DATE

**VIA E-MAIL**

NAME

ADDRESS #1

CITY, STATE ZIP CODE

EMAIL ADDRESS

**Subject: Post-Government Employment Opinion [Name of Company]**

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] will be 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, § 207(a) 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 involving specific parties that either the employee participated in personally and 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, in § 207(c), 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 bars 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 bars self-representation.

The restrictions under § 207(a) only apply to prohibited communications or appearances made in connection with a “particular matter involving specific parties.” While a “particular matter” includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding, not all such matters involve specific parties. Typically, such matters are limited to specific proceedings affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case. For example, general rulemaking is usually excluded from the term “particular matter involving specific parties,” since general rule-making seldom involves specific parties. The provision further requires that the covered participation in a particular matter involving specific parties must have taken place at a time when the matter involved a non-Federal party (or parties) and also involve specific 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 involving specific parties 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)(1) places a permanent, lifetime ban on employees of the Federal Government, prohibiting them from representing others on particular matters involving specific parties 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 particular matter involving specific parties 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) involving specific parties 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 involving specific parties 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 involving specific parties 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 particular matters involving specific parties 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 involving specific parties 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 involving specific parties 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 involving specific parties 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 involving specific parties, 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 governmental 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. Note, however, that certain exceptions do not apply to those who are in an independent contractor, vice employee, status with the non-Federal entity represented. 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 officials[[1]](#footnote-1) outside of the DoD pertaining to a matter with respect to the DoD;[[2]](#footnote-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 cooling off periodand includes a restriction on preparing or assisting others in making a communication to a covered official at a non-DoD agency that you could not personally make. For a more detailed explanation of this post-Government employment restriction, see DoD Instruction 1000.32, “Prohibition of Lobbying Activity by Former Senior Officials” or contact this office for further guidance. **[End Senior Employee Only 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. Note that this provision may be implicated in less obvious situations, such as foreign government owned/controlled corporations or consultant positions receiving partnership/profit distributions derived from foreign government clients.

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 DoD[[3]](#footnote-3), 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 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or by email at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ if you have further questions.

Sincerely,

[*Attorney Name*]

[Title]

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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
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”. [↑](#footnote-ref-3)