

## INFORMATION PAPER

NGB-JA  
13 September 2019

### **SUBJECT: Post-Government Employment - One Year Cooling Off Period for National Guard Bureau Senior Officials**

**PURPOSE:** To provide ethics guidance regarding the one-year representation post-government employment ban (cooling off period) applicable to National Guard Bureau (NGB) senior officials.

**GUIDANCE:** NGB senior officials are required to comply with statutory and regulatory post-government employment restrictions including a one year cooling off period.

**DISCUSSION:** Post-government employment (PGE) restrictions apply to “senior officials” upon termination of service or employment with the United States Government. Civilian personnel are senior officials when their rate of base pay is at or above 86.5% of the rate for Executive Schedule Level II (\$163,455 in 2019). For members of the military, a senior official is in grade O-7 or above. These restrictions do not apply to a Special Government Employee (SGE) who serves less than 60 days of Title 10 active duty during the preceding 365-day period prior to terminating service.

The majority of PGE restrictions are imposed by 18 U.S.C. § 207,<sup>1</sup> a federal criminal statute. While 18 U.S.C. § 207 does not bar a former senior official from working for a public or private employer after government service, it does impose restrictions and time restraints on such employment.

**18 U.S.C. § 207(c) - Cooling off period for senior officials.** For a period of one year after leaving their position, a former senior official may not knowingly, with the intent to influence, make any communication to or appearance before an employee of an agency in which he or she served in any capacity within the one year period prior to termination from the senior position, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former senior employee seeks official action by any employee of such agency. Importantly, 18 U.S.C. § 207(c) does not prohibit “behind the scenes” work by the former senior official.

A communication or appearance is made with the intent to influence when made for the purpose of (1) seeking a Government ruling, benefit, approval, or other discretionary Government action or (2) affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy. While certain routine or ministerial communications are not made with intent to influence, many communications made while the former employee is performing a contract may involve the intent to influence the Government, because the

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<sup>1</sup> Other applicable provisions under 18 U.S.C. §207 are addressed in the “Post-Government Employment Restrictions for National Guard Bureau Senior Officials” Information Paper.

contractor and the Government have potentially differing views or interests on the matter being discussed. The prohibition is not confined to major disputes, renegotiation or the like. Requests for extensions of interim deadlines or work orders, non-routine requests for instructions or information from the agency, suggestions about new directions on even relatively minor portions of the contract and explanation or justification of the manner in which the contractor has proceeded or intends to proceed are all prohibited.

NGB senior officials are “cooled off” from such activities with respect to components of the Department of Defense, including NGB and the senior official’s respective Service, *i.e.*, the Department of the Army or the Department of the Air Force. This restriction would not apply to other components within the Department of Defense, such as the Department of the Navy, Defense Logistics Agency, Defense Intelligence Agency and National Security Agency.

The cooling off restriction is implicated whenever a former senior officer has performed 60 or more days of Title 10 active duty during the preceding 365-day period. Once the restriction comes into play, it applies with respect to any agency in which the former senior official served in any capacity during the one year period, regardless of position, rate of basic pay, or pay grade.

Of note, when a former senior official returns to Title 10 active duty status, the applicable cooling off period may “reset.” For example, when a former NGB General Officer, during his or her one year cooling off period, returns to active duty, the “new” active duty days will be added to any duty days served within the preceding 365 days. This may result in a new one year cooling off period, commencing when the General Officer again leaves active duty.

Any questions regarding the foregoing may be directed to [NG.Ethics@mail.mil](mailto:NG.Ethics@mail.mil).

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