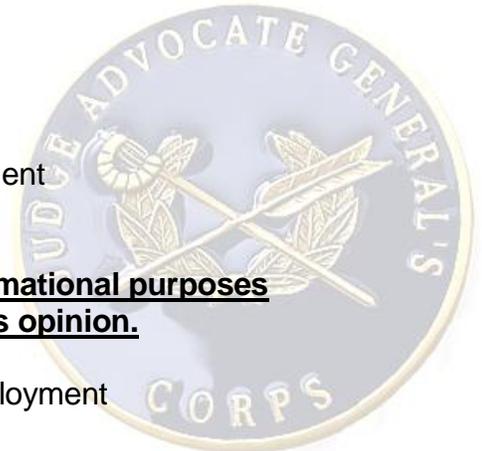


ATZL-SJA-AL

INFORMATION PAPER

SUBJECT: Rules on Job Hunting and Post-Government Employment

**1. This fact sheet and information paper is provided for informational purposes only and is not intended to be legal advice or an official ethics opinion.**

2. There are certain restrictions on seeking post government employment

a. If you have duties involving a company. If you are seeking employment from a company, you may not participate personally and substantially (through decision, approval, disapproval, recommendation, advice, investigation or otherwise) in any government matter (e.g., contract, source selection, claim, sale of asset) in which the company has a financial interest. [18 USC 208(a)] If you have duties involving a company, and you want to seek employment with the company, you must be disqualified from such duties before you begin to seek employment with the company (i.e., before you send the resume or have the first employment discussion). The disqualification must be in writing. Your agency is not required to approve your request for disqualification from duties. A disqualification letter can disqualify you from duties involving one company, or many companies. Also, you should notify your coworkers that you are prohibited from working on matters involving the company so they will not ask you to do so.

b. If you do not have duties involving a company. If you want to seek employment with a company and you do not have any duties involving that company, you are not required to be disqualified from duties involving that company. However, once you begin to seek employment with the company, you will be prohibited from participating personally and substantially in any government matter in which the company has a financial interest.

c. Termination of disqualification. If your employment discussions with a company do not lead to a job, your disqualification from duties involving the company can be terminated. However, your supervisor has the right to determine that, for appearance purposes, you should not immediately resume duties involving a company with which you were recently having employment discussions. If you were disqualified from duties involving a company, but never actually sought employment with the company, you may end the disqualification and resume duties involving the company at any time. However, if you were disqualified from duties with the company, and you did seek employment with the company (by having discussions or giving a resume), you may not end the disqualification and resume duties involving the company unless: (1) either you or the company has rejected the possibility of employment and all employment discussions have ended, or (2) two months have passed since you sent an unsolicited resume or employment proposal to the company, and you have received no indication of interest from the company.

d. Employment search firms. You may use an employment search (i.e., headhunter) firm when seeking post-government employment. An employment search firm may contact companies on your behalf that have no relation to your government duties. An employment search firm may also contact a company on your behalf, where you are participating in a government matter that affects the company's financial interests, as long as the employment search firm does not inform you that it has contacted the company (and assuming that you have not asked the employment search firm to contact the company). Once the employment search firm informs you that it has contacted the company on your behalf, you are considered to be "seeking employment" with the company, and you may not participate personally and substantially in any government matter that affects the company's financial interests.

e. Duty to report certain employment contacts. The Procurement Integrity Act states that if you are participating personally and substantially in a procurement and you contact, or are contacted by, a bidder or offeror in that procurement regarding possible employment, you must do two things. You must promptly report the contact in writing to your supervisor and to the designated agency ethics official (or designee). Also, you must either reject the possibility of employment, or disqualify yourself from further personal and substantial participation in the procurement (until you have been authorized to resume participation in the procurement). [41 USC 2103]

3. Additional rules related to seeking employment.

a. Transition Permissive TDY (PTDY). Transition PTDY is to facilitate transition into civilian life for house and job hunting for soldiers being involuntarily separated, retiring from active duty, or separating under the Voluntarily Separation Incentive (VSI) or Special Separation Benefit (SSB) [AR 600-8-10, Leaves and Passes, Para 5-35] PTDY may not be used simply to work in a job.

b. Interviewing expenses. An employee may accept reimbursement from a prospective employer for meals, lodging, transportation, and other benefits in connection with bona fide employment discussions, as long as: (1) the employee does not have duties that can affect the interests of the prospective employer (if so, the employee must first become disqualified from performing duties involving the company), and (2) the benefits the employee receives are "customarily" provided by the prospective employer to the people being interviewed (i.e., the benefits you receive are not more extravagant than those received by others competing for the position). [5 CFR 2635.204(e)(3)]

c. Information. Employees may not use “non-public information” to further their own private interests, or the private interests of any other person or company. [5 CFR 2635.703(a)] Thus, you may not disclose non-public information to a prospective employer.

d. After you accept the job offer. If an employee has an employment arrangement with a company, the employee may not participate personally and substantially in any government matter (e.g., contract, source selection, claim, sale of asset) in which the company has a financial interest. [18 USC 208(a)] This ban lasts until you leave Federal service.

