

POST-GOVERNMENT SERVICE EMPLOYMENT RESTRICTIONS

For Military Personnel E-1 through O-6 and Civilian Personnel who are not members of the Senior Executive Service

IMPORTANT NOTICE: This information was prepared to assist USAF personnel at Robins AFB who receive their ethics support from 78 ABW/JAQ and who are planning to leave Federal service.^a It identifies statutes and regulations that restrict or otherwise affect activities of Government personnel after they leave Government service. Because these restrictions are dependent upon each employee's unique situation and because this information is only a summary of the rules, Robins personnel should contact our office by e-mail at 78abw.ja.workflow@robins.af.mil to discuss their particular situations. DoD personnel served by other ethics offices should consult with their ethics counselors, or if they want, consult with private counsel.

Advice from ethics officials with respect to these matters is advisory only, and is provided in accordance with 5 C.F.R. § 2635.107, 41 U.S.C. § 2401 (Procurement Integrity Act) and section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Ethics officials are acting on behalf of the United States, and not as your personal representative. There is no attorney-client relationship created by the consultation.

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

Part 1: Restrictions While *Seeking* Private Employment (*BEFORE* You Leave DoD)

1.1 SIMPLIFIED RULE: Once you have started *seeking employment* with a prospective employer, you may not take any official action that will affect the financial interests of that prospective employer.

1.1.1 RULE: An officer or employee may not *participate personally and substantially* in a *particular matter* that, to his knowledge, will have a *direct and predictable effect* on the financial interests of a prospective employer with whom the employee is *seeking* employment (5 C.F.R. § 2635.604).

1.1.1.1 "Particular Matter" - matters that involve deliberation, decision, or action that is focused on the interests of specific persons or a discrete and identifiable

^a Personnel assigned to HQ AFRC should contact HQ AFRC/JA.

class of persons. These matters may include a contract, claim, application, judicial or other proceeding, request for a ruling or other determination, controversy, investigation, or charge. A particular matter could even include legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable group of parties or organizations, *e.g.*, DoD policy affecting only military aircraft manufacturers.

1.1.1.2 Personal and substantial participation - This means that you are directly participating in the matter or that one or more of your subordinates, whom you are directing, is participating. Also, the participation must be of significance to the matter, which may be based on the amount and importance of your effort. One act, such as approving a critical step, may be substantial. Likewise, if you have to review and approve a certain step, and work would stop if you did not approve, then your participation is substantial, even though it may have seemed like a paperwork exercise to you. On the other hand, an entire series of peripheral acts may not be substantial.

If you merely have knowledge of the matter, routine or superficial involvement, or involvement on a peripheral or administrative issue, you are not substantially involved. If you are not involved in the substantive merits, you may not be substantially involved, even though you put a lot of time into the matter. If you are merely responsible for reviewing the matter for compliance with administrative or budgetary considerations, you are also not substantially involved.

1.1.1.3 "Direct and Predictable Effect" - There must be a close, causal link between any 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 matter that may affect the financial interest only because of its effects on the general economy is not direct. 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.

1.1.1.4 Seeking employment" - If the above definitions apply to your situation, then you must complete a disqualification for those non-Federal entities with whom you are "seeking" employment. Seeking employment includes your inquiries regarding potential future employment, including negotiations; and your responses, other than an immediate and clear rejection, to an unsolicited communication regarding possible employment. "Seeking employment" does *not* include requesting a job application, but does include forwarding a resume. If you send a resume, you are considered to be seeking employment for 2 months unless either you or the company rejects the possibility of employment prior to that time.

1.2 Disqualification: Disqualification is simple **Do not do ANY work on the task!**

1.2.1. DoD requires that you give a written disqualification to your supervisor (5 C.F.R. § 3601.105(c); section 2-204c of DoD 5500.07-R, Joint Ethics Regulation (JER)). The written disqualification must state that you will not participate in any official matter that has a direct and substantial effect on the prospective employer(s) that you identified. A

sample disqualification form is included in this package. Withdrawal of Disqualification: When negotiations have terminated with a decision not to work for the prospective employer, you should withdraw your disqualification.

1.3 Supervisory Determination: When you are seeking employment, but have not yet entered into negotiations with the prospective employer, your supervisor may authorize your participation in a matter if he or she determines that the Government's interests outweigh the concern that the integrity of the agency's program and operation may be questioned. The supervisor must consider at least six factors and must consult with JA before making the determination.

Part 2: Restrictions While *Negotiating* Private Employment

2.1 SIMPLIFIED RULE: Once you have started *negotiating* with a prospective employer, you may not take any official action that will affect the financial interests of that prospective employer.

