

SEEKING EMPLOYMENT RESTRICTIONS

(RULES WHEN YOU ARE LOOKING FOR A NEW JOB)

For All Government Employees

IMPORTANT NOTICE: This information was prepared to assist Department of Defense (DoD) personnel who receive their ethics support from the DoD Standards of Conduct Office (SOCO) and who are planning to leave Government service. It identifies statutes and regulations that restrict or otherwise affect activities of Government personnel while they are seeking employment. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, DoD personnel should contact SOCO at (703) 695-3422 or by e-mail at soco@osdgc.osd.mil to discuss their particular situations. DoD personnel served by other ethics offices should consult their ethics counselors. Of course, if you want, you may also consult with private counsel.

Advice from ethics counselors 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. 423 (Procurement Integrity Act). Ethics Counselors are acting on behalf of the United States, and not as your personal representative. There is no attorney-client relationship created by the consultation.

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 could 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, has 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 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.

Comment:
5 C.F.R. § 2637.201(e)

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 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 may not "seek" employment unless you first disqualify yourself. "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 — **Don't do ANY work on the task!** To help you accomplish this, DoD also requires that you give a written disqualification to your supervisor. (Section 2-204c of DoD 5500.7-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. SOCO has sample disqualification forms.

EXAMPLE: If a company has no relationship or dealings with your current work or office, or there is no opportunity for a "particular matter" to "directly and predictably" affect its financial interests, or even an opportunity for you to participate in such a matter, you will not have to disqualify yourself before seeking employment with that company. If, however, you work on any project, program, or a specific task that can directly and predictably affect a potential employer, you must disqualify yourself from any such further work before you start to seek employment with that employer. If your office works on these types

of tasks, even though you aren't personally involved, you should also disqualify yourself so that you don't inadvertently start to work, or that your boss does not assign you a task, in that area. If you don't disqualify yourself, and an assignment does land on your desk, you must immediately disqualify yourself and not do any work on the task. If you are in charge of an office and any of your employees work on such tasks, you must disqualify yourself from participating "personally and substantially" before seeking employment with the organization.

1.2.1 **Withdrawal of Disqualification:** When negotiations have terminated with a decision not to work for the prospective employer, you may 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 SOCO 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 as an official 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 Government is a party or has a substantial interest. (18 U.S.C. 203 and 205).

3.2 **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 DoD contractor if you file a financial disclosure report. (Section 2-206, JER)

3.3 **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.

3.4 **CIVIL 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).

3.5 **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 \$285, and you file a financial disclosure report (OGE 450 or SF 278), you must include them on your report.

3.6 **QUESTIONS? PLEASE CALL US:** If you have questions, please call the DoD Standards of Conduct Office: (703) 695-3422. Fax: (703) 697-1640. E-mail: soco@osdgc.osd.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.

(This guidance was produced by the DoD General Counsel's Office [Standards of Conduct Office]. Please contact us at (703)695-3422 or by e-mail at: soco@osdgc.osd.mil.)

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