



# U.S Department of Defense Standards of Conduct Office

## SEEKING EMPLOYMENT RESTRICTIONS (RULES WHEN YOU ARE LOOKING FOR A NEW JOB)

**Purpose:** This document summarizes the Government ethics rules which may impose certain restrictions on your activities in search of outside or post-Government employment.

**Application:** For all Department of Defense (DoD) personnel.

**Legal Notice:** This information merely identifies statutes and regulations that restrict or otherwise affect activities of DoD personnel who are seeking outside or post-Government employment while currently employed by DoD. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, DoD personnel should contact the Standards of Conduct Office (SOCO) at **(703) 695-3422** or by e-mail at [OSD.SOCO@MAIL.MIL](mailto:OSD.SOCO@MAIL.MIL) to discuss their particular situation. DoD personnel served by other ethics offices should consult with their ethics officials. You may also consult with your personal attorney.

Advice from ethics officials 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. § 2104 (formerly known as the Procurement Integrity Act). Ethics officials are acting on behalf of the United States Government, and not as your personal representative. **No attorney-client relationship** is created.

### I. RESTRICTIONS WHILE *SEEKING PRIVATE EMPLOYMENT (BEFORE YOU LEAVE DOD)*

**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.

**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).

#### **Definitions:**

- ***Particular Matter:*** A matter that involves 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.

- *Personal and substantial participation:* 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.

- *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 particular matter that has an effect on the financial interest only because of its effects on the general economy is not a direct effect. 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.
- *Seeking employment:* You are considered to be seeking employment when you make an unsolicited communication regarding potential future employment, engage in negotiations for employment, or respond to an unsolicited communication regarding possible employment other than to make an immediate and clear rejection. “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 two months unless either you or the company rejects the possibility of employment prior to that time.

**Disqualification:** You should disqualify yourself from participation in official matters which may affect the interests of non-Federal entities with who you are *seeking* employment. Disqualification is simple – **Do not do ANY work on the task!**

Written Disqualification Required. DoD supplemental rules require that DoD personnel submit a written disqualification to their supervisor when they are assigned work that affects the financial interests of a prospective employer (*e.g.*, when an *actual* conflict arises) (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 DoD particular matter that has a

direct and substantial effect on the prospective employer(s) identified. A sample disqualification appropriate for your individual circumstances can be obtained by contacting SOCO.

Example 1: No written disqualification required. If a company you are seeking employment with has no relationship or dealings with your current 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 complete a written disqualification before seeking employment with that company.

Example 2: Written disqualification required. If you are assigned or are working on any project, program, or a specific task that can directly and predictably affect a prospective employer, you must disqualify yourself in writing from any further work before you start to seek employment with that company.

Example 3: No immediate written disqualification required, but disqualification may be prudent. If your office works on tasks that can affect a company you are seeking employment with, even though you are not personally involved, it may be prudent for you to disqualify yourself so that you do not inadvertently start to work, or that your boss does not assign you a task, related to that prospective employer. If you do not initially disqualify yourself, and an assignment subsequently does land on your desk that can affect your prospective employer, you must then immediately disqualify yourself in writing 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 company.

Withdrawal of Disqualification. When you are no longer seeking employment because either (a) you or the prospective employer have rejected the possibility of employment and all discussions have terminated; or (b) two months have passed after your submission of an unsolicited resume or employment proposal and you have received no indication of interest in employment discussions from the prospective employer, you should withdraw your disqualification.

Procurement Personnel. You may not participate personally and substantially in a DoD procurement valued at more than the simplified acquisition threshold (\$150,000) when seeking employment with a bidder or offeror. The rules require that personnel file a written notice of disqualification with the contracting officer, source selection authority, and immediate supervisor. The notice of disqualification must identify the procurement, describe the nature and specific dates of participation in the procurement, and identify the bidder or offeror and describe its interest in the procurement. Further, you must promptly report, in writing, to your supervisor and ethics officials, any employment contact with a bidder or offeror in a DoD procurement valued at more than the simplified acquisition threshold, even when you promptly reject the employment contact.

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 interest of the Government outweighs 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.

## II. RESTRICTIONS WHILE *NEGOTIATING PRIVATE EMPLOYMENT*

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.

RULE: An officer or employee may not personally and substantially participate in a particular matter in which *a person or an organization with whom he or she is negotiating or has any arrangement concerning prospective employment* has a financial interest if that particular matter will have a direct and predictable effect on that interest. An arrangement or negotiation for prospective employment is considered to create a financial interest on the part of the officer or employee in the company with whom he or she has an employment arrangement or is negotiating for employment. It has the same effect as if the employee purchased stock in the company. 18 U.S.C. § 208.

### Definitions:

- *Negotiating* is any discussion with an organization, or its 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.
- See the preceding section for the definitions of *particular matter*, *personal and substantial participation*, and *direct and predictable effect*.

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

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.

STOCK Act Notice. Public Financial Disclosure Report (OGE Form 278) filers are required to file a statement notifying their ethics counselor of any negotiation for or agreement for employment within three business days after commencement of the negotiation or agreement. A sample STOCK Act notice can be obtained by contacting SOCO.

## III. MISCELLANEOUS MATTERS

**A. Representing 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.

**B. 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. 5 C.F.R. § 3601.107; section 2-206, JER.

**C. 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.

**D. Accepting a Federal Civilian Position:** *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.

**E. 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 \$375, and you file a financial disclosure report (OGE 450 or OGE 278), you must include them on your report.

**F. Questions? PLEASE CALL US:** If you have questions, please call SOCO: (703) 695-3422. Fax: (703) 695-4970. E-mail: [OSD.SOCO@MAIL.MIL](mailto:OSD.SOCO@MAIL.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.

Rev. 2/22/17

O:\socgc\ADVICE\POSTEMPLOYMENT\PGE Handout documents\2017 Seeking Employment Handout.docx