Departing Attorney***]**

[*Termination Report –OGE 278 filers only – Remove for all others.]**

Requirements for Termination Public Financial Disclosure Report (OGE 278) Filers

OGE 278 filers are required to file a Termination OGE 278 Report, within 30 days of the final day of Government service. The final date of service is the day before the effective retirement or termination date. As an OGE 278 filer, you must file a Termination Report, which is due 30 days after your

³ On April 16, 2014, the DoD Standards of Conduct Office issued the memorandum, *Interpretation of “Covered Department of Defense Officials” Under Section 847*, to all DoD Designated Agency Ethics Officials to promote uniform application of Section 847 throughout DoD. This guidance clarified that a “covered DoD official” must have participated in the kinds of matters that trigger the application of Section 847 “within the two year period prior to his or her departure from DoD”.

official separation date. You may submit the report up to 15 days before your official separation date; however, you will have a continuing obligation to disclose any reportable changes that occur between your filing date and your official separation date. [\[END Termination Report***\]](#)

Conclusion

These restrictions are complex and highly fact-dependent. If any of the facts set forth in this opinion are not accurate, please let me know as it could change my analysis on whether a particular restriction applies to you. If you have any doubts about the propriety of a particular course of action, you should obtain advice before acting to ensure that you do not inadvertently violate one of these rules. Please contact this office at [\[Add Phone Number\]](#) or by email at [\[Add Email\]](#) if you have further questions.

Sincerely,

[Attorney Name]

[Title]