



# Post Government Employment Issues

Ethics, Legislation, and  
Government Information Practices  
Branch

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# Contact Information and Resources

- Ethics, Legislation, and Government Information Practices Branch
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# Briefing Map

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- If going to work for Federal Government
  - Military retirees have a 180 day waiting period for DOD Federal civilian positions (ie GS, SES, NAF). In Army waiver requests must be sent to HQDA. Inquire with CPAC/HR personnel for information regarding the process.
  - No Civil Office in Federal Government during transition leave
  - State/Local Government–No Civil Office during transition leave.
- Going to work in private sector or for government contractor –
  - Three Phases
  - Procurement Integrity Act
- Foreign Governments
- Other Items of Interest



# Three Phases

- Phase I: Seeking Employment
  - What is “SEEKING”
  - 18 USC 208 Disqualification/5 CFR 2635.604
  - Procurement Integrity Act
- Phase II: Working while on Transition Leave
  - 18 USC 205/203
  - Procurement Integrity Act
- Phase III: Your Second Career
  - 18 USC 207
  - Procurement Integrity Act



# Phase I: What is 'Seeking Employment' ?

- IT IS: Communications mutually conducted for the purpose of reaching an agreement regarding potential post Government employment
  - Submitting a job application? (yes)
  - Going to a job interview ? (yes)
  - Submitting a resume ?
    - It depends on whether mass mailing to industry, or to a specific employer, i.e. submitting an application.



# Phase I: The “Seeking Employment” RULE

- 18 US Code 208
- 5 CFR 2635.604
- You cannot perform Official Government work
  - on a particular matter
  - that could affect the financial interests
  - of a prospective employer
  - when looking for employment



# Remedies

- Disqualify yourself in writing from any further Official involvement on the matter affecting the private corporation.
- Reject any employment offer or terminate discussions.
- May not “defer” the rejection/termination (e.g., “...I am interested, call me in 6 months...”)



## Phase II: Working During Transition Leave

- 18 USC 205/203
- While on T/L you are still a Federal employee.
- Representational Activity restriction that applies to ALL Federal employees (not work or salary restriction).
- Not Matter Specific.
- Examples of prohibited “Representational Activities” include:
  - Signing agreements with the Department or any other federal agency.
  - Signing reports, memoranda, grant or other applications, letters, or other materials intended for submission to any Federal agency.
  - Signing tax returns for submission to the Internal Revenue Service.
  - *Urging, advocating, or intending to influence* any Federal employee who is acting in his/her *official* capacity or any Federal agency for or against the taking or non-taking of any action.
  - Physically working as a contractor employee in Government offices during terminal leave





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## Phase III: Post Government Representation

- 18 USC 207
- Lifetime, 1 year or 2 year Representational Activity restriction.
- Not a work or salary restriction
- Particular Matter Applies:
  - Contract, task order, program, system, project.
- Some prior official involvement:
  - Personal and substantial
    - Go/No-Go, funding approval, requirements generation.
  - Under official responsibility.



# 18 US Code 207(a)(1)

- Lifetime Restriction
  - Life of the particular matter.
- May not:
  - Communicate/appear on behalf of another
  - With “intent to influence”
  - Regarding a “particular matter”
  - Involving specific parties
  - Where participated “personally and substantially” as Federal employee
- Behind-the-scenes assistance permitted



# Key Definitions

- **Particular matter -- includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, or investigation. Generally, does not include rulemaking, formulation of general policy, standards or objectives, or other matters of general application.**
- **Intent to influence -- seeking some discretionary action, ruling, benefit, or approval. Does not include purely social contacts or requesting publicly available information.**



# 18 US Code 207(a)(2)

May not, within 2 years of termination of Government service

- Communicate/appear on behalf of another
- With “intent to influence”
- Regarding a “particular matter”
- Involving specific parties
- Under “official responsibility” during last year of Government service



# Key Definitions

- **Official responsibility -- 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.**
- **Administrative authority -- planning, organizing, and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter, such as regularity of budgeting procedures, public or community relations aspects, or EEO considerations.**



# Procurement Integrity Act

- Employees who serve in any of seven positions on a contract over \$10 million may not accept compensation from the related contractor for 1 year after serving in the position.
- Seven Positions:
  - Procuring Contracting Officer
  - Source Selection Authority
  - Source Selection Evaluation Board member
  - Chief of a financial or technical evaluation team
  - Program Manager
  - Deputy Program Manager, or
  - Administrative Contracting Officer



# Procurement Integrity Act

- There are also seven procurement decisions that may subject you to the Procurement Integrity Act, regardless of your official position:
  - 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



# PIA Notification Requirement

- If contract involves \$100,000 +
- Employment offers must be reported whether initiated by you or the potential contractor
- Includes contractors with pending option years or performance awards



# Foreign Government Employment



- Obtain prior permission of Army and State Departments
- Requests are to be submitted to US Army Human Resources Command (HRC) for processing
- Penalty for failure to obtain permission- Loss of retired pay
- Applies to employment by companies owned, operated or controlled by foreign governments
- Applies to partnership proceeds and direct payments made to retired personnel by foreign governments



# State or Local Government Employment

- 10 USC 973(b)(3)
- Joint Ethics Regulation 5-407 & 9-901b
- Military officers may not accept a civil office, nor perform the duties of civil office with a State or local government while on active duty. This rule applies while the military officer is on terminal leave.
- “Civil Office” means to exercise the sovereign power.



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# PTDY and Transition Leave

## PTDY (up to 20 days)

- for house hunting, job hunting, or other activities to facilitate relocation (AR 600-8-10)
- No authority exists that permits you to work for a contractor or private company during PTDY
- During transition leave – working for a contractor or a private company is permitted
  - so long as there is no conflict of interest
  - treated as off-duty employment
  - officers cannot communicate with the Federal Government on behalf of a private company during transition leave
  - officers cannot work in a Federal workplace during this period



# Use of Government Property

- Government computers and e-mail may be used in job search with the permission of your supervisor
  - On your personal time
  - with no adverse effect on DoD
- **BUT**, a subordinate's time may not be used to help your job search
  - 5 CFR 2635.705



# Interview / Travel Expenses

- Can you accept meals, lodging and transportation from a prospective employer ?
- Yes, if it is their customary practice to pay such expenses for similarly situated potential employees



# Obligation to Protect Inside Information After Retirement

- Lifelong Obligation to Protect Inside Information After You Retire
- This includes continuing obligation to protect the following: classified information, information that is procurement sensitive, information that is protected by Procurement Integrity Act, Trade Secrets Act, or information not releasable under the Freedom of Information Act or Privacy Act



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Questions?