

ANNUAL POST-EMPLOYMENT CERTIFICATION & NOTIFICATION TO SENIOR OFFICIALS OF POST-GOVERNMENT EMPLOYMENT RESTRICTIONS UNDER 18 U.S.C. SECTION 207

Certification: Because you are a member of the Department of Defense who files a public financial disclosure report (SF 278), DoD 5500.7-R, Joint Ethics Regulation (JER), requires you to certify each year that you are aware of the restrictions that three statutes place on you during your Federal service when you are negotiating employment and after you leave Federal service. You are also required to certify that you have not knowingly violated these statutes.

Notification: This certification also constitutes notice (pursuant to 5 C.F.R. Part 730) to senior officials (Flag and General Officers and civilian personnel who meet the specified pay threshold, discussed on pg. 3, below) of the application to them of the “Cooling Off” post-employment restrictions in 18 U.S.C. section 207(c) and (f).

A summary of the statutes, with brief definitions of terms, follows below. If you have any questions after reading the summary, please contact your Ethics Counselor.

*Planning on working for a Defense Contractor after leaving DoD? If so, Section 847 of the FY 2008 National Defense Authorization Act, **Requirement to Seek Written Ethics Advice**, may apply to you. Certain DoD officials are required to request a written opinion from an appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to activities that they may undertake on behalf of a DoD contractor. Such contractors are prohibited from paying covered officials during a two-year period following their departure from DoD unless they have either received the opinion or requested it at least 30 days prior to receiving compensation.*

“Covered official” – Individuals who either hold a position in the Executive Service, the Senior Executive Service, or a general or flag officer position and participated personally and substantially in an acquisition valued over \$10,000,000; or serve as 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 team for a contract valued in excess of \$10,000,000.

18 U.S.C. 208: Restrictions On Negotiating Employment:

Federal employees are prohibited from participating personally and substantially in an official capacity in any particular matter if, to their knowledge, it will have a direct and predictable effect on their financial interest, which includes any negotiation or arrangement concerning prospective employment, and the financial interest of the entity with which they are negotiating or have an arrangement.

“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.

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“Personal and Substantial” Participation – To participate “personally” means to participate directly. It also includes the direct and active supervision of the participation of a subordinate. Participation is substantial if it is of significance to the matter, and may occur through decision, approval, recommendation, investigation, or advice. One act, such as approving a critical step, may be substantial, but an entire series of peripheral acts may not be.

“Direct and Predictable Effect” - a close, causal link between **any** action taken on the matter and **any** expected effect of the matter on the potential employer’s financial interest. An effect may be direct even though it does not occur immediately, although effects on the general economy are 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.

“Negotiating” - any discussion or communications 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.

Please note that regulations place similar restrictions when you are seeking employment. Please also note that your disqualification remains in effect until it may be withdrawn or appropriate authority authorizes your participation.

41 U.S.C. 423: Restrictions On Seeking Employment:

DoD personnel may not participate personally and substantially in a DoD procurement valued at more than \$100,000 when seeking employment with a bidder or offeror. The rules require that personnel file written disqualification statements with the contracting officer, source selection authority, and immediate supervisor. They 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.

DoD personnel must promptly report, in writing, to their supervisors and ethics officials, any employment contact with a bidder or offeror in a DoD procurement valued at more than \$100,000, even when they promptly reject the employment contact.

“Employment contact” - inquiries regarding potential future employment, including negotiations, and responses, other than immediate and clear rejections, to unsolicited communications regarding possible employment. It does not include requesting a job application, but does include a 2-month period after forwarding a resume unless the possibility of employment is rejected prior to that time.

“DoD Procurement Valued at More Than \$100,000” - DoD acquisition, using competitive procedures and appropriated funds, for a contract in excess of the simplified acquisition threshold, currently \$100,000.

“Personal and Substantial Participation” - active and significant involvement in any of the following activities directly related to the procurement:

- drafting, reviewing, or approving the specification or statement of work;
- preparing or developing the solicitation;

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- evaluating bids or proposals;
- selecting a source;
- negotiating price or terms and conditions; or
- reviewing and approving the award.

Unless and until you have received written authorization from the Head of the Contracting Authority, you will remain disqualified.

