U.S. Department of War
Standards of Conduct Office

SEEKING EMPLOYMENT RESTRICTIONS
(RULES WHEN YOU ARE LOOKING FOR A NEW JOB)

Purpose: This document summarizes the Government ethics rules that may impose certain restrictions on your activities while seeking outside or post-Government employment.

Application: For all Department of War (DoW) personnel.

Legal Notice: This information identifies statutes and regulations that may restrict or otherwise affect activities of DoW personnel who are seeking outside or post-Government employment. This information is a summary of the rules, OSW personnel should contact the Standards of Conduct Office (SOCO) at **(703) 695-3422** or by e-mail at OSD.SOCO@MAIL.MIL to discuss their particular situation. DoW personnel served by other ethics offices should consult with their ethics officials.

Advice from ethics officials with respect to these matters is ***advisory only***, and is provided in accordance with 5 C.F.R. § 2635.107 and 41 U.S.C. § 2104. Ethics officials are acting on behalf of the United States Government, and not as your personal representative. ***No attorney-client relationship*** is created.

I. RESTRICTIONS WHILE SEEKING AND NEGOTIATING EMPLOYMENT *(BEFORE YOU LEAVE DOW)*

A. RULE: Generally, DoW personnel may not *participate personally and substantially* in a *particular matter* that, to his or her knowledge, will have a *direct and predictable effect* on the financial interests of a prospective employer. (18 U.S.C. § 208; 5 C.F.R. § 2635.604).

B. STOCK ACT NOTICE. Public Financial Disclosure Report (OGE Form 278) filers are required to file a statement notifying their ethics counselor of any *negotiation* for or agreement for employment or compensation within three business days after commencement of the *negotiation* or agreement. A sample STOCK Act notice can be obtained from your ethics official.

C. DEFINITIONS:

- **Seeking employment** includes: (1) making an unsolicited communication to a prospective employer or the prospective employer's agent or employee regarding potential future employment; (2) engaging in negotiations for employment; or (3) responding to an unsolicited communication from a prospective employer or the prospective employer's agent or employee regarding possible employment (other than rejecting the possible employment). *A response that defers discussion to a later date does not constitute rejection.*

    - "Seeking employment" does *not* include requesting a job application.
    - An employee is no longer seeking employment when either party rejects the possibility of employment or two months have passed since the transmittal of an unsolicited resume or employment proposal and the employee has received no indication of interest from the potential employer.

- **Negotiation** for employment includes any discussion or communication with another person or such person's agent with the mutual view of reaching an agreement regarding possible employment. It is not limited to just discussing specific terms and conditions of employment in a specific position.

- **Particular matters** include matters that involve deliberation, decision, or action that are focused on the interests of specific persons or a discrete and identifiable class of persons. A *particular matter* could include legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable group of parties or organizations, *e.g.*, DoW policy affecting only military aircraft manufacturers. Particular matters may also include a contract, claim, application, judicial or other proceedings, request for ruling or other determination, controversy, investigation, or charge.

- **Participation** means to take an action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or purposeful inaction in order to affect the outcome of a matter. An employee can participate in particular matters that are pending other than in his own agency.

- **Personal** participation is direct participation. It also includes the direct and active supervision of the participation of subordinates in a matter.

- **Substantial** participation means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of the particular matter. A single act of approving or coordinating on a critical step, may be substantial. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement of an administrative or peripheral issue.

- **Direct and predictable effect** requires a close, causal link between any decision or action taken on the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter that has an effect on the financial interest only because of its effects on the general economy is not a direct effect. There must also be a real, not speculative, possibility that the matter will affect the financial interest, but the size of the gain or loss is not relevant. Note: The question is whether the *matter* will have an effect on the prospective employer's financial interest, *not* whether the employee's participation in that matter will have an effect.

II. Recusal Requirements

A. Notification of Recusal: DoW personnel must recuse from participating in official matters that may affect the financial interests of a prospective employer with whom they are *seeking, negotiating, or have an arrangement for* employment. Recusal is simple – **Do not do ANY work on the task!**

B. Notification in Writing. Employees generally do need not to file written recusal statements when seeking employment. However, employees who become aware of the need to recuse from a particular matter involving a prospective employer should take whatever steps are necessary to ensure that they do not participate in that matter. 5 C.F.R. § 2635.604(b). To that end, it is often prudent for employees to create a record of their actions by providing written notice to an agency ethics official, a supervisor, or other appropriate official. (5 C.F.R. §2635.604(c)). A sample recusal can be obtained from your ethics official or the SOCO website.

