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***Before you leave ...  
What departing employees need to  
know about the seeking and post-  
Government employment rules.***

**Presented by:  
DoD Standards of Conduct Office  
Office of General Counsel**



# Contact SOCO!

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- **This presentation is a broad overview – it is NOT intended to provide specific advice.**
- **Do I need individual advice?**
  - **Yes** – If you are or will be seeking employment with any entity doing business with or seeking action from the Federal government – this includes academia, think tanks, FFRDCs/UARCs, and industry.
  - **No** – If you:
    - Plan to fully retire and “go fishing”
    - Plan to work for entities that do not do business with or seek action from the Federal government
    - Plan to work for another Federal government entity
- **How to reach us:**  
**[osd.soco@mail.mil](mailto:osd.soco@mail.mil) or 703-695-3422**



# *Seeking Employment*

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# Seeking Employment

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- **Why do you need to be careful?**

Because as you move through the process of seeking and negotiating for post-government employment, you are deemed to have an actual financial interest in your prospective employer.

- **Criminal conflict of interest laws & regulations apply!**
- **Public Financial Disclosure (278) Filers have statutory notice requirements:**
  - The STOCK Act requires that public filers submit a notice to their ethics counselor within 3 days of commencing negotiations for employment or completing an arrangement for employment with any non-Federal entity.



## ***Seeking Employment (cont.)***

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- **You are “seeking employment” when you:**
  - Submit a resume or job application
  - Make an unsolicited employment contact with a prospective employer
  - Respond to (other than to reject) an unsolicited overture regarding employment
  - Engage in employment discussions with a prospective employer
- **You are “negotiating employment” when:**
  - Your employment discussions move from a one-sided overture or general expression of interest and become a mutual expression of interest regarding a specific position or set of duties
  - “Negotiating” means the prospective employer’s financial interests are now imputed to you and if you are an OGE 278 filer, you must file a STOCK Act notice with ethics counsel.
- **You are not seeking or negotiating employment when you:**
  - Ask someone to critique your resume
  - Ask advice from a friend or mentor about the job seeking process
  - Submit a resume to or contact a head hunter generally
  - Request a job application or general information about a prospective employer



# *Disqualification*

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- **To avoid violating the law:**
  - Take **no official action** with regard to a company with which you are “seeking employment”
  - Complete a **written disqualification** statement, with copy to your supervisor and to your ethics office, if the company has any actual or potential relationship to your current work or dealings with your current organization (when in doubt disqualify!)
  - Work with your supervisor and subordinates to set up an appropriate screening and referral process to ensure your disqualification is effective, if applicable
- **Ethics officials can provide disqualification templates and assist with establishing a screening process.**



# *Termination of Restrictions*

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- **You are no longer “seeking employment” when:**
  - Either you or a prospective employer reject the possibility of employment and discussions have terminated,
  - OR*
  - 60 calendar days have passed after submitting a resume or application and no response has been received from the prospective employer



# Common Questions

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- ***When can I look for a job?***

When you are ready. However, you cannot seek employment with a company if you would be required to disqualify yourself from performing your official duties.

- ***Do I have to prepare a written disqualification?***

Yes, if your duties have the potential to involve your prospective employer you must recuse in writing, with notification to your supervisor and a copy to your ethics office. However, if your duties require you to participate in matters involving your prospective employer, you will not be able to begin seeking employment with that company until you are no longer performing those duties.

- ***What am I disqualified from?***

Any official action on a “particular matter” that could impact the financial interests of the prospective employer. Examples include any action other than purely ministerial work related to licenses, grants, contracts, loans, or litigation, as well as participation in issuance of regulations or policies focused on the interests of a discrete and identifiable class.



## Common Questions (cont.)

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- ***How do I respond if someone approaches me about future employment?***
  - Decide if you are interested.
    - If yes, immediately disqualify yourself (if your duties allow).
    - If not, decline promptly.
- ***What kind of responses DO NOT constitute rejection of possible employment discussions?***
  - “I’m not entertaining any job possibilities until the end of the Administration.”
  - “My schedule is packed right now, can we discuss after the election?”
  - “Let me think about it and get back to you.”
  - “I don’t know. Could we set up a time to talk?”
  - “I’d have a conflict with what I’m working on right now, but that should wrap up in the next week or two. We can talk then.”