2.1.1 RULE: An officer or employee may not personally and substantially participate in a particular matter in which, to the officer or employee's knowledge, the officer or employee, his/her spouse, child, partner, organization in which the officer or employee serves as an officer, director, trustee, partner, or employee, or *organization with whom he or she is negotiating or has any arrangement concerning prospective employment* has a financial interest. An arrangement or negotiation for prospective employment is considered to create a financial interest of the officer or employee in the company with whom he or she is seeking employment. It has the same effect as if the employee purchased stock in the company (18 U.S.C. § 208).

2.1.1.1 Negotiating- any discussion with the organization, or an 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.

2.1.1.2 See the preceding section for the definitions of particular matter, personal and substantial participation, and direct and predictable effect.

2.2 Disqualification: See the preceding section for an explanation. Even if your supervisor has authorized your participation in a matter while seeking employment, you must disqualify yourself the moment you start negotiating.

2.3 Waiver: The official responsible for your appointment to your position is the only one who can grant a waiver of this disqualification. He or she must find that your financial interest is not so substantial as to be deemed likely to affect the integrity of your services. The official must consult with SOCO before granting a waiver and allowing your participation in the matter. DoD recommends that the granting of waivers be carefully scrutinized in the light of all the facts and circumstances.

Part 3: Miscellaneous Matters

3.1 RULE: REPRESENTATIONS 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).

3.2 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 \$335, and you file a financial disclosure report (OGE Form 450), you must include them on your report.

DIVISION II—POST-EMPLOYMENT RESTRICTIONS

Part 1: Employment Restrictions after Leaving DoD

Personal Participation: Lifetime Ban

1.1 **SIMPLIFIED RULE:** After you leave Government service, you may not represent someone else to the Government regarding *particular matters* that you worked on while in Government service.

1.1.1 **RULE:** Former Government officers and employees may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court in connection with a *particular matter* in which the officer or employee *personally and substantially* participated, which involved a *specific party* at the time of the participation and representation, and in which the U.S. is a party or has a direct and substantial interest. (18 U.S.C. § 207(a) (1))

1.1.1.1 “Particular Matter”—matters that involve deliberation, decision, or action that is focused on the interests of specific persons or a discrete and identifiable class of persons. These matters may include a contract, claim, application, judicial, or other proceeding, request for a ruling or other determination, controversy, investigation, or charge. A *particular matter* could even include legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable group of parties or organizations, *e.g.*, DoD policy affecting only military aircraft manufacturers. For this statute, particular matters must also involve “specific parties.” This means that identifiable parties exist. For example, a procurement may be a *particular matter*, but it might not become one involving *specific parties* until the first bid is received.

1.1.1.2 *Personal and substantial* participation—This means that you are directly participating in the matter or that one or more of your subordinates, whom you are directing, is participating. Also, the participation must be of significance to the matter, which may be based on the amount and importance of your effort. One act, such as approving a critical step, may be substantial. Likewise, if you have to review and approve a certain step, and work would stop if you didn’t approve, then your participation is substantial, even though it may have seemed like a paperwork exercise to you. On the other hand, an entire series of peripheral acts might not be substantial.

If you merely have knowledge of the matter, routine or superficial

involvement, or involvement on a peripheral or administrative issue, you are not *substantially* involved. If you are not involved in the substantive merits, you may not be substantially involved, even though you put a lot of time into the matter. If you are merely responsible for reviewing the matter for compliance with administrative or budgetary considerations, you are also not substantially involved.

1.1.2 This ban remains for the lifetime of the *particular matter*.

Official Responsibility: 2 Year Ban

1.2 **SIMPLIFIED RULE**: For 2 years after leaving Government service, you may not represent someone else to the Government regarding *particular matters* that you did not work on yourself, but were pending under your responsibility during your last year of Government service.

1.2.1 **RULE**: For a period of 2 years after termination of Government service, former Government officers and employees may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court, in connection with a particular matter which the employee reasonably should have known was actually pending under his or her *official responsibility* within 1 year before the employee left Government service, which involved a specific party at that time, and in which the U.S. is a party or has a direct and substantial interest. (18 U.S.C. § 207(a) (2))

1.2.1.1 “Official responsibility”—direct administrative or operating authority to approve, disapprove, or otherwise direct, Government actions. It includes a supervisor at any level having responsibility for the actions of a subordinate employee who actually participates in a matter.

1.2.2 Although you may have been disqualified from personally acting on a particular matter during your last year in the Government, the particular matter was still under your official responsibility during that period. (Example: Because you owned stock in IBM, you were disqualified from reviewing a particular contract with IBM, which was reviewed by one of your subordinates during your last year in the Government. Under this statute, because the particular matter was under your responsibility during your last year of service, you are prohibited from representing others regarding that contract.)