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

D. Statutory Recusal Requirement. Section 1117 of the FY22 NDAA (Pub. L. No. 117-81) creates a statutory seeking employment recusal requirement that applies to *DoW* personnel in addition to the seeking employment recusal requirements for all *Federal* employees discussed above. Comparatively, the recusal standard in Section 1117 more narrowly prohibits DoW personnel from participating in a "*particular matter involving specific parties"* where a prospective employer is or represents a party to the matter. For purposes of applying Section 1117, use the definition of "seeking employment" referenced above.

III. Acquisition/Procurement Issues

A. RULE: A DoW official who is participating personally and substantially in a procurement for a contract in excess of the **simplified acquisition threshold** (currently $350,000) and is contacted by a bidder regarding non-Federal employment or is seeking employment with a

bidder shall:

- Report the contact, in writing, to his supervisor and ethics official; and
- Reject the offer of non-Federal employment; or
- Recuse from further personal and substantial participation in the procurement until authorization to resume participation is granted in accordance with the conflict of interest rules (18 U.S.C. § 208) on the grounds that:

    - The offeror is no longer a bidder; or
    - All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement for employment. (41 U.S.C. § 2103).

B. Recusal: Recusal is simple – Don't do **ANY work on the task!** Further, the Federal Acquisition Regulations require an official who must recuse, to submit a written notice of such recusal to the contracting officer, source selection authority if other than the contracting officer, and immediate supervisor. The written notice must identify the procurement, describe the nature and specific dates of the official's participation in the procurement, identify the offeror, and describe the offeror's interest in the procurement.

   An official must remain recused until such time as the agency, at its discretion, authorizes the official to resume participation in the procurement. In addition to the procurement integrity restrictions, the conflict of interest statute, 18 U.S.C. § 208, prohibits an official from taking part in any particular matter, including a procurement of any amount, if the official has an existing employment relationship with the concerned contractor or is negotiating for employment with that contractor, unless a waiver has been granted.

C. Definitions: See the preceding section for the definitions of *personal and substantial participation*, *seeking employment,* and *negotiating employment*.

D. Examples:

- *Personal and substantial* participation includes active and significant involvement in *any* of the following activities directly related to the procurement:

    - Drafting, reviewing, or approving the specification or statement of work;
    - Preparing or developing the solicitation;
    - Evaluating bids or proposals;
    - Selecting a source;
    - Negotiating price or terms and conditions of the contract; or
    - Reviewing and approving the contract award.

- For purpose of this Procurement Integrity requirement, the following activities are not considered *personal and substantial participation*:
    - Clerical functions supporting the conduct of a particular procurement; and

- Reviews conducted solely to determine compliance with regulatory, administrative, or budgetary procedures.

IV. MISCELLANEOUS MATTERS

A. Representing to the Government: While in Government service, including on terminal, transition, or separation leave or associated TDY, you are prohibited from representing someone else, with or without compensation, and from accepting compensation for representational services provided by anyone, before any Federal agency or court regarding particular matters in which the United States is a party or has a direct and substantial interest. 18 U.S.C. §§ 203 and 205.

B. Off-Duty Employment: While on terminal, transition, or separation leave or associated TDY, you are still in Government service, and must comply with your organization's requirements regarding off-duty employment, including obtaining approval to work for a DoW contractor if you file a financial disclosure report. 5 C.F.R. § 3601.106.

C. Holding a Civil Office in State or local Government: While on active duty (including terminal leave) military *officers* are prohibited by 10 U.S.C. § 973(b) from holding a "civil office" with a state or local government.

D. Accepting a Federal Civilian Position: *Military personnel* on terminal, transition, or separation leave are authorized to accept a civilian position in the U.S. Government and receive the pay and allowances of that position as well as their military pay and allowances. 5 U.S.C. § 5534a.

E. Interview Expenses: You may accept travel expenses (meals, lodging, transportation) from a prospective employer if they are customarily provided in connection with *bona fide* employment discussions. If the performance of your official duties could affect a prospective employer, you must first be disqualified from acting on those matters. If these expenses exceed **$525**, and you file a financial disclosure report (OGE 450 or OGE 278), you must include them on your report.

F. Questions? **PLEASE CALL YOUR LOCAL ETHICS OFFICIALS!** For OSD personnel, contact SOCO at (703) 695-3422 or OSD.SOCO@MAIL.MIL. All others, contact your local JAG or General Counsel's office.