18 U.S.C. 207: Post-Government Service Employment Restrictions:

Senior Officials -

“Senior Officials” - Flag and General Officers, and civilian personnel whose basic rate of pay is at or above 86.5% of the basic rate for Executive Schedule Level II (at or above \$148,953 in 2008, which amount will be adjusted annually as pay rates change). Officials who meet this threshold are subject to the restrictions under 18 U.S.C. 207(c) and (f), summarized immediately below.

For 1 year after leaving a senior position, they may not make any communications or appearances on behalf of any other person before any officer or employee of the agency or agencies in which they served within 1 year prior to leaving the senior position, with the intent to influence in connection with any matter on which official action is sought by the other person. See 18 U.S.C. 207(c). You may request a more detailed explanation from your local Ethics Counselor.

“Agency” -

For Presidentially-appointed, Senate-confirmed appointees: all of DoD, including the Military Departments and DoD Agencies.

For Flag and General Officers and all other civilian senior officials: their component within DoD. Components are each of the Military Departments, DISA, DIA, DLA, NGA, NRO, DTRA, and NSA. Any DoD entity not part of a component in the previous list is included in the overall DoD component. For Flag and General Officers who served outside of their Military Departments during their last year of service, their agencies are their Military Departments and the other components in which they served.

In addition, for 1 year after leaving a senior position, they may not aid, advise, or represent a foreign government or foreign political party with the intent to influence any officer or employee of any Federal department or agency, or Member of Congress. See 18 U.S.C. 207(f).

Violations of 18 U.S.C. 207 are subject to punishments under 18 U.S.C. 216, which include imprisonment, fines, or both.

Very Senior Official (Secretary of Defense) - In addition, for 1 year after leaving that very senior position, they may not make any communications or appearances on behalf of any other person before any employees in positions on the Executive Schedule in all agencies of the

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executive branch, with the intent to influence in connection with any matter on which official action is sought by the other person.

All Personnel -

Forever after terminating Federal service, they may not make a communication or appearance on behalf of any other person before any officer or employee of any Federal agency or court with the intent to influence in connection with a particular matter in which they 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.

“Specific Parties” - identifiable parties other than the Federal Government.

For 2 years after terminating Federal service, Government officers and employees may not make a communication or appearance on behalf of any other person before any officer or employee of any Federal agency or court with the intent to influence in connection with a particular matter which they reasonably should have known was actually pending under their official responsibility within 1 year before they left Federal 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.

“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.

For 1 year after terminating Federal service, they may not represent, aid, or advise someone else on the basis of covered information concerning any ongoing trade or treaty negotiation in which they participated personally and substantially in their last year of Federal service.

“Trade Negotiations” - those undertaken pursuant to the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902).

“Treaties” - international agreements that require the advice and consent of the Senate.

“Covered Information” - agency records accessible to the employee but exempt from disclosure under the Freedom of Information Act.

There are exceptions to the restrictions of 18 U.S.C. 207.

41 U.S.C. 423 Post-Government Service Employment Restrictions:

For 1 year after a designated date, covered DoD personnel may not accept compensation from the prime contractor on a DoD contract valued in excess of \$10,000,000.

“Designated Date for Covered Personnel”:

- Date of selection or award of contract: for service by procuring contracting officers, source selection authorities, members of source selection evaluation boards, and chiefs of financial or technical evaluation teams;

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- Last date of service on the contract: for program managers, deputy program managers, and administrative contracting officers;
- Date of decision: for 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.

“Valued in Excess of \$10,000,000” :

- 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: estimate, 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; and
- negotiated overhead or other rates: estimated monetary value, when applied to the Government portion of the applicable allocation base.

They 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.

“Same or Similar” - a product or service must be “dissimilar enough” from that under the contract to warrant use of the exception.

I certify that I am aware of the restrictions set forth above. I further certify that I have not knowingly violated those restrictions that apply to Federal personnel while they are in Federal service.

Printed Name

Signature

Date

Note: DoD personnel who file their SF 278, Public Financial Disclosure Report, using FDM, <https://www.fdm.army.mil>, complete this annual certification concurrent with eSigning the SF 278 in FDM and do not need to separately prepare/print/sign this certification. Forward this certification to your Ethics Counselor if/when printed and signed.