Trade or Treaty Assistance: 1 Year Ban

1.3 **SIMPLIFIED RULE**: For 1 year after leaving Government service, you may not aid, advise, or represent someone else regarding trade or treaty negotiations that you worked on during your last year of Government service.

1.3.1 **RULE**: For a period of 1 year after leaving Government 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 Government service. (18 U.S.C. § 207(b))

1.3.1.1 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.

1.3.1.2 "Covered information"—agency records accessible to the employee but exempt from disclosure under the Freedom of Information Act.

Exceptions

1.4 **EXCEPTIONS:** There are exceptions to the restrictions of 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. Restrictions under 18 U.S.C. § 207(c) do not apply to employees of state or local governments, hospitals, medical research organizations, or degree-granting institutions of higher learning, when making representations on those institutions' behalf. In addition, if individuals are not compensated, they may make statements based on special knowledge. Restrictions under 18 U.S.C. § 207(a) and (c) do not apply to communications that furnish scientific or technological information with prior, published certification by the Secretary of Defense. There are special rules regarding testimony under oath. Consult your ethics counselor or the DoD SOCO for specific guidance.

Penalties and Injunctions

A violation may subject you to imprisonment for not more than 5 years, a criminal or civil fine, and a court order prohibiting you from engaging in the conduct in the future.

Part 2: Compensation Ban on Representation by Others

2.1 **RULE: COMPENSATION FOR REPRESENTATION TO THE GOVERNMENT BY OTHERS:** After you leave Government service, you may not accept compensation for representational services, which were provided by anyone while you were a Government employee, before a Federal agency or court regarding particular matters in which the Government was a party or had a substantial interest. This prohibition may affect personnel who leave the Government and share in the proceeds of the partnership or business for representational services that occurred before the employee terminated Federal service. (Examples: Lobbying, consulting, and law firms). (18 U.S.C. § 203)

Section 2: Employment Restrictions *after Leaving DoD*

2.3 **SIMPLIFIED RULE:** For 1 year after a *designated date*, you may not accept compensation from the concerned contractor on a \$10 million+ DoD contract on which you performed designated services.

2.3.1 **RULE:** For a period of 1 year after a *designated date*, former Government officials may not accept *compensation* from the concerned contractor on a \$10 million+ DoD competitively awarded or non-competitively awarded contract if the former officials served or acted in any of the following capacities: (48 C.F.R. § 3.104-3(d))

2.3.1.1. To whom does this apply?

A. Procuring contracting officers, source selection authorities, members of source selection evaluation boards, and chiefs of financial or technical evaluation teams

Designated date for these employees:

If you served on the date of selection, but not the date of award—
Date of selection.

If you served on the date of award—Date of award of the contract.

B. Program managers, deputy program managers, and administrative contracting officers

Designated date for these employees: Last date of service in those positions.

C. Officials who personally made any of the following decisions:

- 1) to award contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess of \$10,000,000,
- 2) to establish overhead or other rates valued in excess of \$10,000,000,
- 3) to approve issuance of a contract payment in excess of \$10,000,000, or
- 4) to pay or settle a claim in excess of \$10,000,000.

Designated date—the date of decision.

For DoD purposes, *concerned contractors* are prime contractors.

2.3.1.2 *Compensation*—any form of compensation provided directly or indirectly for services rendered as an employee, director or consultant.

2.3.1.3 *\$10 million+*—determined by the following:

- Contract (including all options)—value or estimated value at the time of award;
- Indefinite-delivery/indefinite quantity or requirements contract—total estimated value of all orders at the time of award;
- Any multiple award schedule contract, unless contracting officer documents a lower estimate;
- Basic Ordering Agreement—value of delivery order, task order or order;
- Claims—amount paid or to be paid in settlement;
- Negotiated overhead or other rates—estimated monetary value, when applied to the Government portion of the applicable allocation base.

2.3.2 EXCEPTION: You may accept compensation from any division or affiliate of the contractor that does not produce the *same or similar* products or services as the entity responsible for the contract.

2.3.2.1 *same or similar*—It is DoD guidance that a product or service must be *dissimilar enough* from that under the contract to warrant use of the exception. It is not sufficient that the product or service is produced by a division on the commercial, as opposed to the government, side of the contractor. Any amount of the *same or similar* product or service is sufficient to trigger the compensation ban.

2.3.3 If you do not know whether you may accept any compensation, you may make a written (signed and dated) request for advice, prior to accepting any compensation, from your agency ethics official. The ethics official must issue a written opinion within 30 days after receiving complete information as to whether the compensation would be proper or a violation. The ethics official may rely on that information, unless there is reason to believe that the information is fraudulent, misleading, or otherwise incorrect. You and the contractor may make good faith reliance on that written opinion, *i.e.*, that neither you nor the contractor have actual knowledge or reason to believe that the opinion is based on fraudulent, misleading, or otherwise incorrect information. (In certain cases, see 5.1 below, you must request an opinion.)

