

Summary of Section 1045 of the NDAA for FY 2018

Effective December 12, 2017, Congress enacted additional post-Government employment restrictions for senior personnel departing the Department of Defense after that date. Section 1045 restricts “lobbying activities” with respect to DoD matters by certain senior civilian officials and officers. Departing flag and general officers and senior civilian equivalents are prohibited from lobbying the Department or certain other executive branch officials regarding DoD matters for a one or two year period after departure, depending on seniority.

Who is affected and for how long?

Section 1045:

- Prohibits military officers in grades O-9 and O-10 and “civilian equivalents” departing service after December 12, 2017, from engaging in “lobbying activities” with respect to DoD for **two years** after date of retirement or separation.

These most senior “civilian equivalents” are Tier 3 (and above) SES (career and non-career) and DISES, and all Presidential Appointees confirmed by the Senate.

- Prohibits military officers in grades O-7 and O-8 and “civilian equivalents” departing service after December 12, 2017, from engaging in “lobbying activities” with respect to DoD during the **one year period** after date of retirement or separation.

These less senior “civilian equivalents” are Tier 1 and 2 SES (career and non-career) and DISES, SL, ST, and DISL.

- Applies in addition to all other restrictions governing post-Government service activity by senior officials under criminal statutes, procurement integrity laws, regulations, and executive orders, including the Trump Ethics Pledge as applicable.
- Leaves unchanged other post-Government restrictions applicable to non-senior officials.
- Does not restrict departing personnel not subject to the 18 U.S.C. 207(c) one-year “cooling off” period, including civilians whose rate of base pay is below 86.5% of the rate for Executive Schedule Level II or Reserve officers not otherwise triggering the criminal ban.

What activities are restricted?

Section 1045 bars engaging in *lobbying activities with certain DoD officials* (see “covered executive branch officials” Key Definitions) or *with respect to DoD matters* to certain non-DoD Federal officials during the applicable prohibition period.

What is the “bottom line”?

This legislation limits the ability of former senior civilian employees and general or flag officers to work in positions requiring communications with certain DoD officials, or other Federal officials regarding DoD matters, while under the restriction. *This includes behind-the-scenes activity supporting lobbying contacts during the applicable cooling off period.*

Key Definitions for purposes of Section 1045

Lobbying Activities means **lobbying contacts** and efforts directed at **covered executive branch officials** in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, as well as coordination with the lobbying activities of others.

lobbying contacts include:

- Written or oral communications
 - With covered executive or legislative branch officials
 - On behalf of a client
 - For financial or other compensation
 - with limited exceptions
- or*
- Engaging in behind-the-scenes efforts in support of such lobbying contact

covered executive branch officials include:

- Any officer or employee in the Executive Office of the President
- Any officer or employee serving in a position in levels I-V of the Executive Schedule (e.g., Presidentially Appointed, Senate-confirmed officials)
- Any member of the uniformed services whose pay grade is at or above O-7 (Flag or General Officers)
- A non-career official in a confidential, policy-making position, i.e., non-career SES or Schedule C appointee

Restricted **lobbying activities** include engaging in oral, written, or electronic communications 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. Also covered are contacts about 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; but not technical communications made pursuant to those Federal arrangements). Note that communications required by the terms of an existing contract with DoD are not prohibited.

The prohibition on lobbying activities **with respect to the DoD** means the identified senior officials are prohibited from:

- Engaging in or supporting lobbying contacts with **covered executive branch officials** with respect to the DoD. This includes contact with covered officials **in any Department about DoD matters**, e.g. discussing DoD issues with an executive branch agency covered official at the National Security Council.
- Engaging in or supporting lobbying contacts with **covered officials serving within DoD**. For purposes of this prohibition, there are no separate “DoD components.” Each Military Department and Defense Agency is considered within DoD and within the restriction for all identified senior officials.

For further information consult your local ethics official.