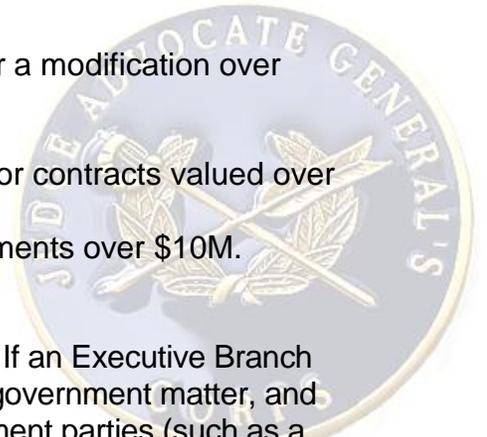
e. Employment during transition leave. Employment by military members during transition leave is considered off-duty employment. The general rule in DoD is that you must obtain prior approval of off-duty employment if (1) you are required to file a financial disclosure report (i.e., OGE Form 278 or OGE Form 450), and (2) you will work for a “prohibited source” (e.g., a DoD contractor). [JER para. 2-206] Off-duty employment is generally approved by one’s first-level supervisor who is a commissioned military officer or civilian GS-12 or above). However, for General Officers who are in command, off-duty employment is approved by their Ethics Counselor.

f. Employee representation ban. Military officers and civilian employees on transition leave may not represent individuals, companies or organizations before any Federal agency. [18 USC 203 & 205] Working in or around any federal agency facility (to include DoD facilities) for the company has been determined to be “representation,” because you are presumed to be interacting with federal employees, and is therefore prohibited until after your effective retirement date.

4. The post-government employment rules are based upon your duties, responsibilities, actions, and rank achieved during your government service. The specific rules are as follows.

a. 1-year compensation ban. Employees who serve in any of seven positions or make any of seven decisions on a contract over \$10 million may not accept compensation from the contractor or one of its affiliates for 1 year. [41 USC 2104] The positions are Procuring Contracting Officer, Source Selection Authority, Source Selection Evaluation Board or, in some cases, a Source Selection Advisory Council member, chief of a financial or technical evaluation team, Program Manager, Deputy Program Manager, or Administrative Contracting Officer. The decisions are:

- Decision to award a contract over \$10M.
- Decision to award a subcontract over \$10M.
- Decision to award a modification over \$10M of a contract, or a modification over \$10M of a subcontract.
- Decision to award a task order or delivery order over \$10M.
- Decision to establish overhead or other rates for a contract or contracts valued over \$10M.
- Decision to approve issuance of a contract payment or payments over \$10M.
- Decision to pay or settle a contract claim over \$10M.



b. Post Gov't employment (PGE) lifetime representation ban. If an Executive Branch employee participates personally and substantially in a particular government matter, and the participation happened after one or more specific non-government parties (such as a contractor) were identified in the matter, then he may not, at any time after leaving the government, make an appearance before or communication to any Federal employee, with the intent to influence that employee, regarding that same particular matter. [18 USC 207(a)(1)] The ban applies to commissioned military officers and Federal civilian employees, but not to enlisted military personnel. If the ban applies, behind-the-scenes assistance is generally permitted. The representation ban often applies even when the compensation ban does not apply.

c. Post Gov't employment (PGE) 2-year representation ban. If an Executive Branch employee has a particular government matter under his or her official responsibility during his last year of government service, and the matter was under the employee's official responsibility after the point when one or more specific non-government parties (such as a contractor) were identified in the matter, then he may not, for two years after leaving government service, make an appearance before or communication to any Federal employee, with the intent to influence that employee, regarding that same particular matter. [18 USC 207(a)(2)] The ban applies to commissioned military officers and Federal civilian employees, but not to enlisted military personnel. If the ban applies, behind-the-scenes assistance is generally permitted.

d. Definitions for purposes of the lifetime and 2-year representation bans.

A "**particular matter**" is a specific action that focuses on the interests of one entity, or a discrete and identifiable class of entities. Examples of "particular matters" include, but are not limited to, government contracts, task orders, delivery orders, acquisitions (i.e., source selections), claims against the government, sales of government assets, and personnel actions. A "particular matter" does not include the consideration or adoption of broad policy options or other matters of general applicability. Things that are not "particular matters" include, but are not limited to, the adoption of policies, the drafting of legislation, and the changing of application or appeal procedures.

To "**participate personally**" means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To **participate substantially** means that the employee's involvement is of significance to the matter.

However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Examples of “personal and substantial” participation include, but are not limited to, serving as a decision maker, an approval authority, an advisor, a reviewer, an evaluator, an inspector, or an investigator.

Official responsibility means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. The scope of an employee’s official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description. It includes all particular matters under a subordinate employee who actually participates in the matter. An employee’s recusal from or other non-participation in a matter does not remove it from his official responsibility.

A **communication** can be made orally, in writing, or through electronic transmission. An **appearance** extends to a former employee’s mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An **intent to influence** the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken.

e. 1-year no contact rule. A “senior employee” may not, for 1 year after leaving the government, make any communication to, or appearance before, any employee of his former agency, with the intent to influence that employee, on behalf of any third person, in connection with any matter on which the senior employee seeks official action by his former agency. [18 USC 207(c)] “Senior employee” includes General/Flag Officers, SES and other civilian employees whose rate of basic pay equals or exceeds 86.5 percent of the rate for Level II of the Executive Schedule, and certain other civilian employees. For Army personnel, “former agency” generally means the Army.

f. 1-year ban on representing or advising foreign entities. A “senior employee” may not, for one year after leaving government service, represent a foreign entity before any US Government agency with intent to influence a decision by that agency, and may not aid or advise a foreign entity with intent to influence a decision by a US Government agency. “Foreign entity” means a foreign government or a foreign political party. [18 USC 207(f)] “Senior employee” has the same definition as in the previous paragraph. The ban on aiding and advising also prohibits behind-the-scenes assistance.

5. Retired military members may not work for a foreign government, or any entity owned or controlled by same, without obtaining prior approval.

6. If you need additional information please call 913-684-4943