## ***Common Questions (cont.)***

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- ***What kind of responses constitute rejection of possible employment?***
  - “Thanks, but I’m not interested.”
  - “I’m not considering future employment at this time.”
  
- ***I’ve disqualified myself. The prospective employer wants to take me to lunch or pay for my travel expenses to meet executives at their headquarters location. Can I accept?***
  - Yes, after disqualification, if customarily provided by the prospective employer in connection with recruiting.
  - Benefits exceeding \$415 must be reported on your next Financial Disclosure Report.



# *Procurement Integrity*

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- **Special reporting rules for procurement officials seeking employment:**
  - You may not take official action on procurements exceeding the Simplified Acquisition Threshold (SAT) involving prospective employers
  - If you are involved in a procurement over the SAT and have an employment contact with a bidder or offeror, you must:
    - 1) Promptly report the contact in writing to your supervisor and ethics counsel and reject the possibility of non-Federal employment; or
    - 2) Promptly disqualify yourself from further participation in the procurement until/unless authorized to resume on the grounds that:
      - a) the entity is no longer a bidder or offeror; or
      - b) all employment discussions with the bidder or offeror have terminated without an agreement or arrangement for employment.



# *Post Government Employment*

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# Overview

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**General:** Former employees have various restrictions relating to post-Government employment (PGE) activities. Most do not restrict with whom you can be employed.

- **Statutory:** Three broad categories –
  - **Criminal Conflicts of Interest** - Generally restricts communications to or appearances before Federal employees on behalf of a non-Federal entity. Does not restrict “behind-the-scenes” activities.
  - **Procurement Integrity** – Prohibits compensation from a prime contractor that was awarded a contract over \$10M in which former official served in certain procurement positions or took certain actions during their last year of service.
  - **Ad Hoc NDAA Provisions** –
    - § 847- PGE opinion letter required for certain employees before compensation by a defense contractor.
    - § 1045 - Prohibits “lobbying contacts” back to political appointees and GO/FOs in DoD and “lobbying activities” (to include behind-the-scenes) to covered employees outside of DoD, if related to DoD matters.
- **Ethics Pledge (political appointees only):** Prohibits “lobbying activities”, to include behind-the-scenes,” back to political appointees and GO/FOs for remainder of current administration (Executive Branch) and 5 years (DoD) and permanently prohibits activities under Foreign Agents Registration Act.



# *Conflicts of Interest Statute*

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## Representation Bans:

- **Lifetime Ban:** Permanently bars former employees who participated in particular matters involving specific parties from communicating on behalf of another to any Executive or Judicial Branch official on that matter for the life of that matter.
- **2-Year Ban:** Bars former employees from communicating on behalf of another to any Executive or Judicial Branch official for two years on matters involving specific parties that were pending under their responsibility during their last year as Government employee.
- **1-year Cooling Off:** Bars “senior” officials from communicating on behalf of another back to their former agency. For Senate confirmed appointees this includes all of DoD. For GO/FO, this includes Military Department and DoD component. For all others, only includes their DoD component, or in some cases, agency. (Senior officials are those whose basic pay is  $\geq$ \$170,665 in 2020).



## ***Conflicts of Interest Statute (cont.)***

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- **Foreign Entity Ban:** One year restriction on aiding, advising, or representing a foreign government or political party w/ the intent to influence Congress or any Federal agency. *Only applies to senior officials.*
- **Trade and Treaty Ban:** One year restriction applies to aiding and advising another on trade or treaty negotiations that former employees worked on in their final year of Government service.
- **Exceptions to the representational bans include:**
  - requests for publicly available documents
  - status inquiries
  - purely social contacts
  - public commentary under certain circumstances
  - self representation



# *Procurement Integrity*

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## **41 U.S.C. §2104**

- Former employees may not accept compensation from a contractor within one year after the official –
  - 1) Served in one of the following capacities with respect to a contract in excess of \$10M:
    - PCO, SSA, SSEB member, or Chief of Financial or Tech evaluation team
    - Acquisition PM/Deputy PM or ACO
    - Award/modification of a contract, subcontract, task/delivery order > \$10M to that contractor
  - 2) Personally made for the Federal agency a decision to:
    - Award a contract, subcontract, modification, or a task/delivery order >\$10M to that contractor
    - Establish overhead or other rates for that contractor >\$10M
    - Approve issuance of contract payment(s) > \$10M to that contractor
    - Pay or settle a claim >\$10M with that contractor



