



U.S. Department of Defense Standards of Conduct Office

ETHICS GUIDANCE FOR DOD EMPLOYEES PARTICIPATING IN THE OPM DEFERRED RESIGNATION PROGRAM

Purpose: This document summarizes the Government ethics rules that apply to Department of Defense (DoD) personnel who accept the Office of Personnel Management (OPM) Deferred Resignation Program.

Application: DoD personnel who accept the OPM Deferred Resignation Program and who are placed in an administrative leave status.

Legal Notice: This information identifies statutes and regulations that restrict or otherwise affect activities of DoD personnel while they remain in Government service, including while in an administrative or other leave status. This information is a summary of the rules and is not intended to serve as legal advice. Personnel should consult with their local ethics official(s) for advice concerning their specific situations. **For OSD personnel only** - contact the DoD Standards of Conduct Office (SOCO) at (703) 695-3422 or by email at OSD.SOCO@MAIL.MIL.

Advice from ethics officials with respect to these matters is advisory only. Ethics officials are acting on behalf of the United States Government, and not as your personal representative. No attorney-client relationship is created. If you have questions concerning your rights and legal obligations, you should contact your personal legal advisor.

Summary: OPM has indicated that federal personnel who accept the OPM Deferred Resignation Program will be placed in an administrative leave status. During this time, just as with any other leave status, DoD personnel remain subject to the Federal ethics rules, criminal conflict of interest statutes, the Hatch Act, and DoD supplemental ethics rules and policies regarding engaging in outside employment and outside activities.

I. FEDERAL ETHICS RULES STILL APPLY.

The following provides a brief summary of ethics-related issues that DoD personnel who accept the OPM Deferred Resignation Program may encounter prior to official separation from federal service:

- A. *Gifts.* Unless a regulatory exclusion or exception applies, the general rule is that DoD personnel may not accept any gift given (1) because of their official position; or (2) from any person who is seeking official action from DoD, does or seeks to do business with the DoD, conducts activities regulated by the DoD, has interests that can be affected by

the performance or non-performance of the individual's official duties, or is an organization the majority of whose members are in any of those classes (i.e. a "prohibited source").

B. *Disqualification or recusal.* Federal personnel may not work in their official capacity on a matter that will affect a prospective or current employer or client. Personnel who are seeking or have an arrangement for employment with a non-Federal entity while still a federal employee may be required by federal regulations to provide a written disqualification to their supervisor and their local ethics official identifying the entity(ies) from which the individual is recused. However, written recusal is not necessary if the individual is on administrative leave and not performing any official duties, since there is no potential to participate in matters affecting such entity(ies).

C. *Financial Disclosure.*

1. Public (OGE 278) Filers –Until officially separated from federal service, an official who is subject to OGE 278 public financial disclosure reporting requirements must:
 - i. Continue to submit required reports, including periodic, annual, and termination reports; and
 - ii. Comply with the requirements of the "STOCK Act" at 5 U.S.C. § 13103 to file a notification with their local ethics official within three business days of engaging in negotiations for post-Government employment or entering into an arrangement for such employment. A sample STOCK Act notice is available on the [SOCO website](#).
2. Confidential (OGE 450) Filers – Individuals who file the OGE 450 confidential financial disclosure report are not required to file the report while on administrative leave as part of the Deferred Resignation Program, as long as the individual is not performing any official duties. If an individual resumes performing official duties in a OGE 450 filing position, the individual's OGE 450 reporting requirements will resume and the individual must contact their local ethics official promptly following the resumption of duties.

D. *Notification and approval for outside activities.* DoD personnel who file a financial disclosure report (OGE 450 or OGE 278) must obtain approval from their supervisor before engaging in a business activity or compensated outside employment with a prohibited source. Approval will be annotated on the individual's annual financial disclosure report, or if no further reports are owed following approval, the supervisory may document approval via email transmittal to the individual.

E. *Compensation restrictions.* A criminal statute prohibits Federal personnel from receiving pay from a non-Federal source for performing their official duties. This criminal statute applies even when the receipt of outside compensation does not create a conflict of interest and would not cause actual injury to the United States. This law may, for example, bar DoD personnel from working for a contractor to finalize a study that the individual completed as a DoD employee. *See* 18 U.S.C. § 209.

- F. *Representation restrictions.* Criminal statutes prohibit Federal personnel from representing any non-federal entity, employer, or client before any Federal department, agency, or court with or without compensation. *See* 18 U.S.C. §§ 203 & 205. For example, in most instances, DoD personnel would not be able to serve as an onsite federal contractor, since doing so necessarily entails representing the contractor to DoD officials.
- G. *Use of government resources.* Ethics rules prohibit the use of government resources, time, or position for other than official or authorized purposes. For example, if you retain a government issued device pending separation, it may not be used for other than official Government purposes. *See* 5 C.F.R. §§ 2635.702-705 and JER §§ 2-300, 2-301, and 2-302.
- H. *Hatch Act.* DoD personnel must abide by the Hatch Act, which governs the political activity of federal employees even in their personal capacity. DoD employees cannot engage in any political fundraising and cannot use their official titles in connection with any political activity, even if the activity is otherwise permissible under the Hatch Act.

II. OUTSIDE EMPLOYMENT SCENARIOS.

While on administrative leave, DoD Personnel are subject to rules that prohibit non-federal employment or engaging in outside activities that conflict with official duties, and also from accepting compensation for teaching, speaking, or writing that relates to official duties.

- A. *Outside Employment that May be Prohibited.* Until officially separated from federal service, DoD personnel who accept the OPM Deferred Resignation Program should consult with an ethics official prior to engaging in the following types of outside employment:
- Consulting services with any nexus to the federal government, such as consulting for defense contractors;
 - Representational services before Federal courts, agencies, or departments, such as government relations activities;
 - Holding State or local public office;
 - Engaging in teaching, speaking, or writing that deals in significant part with the policies, programs, or operations of DoD; or
 - Working on any particular matter involving specific parties in which the individual participated at any time during their federal service or that fell within the individual's official responsibility in the previous year.
- B. *Outside Employment that is Generally Permitted.* The following examples of outside employment are not prohibited while on administrative leave under the OPM Deferred Resignation Program:
- For non-senior personnel, working “behind-the-scenes” for companies in the defense industry, provided that during the past year the individual has not participated in

certain positions or made certain decisions relative to a procurement in which the entity was involved (prior approval may be required);

- Employment with a private entity that has no nexus to or interaction with the federal government, other than being generally required to comply with federal laws and regulations.
- Representational activities before state and local governmental agencies, departments, or courts;
- Retail sales;
- Tutoring;
- Substitute teaching;
- Childcare services (ethics advice recommended for Federal childcare centers);
- Food/beverage/hospitality positions;
- Ride share driver; or
- Exercise instructor.

III. QUESTIONS?

Individuals should contact their local ethics official for information pertaining to the individual's specific circumstances. **For OSD personnel only** - contact the Standards of Conduct Office (SOCO) at (703) 695-3422 or by e-mail at OSD.SOCO@MAIL.MIL.