Part 4: Additional Restrictions for Retired Personnel And Reservists

4.1 **SIMPLIFIED RULE: FOREIGN EMPLOYMENT:** Unless you receive prior authorization from your Service Secretary and the Secretary of State, as a retired *military officer* or a reservist, you may forfeit your military retired pay during the time you perform services for a foreign government.

4.1.1 **RULE:** The U.S. Constitution prohibits retired military personnel and reservists from receiving pay from *foreign governments* without Congressional authorization. This can extend to receipt of pay from a U.S. contractor or subcontractor for providing services to a foreign government. In 37 U.S.C. § 908, Congress authorizes the Secretary of State and Secretary of the appropriate Military Department to approve such receipt of pay. The Air Force has issued AFI 36-2913 to implement this law. Retired personnel and reservists who violate this Constitutional proscription may forfeit pay equal in amount to their foreign pay.

4.1.1.1 “Foreign Governments” may include educational and commercial entities that are substantially owned or controlled by foreign governments.

4.2 **EMPLOYMENT BY DOD:** To avoid the appearance of favoritism, 5 U.S.C. § 3326 prohibits the appointment of retired military personnel to civil service positions (including a non-appropriated fund activity) in any DoD component for 6 months after retirement. (This restriction has been temporarily waived during the current national emergency following the attacks of 9/11).

4.3 **RULES: EMPLOYMENT DURING TERMINAL LEAVE:**

4.3.1 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.

4.3.2 Civilian position in the U.S. Government: Military personnel on terminal 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)

4.3.3. Please remember that while on terminal leave, you are still an active-duty service member or civilian employee, and the restrictions that apply to you while on active duty or while employed (such as restrictions on political activities) still apply.

4.3.4 Outside employment: AFMCI 51-201 and AFSPCI 51-4 require all AFMC and AFSPC personnel to obtain permission prior to engaging in outside employment, including during terminal leave. ACCI 51-901 requires all ACC military personnel and all ACC civilian employees who file the OGE Form 450 financial disclosure report to obtain approval. Check with your supervisor.

4.3.5 Restriction on representing others to the Federal Government: You may not represent anybody outside the Government to the Government on any particular matter involving the Government. Military officers and civilian employees working on terminal leave are prohibited by 18 U.S.C. § 205 and 18 U.S.C. § 203 from representing their new employer to the Government. In almost every case, this precludes a member from interacting or appearing in the Federal workplace as a contractor. Being present in Government offices on behalf of a contractor inherently is a representation. Of course, military officers or civilian employees on terminal leave may begin work with the contractor, but only “behind the scenes” at a contractor office or otherwise away from the Government workplace.

4.3.6 Prohibition on working for a foreign principal: Over and above the restriction of receiving compensation from a foreign government, there is also a specific prohibition of a public official from being or acting as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 (expanding the restriction beyond foreign governments to include persons and corporations (18 U.S.C. § 219)).

Part 5: Requirement to Request an Opinion

5.1 If you will be receiving compensation from a defense contractor within two years of leaving DoD, you are required to request a written opinion regarding the applicability of the post-employment restrictions to the activities you undertake on behalf the defense contractor. This requirement applies to any employee who participated personally and substantially in an acquisition with a value in excess of \$10M **and** who serves or served 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. You must obtain this written opinion prior to accepting compensation from the contractor. Also, your request and the opinion will be maintained in a

database for five years. We use the Army's After Government Employment Advice Repository (AGEAR) system for opinions that qualify for this requirement. You can access the AGEAR system at <https://www.fdm.army.mil/AGEAR>.

Part 6: Administrative Reminders

6.1 **USE OF NONPUBLIC INFORMATION:** Even though you have left Government service, you still may not use nonpublic information to further your own private interests, or those of another, including your subsequent employer. Nonpublic information includes classified information, source selection data, information protected by the Privacy Act, proprietary information, and other information that has not been made available to the public and is exempt from disclosure.

6.2 **IF YOU ACCEPTED A BUY-OUT:** If you accepted a "buy-out" or separation payment, you have re-employment restrictions. Please contact your personnel office if you are unsure of those measures.

6.3 **QUESTIONS? PLEASE CALL US:** If you have questions, even *after* you leave Government service, please contact our office at 78abw.ja.workflow@robins.af.mil. We would much rather talk to you before you take action, than read adverse reports about you (from the IG or in the media) after you have taken the action.

6.4 **Thank you for your service to your country.**

(as of 26 Feb 2013)