# *Ad Hoc Statutes*

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## **Section 847 of the 2008 NDAA**

- Covered employees must request written PGE advice using a specific online system if they will receive compensation from a DoD contractor within two years of leaving DoD.
- Covered employees include employees who participated personally and substantially in an acquisition over \$10M as either an:
  - SES (including NC-SES and DISES) or General/Flag Officer; or
  - Acquisition PM/Deputy PM, PCO, ACO, SSA, SSEB member, or Chief of a Financial or Tech evaluation team.
- Impact: What does this mean for you?
  - If you fall into one of the covered positions above and are considering employment with a defense contractor, seek ethics guidance well in advance of your departure.



# *Ad Hoc Statutes*

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## **Section 1045 of the 2018 NDAA**

- “Lobbying” ban – Broader than acting as a registered lobbyist
- Applicability/Duration of restriction:
  - O-9/10 and civilian equivalents – 2 year restriction
  - O-7/8 and civilian equivalents – 1 year restriction
- (1) Prohibited from making direct communication to covered official in DoD on behalf of employer. Behind-the-scenes assistance is allowable. DoD means all of DoD – no separate components.
- (2) Prohibited from making direct communication to covered official on behalf of employer AND providing behind the scene assistance to employer in support of the communication directed to the covered official IF the communication pertains to a DoD matter.



# ***Ethics Pledge***

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## **E.O. 13770 – Ethics Pledge**

- “Lobbying” ban – Broader than acting as a registered lobbyist
- All political appointees required to sign the Ethics Pledge, agreeing to three additional PGE restrictions.
- (1) For the remainder of the administration, former appointees may not communicate (or support communications) back to covered employees throughout the Executive Branch on behalf of a client. Prohibits behind the scenes assistance.
- (2) For five (5) years, former appointees may not communicate (or support communications) back to covered employees at their former DoD component on behalf of a client. PAS are still prohibited from communicating to covered employees throughout all of DoD. Prohibits behind the scenes assistance.
- (3) Former appointees may not engage in any activity on behalf of a foreign government, or foreign political party, which would require them to register under the Foreign Agents Registration Act of 1938. Duration unlimited.



## *Other Provisions*

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- **Non-Public Information**: Non-public information may never be disclosed, even after leaving Government service. This means any information not legally in the public domain. It includes, but is not limited to, information that is classified, Controlled Unclassified Information (CUI), or procurement sensitive.
- **Termination OGE 278 Reports**: By statute, Public Financial Disclosure Report (OGE 278) filers must file a termination report within 30 days after leaving Government service.
  - Can and should be filed in Integrity within last two weeks of termination of employment.
  - Filers must notify ethics counsel of your departure date for report to be assigned.
  - Penalties –
    - Untimely submissions may result in a \$200 penalty.
    - Failure to file or falsification triggers mandatory referral to the Justice Department and civil penalties of more than \$50,000.



# Questions?

## Contact Your Local Ethics Office:

### **OSD Personnel:**

DoD Standards of Conduct Office (SOCO)

[osd.soco@mail.mil](mailto:osd.soco@mail.mil)

703-695-3422

### **WHS & PFFA Personnel:**

WHS Office of General Counsel

[osd.pentagon.ogc.mbx.whs-pffa-ethics-program@mail.mil](mailto:osd.pentagon.ogc.mbx.whs-pffa-ethics-program@mail.mil)

### **Marine Corps & Navy**

[ethics@navy.mil](mailto:ethics@navy.mil) or [OJAG\\_Ethics@navy.mil](mailto:OJAG_Ethics@navy.mil)

### **Army**

[usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil](mailto:usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil)

### **Air Force**

[usaf.pentagon.saf-gc.mbx.SAF-GCA-Ethics-Workflow@mail.mil](mailto:usaf.pentagon.saf-gc.mbx.SAF-GCA-Ethics-Workflow@mail.mil)