



DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
675 NORTH RANDOLPH STREET
ARLINGTON, VA 22203-2114

Dr. Jose Bricio-Neto
15607 Rhame Dr.
Dumfries, VA 22025

Dear Dr. Bricio-Neto:

This post-Government employment advisory opinion is provided to you in response to the completed post-Government employment advice opinion request (DD Form 2945) and the accompanying Excel spreadsheet that Defense Advanced Research Projects Agency (DARPA) General Counsel received from you on October 30, 2023. I am providing you with this opinion concerning your post-Government employment activities with prospective employers. My advice concerning these matters is advisory only, in accordance with 5 C.F.R. § 2635.107, and in my official capacity on behalf of the United States, not as your representative. Neither the information you provided to receive this advisory opinion nor the provision of this opinion creates an attorney-client relationship.

In your DD Form 2945, you stated that during your federal Government employment, you served as the Program Manager in DARPA's Adaptive Capabilities Office (ACO). In your form, you disclosed that you served as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which a contractor was selected for award of contracts in excess of \$10,000,000. As a DARPA PM, you have served in the following positions and/or taken the following actions regarding an acquisition or contract in excess of \$10 million:

- Program Manager
- Member of a source selection evaluation board

Based on the information you disclosed in your DD Form 2945, I provide the following advisory opinion.

National Defense Authorization Act of FY 2008, Section 847, Opinion Requirement

Certain current or former Department of Defense (DoD) officials who, within two years of leaving DoD, expect to receive compensation from a defense contractor must request and receive a written opinion regarding the applicability of post-government employment restrictions to activities that the official may undertake on behalf of a defense contractor before receiving payment. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) and is implemented by the Defense Federal Acquisition

Regulation Supplement 203.171. It applies if you are a current or former DoD official who participated personally and substantially in an acquisition with a value in excess of \$10 million while serving in: (1) an Executive Schedule position; (2) a Senior Executive Service position; (3) a general or flag officer position; or (4) in the position of 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. Based on the information you disclosed in your DD Form 2945, you are subject to Section 847 requirements summarized above. This advisory opinion satisfies Section 847 requirements.

41 U.S.C. §§ 2101-2107 (formerly the Procurement Integrity Act)

It is my opinion that 41 U.S.C. §§ 2101-2107 (formerly the Procurement Integrity Act) prohibits you from accepting compensation from Radiance Technologies as an employee, officer, director, or consultant for which you have served in the above-listed positions, where the value of such contract exceeded \$10 million. The compensation ban is for one year after the date of contract award. 41 U.S.C. § 2104; FAR 3.104-3(d).

Note, however, that you may be able to accept compensation from a division or affiliate of this contractor that does not produce the same or similar products or services as the entity responsible for the contract. This prohibition and its exceptions are discussed in detail in the enclosed materials styled “*Procurement Integrity Restrictions*.”

Applicability of 18 U.S.C. § 207

Other post-Government employment laws and regulations could potentially restrict the type of work you may perform for prospective employers. For example, under 18 U.S.C. § 207, you cannot represent a non-federal entity (such as a contractor) back to the Government under certain circumstances discussed below. The federal regulations implementing this law state that it is not intended to discourage Government employees from moving to and from private positions. Rather, it only bars certain acts that involve, or may appear to involve, unfair use of prior Government employment. It does not restrict behind-the-scenes advice to non-federal entities, and it does not preclude you from accepting compensation from a contractor.

More specifically, 18 U.S.C. § 207(a)(1) is a lifetime ban on attempting to influence the Government on behalf of someone regarding a particular matter you worked on in the Government. The applicable “lifetime” is the lifetime of the relevant matter, not your personal lifetime or lifespan. Particular matters include contracts, claims, applications, judicial, or other proceedings, requests for a ruling or other determination, controversies, investigations, or charges. At DARPA, typical particular matters that trigger 18 U.S.C. § 207(a)(1) are acquisition source selections and contracts for programs. Accordingly, you may not represent a non-federal entity on any acquisitions or contracts that you were personally and substantially involved in during your entire tenure at DARPA. Although the lifetime representation ban applies to the

contracts you worked on, you may work for a non-federal entity on those particular matters as long as you remain behind the scenes. For details, please see the enclosed materials styled, “*Senior Employee Post-Government Restrictions*.”

18 U.S.C. § 207(a)(2) provides that if a particular matter was under your official responsibility during your last year of Government service, even if you did not personally participate in it, you are barred from making representational contacts about that matter for two years. As a Program Manager, you do not have supervisory responsibility. Accordingly, the two-year representation ban of 18 U.S.C. § 207(a)(2) does not apply to you.

Notwithstanding the lifetime ban under 18 U.S.C. § 207(a)(1) for matters you worked on, 18 U.S.C. § 207(c) provides that for one year after leaving a senior position, former senior officials may not knowingly, with intent to influence, make any communication to or appearance before an employee of an agency in which he/she served in any capacity within the one-year period prior to his/her leaving the senior position, in connection with any matter on which official action is sought by such individual. When you leave DARPA, your base pay will exceed the threshold amount of \$183,467.00 which qualifies you as a senior employee. Accordingly, the one-year cooling-off period applies to you.

During the first year after your departure from federal service, you may not represent any non-federal entity on any matter in which the non-federal entity is seeking official action before DARPA. This period is designed to prevent any appearance that former senior officials are able to influence Government decisions improperly because of their former senior positions. You should note that unlike the proscriptions found in 18 U.S.C. § 207(a)(1), which pertain to particular matters, 18 U.S.C. § 207(c) pertains to any matter in which official action is sought. It does not restrict behind-the-scenes advice to non-federal entities.

Please note, for purposes of this one-year cooling-off period under 18 U.S.C. § 207(c), DARPA is a separate agency from other DoD components, effective April 6, 2021. 5 C.F.R. Part 2641, Appendix B. Thus, you may appear before or communicate with personnel of other DoD components.

Under 18 U.S.C. § 207(j), a former senior employee will not violate the one-year cooling-off period if his/her communication or appearance is made in carrying out official duties as an employee of one of the following organizations: State and local government; an accredited degree-granting public or nonprofit private institution of higher education as defined in 20 U.S.C. § 1001; or a hospital or medical research organization as defined by section 501(c)(3) of the Internal Revenue Code.

For one year after leaving federal service, you may not aid, advise, or represent someone else regarding trade or treaty negotiations that you worked on during your last year of federal service or advise or represent a foreign government or foreign political party with the intent to influence the U.S. Government. 18 U.S.C. §§ 207(b) and (f).

POST-GOVERNMENT EMPLOYMENT ADVISORY OPINION
Dr. Jose Bricio-Neto

The post-Government employment laws and regulations carry criminal sanctions and can be confusing. If you have any questions or need more specific advice, even after you leave federal Government employment, please contact me or any ethics counselor in this office at (571) 218-4250.

Terry Stenerson
Associate General Counsel

Enclosures:
As stated



U.S. Department of Defense Standards of Conduct Office

PROCUREMENT INTEGRITY RESTRICTIONS RELATED TO SEEKING EMPLOYMENT AND POST-GOVERNMENT EMPLOYMENT

PURPOSE: This document summarizes the Procurement Integrity rules which may impose certain restrictions on your job search and employment after departure from the Department of Defense (DoD).

LEGAL NOTICE: This information merely identifies statutes and regulations that restrict or otherwise affect activities of DoD personnel. 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 OSD.SOCO@MAIL.MIL to discuss their particular situation. DoD personnel served by other ethics offices should consult with their ethics officials.

Advice from Federal 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. §§ 2101 - 2107 (commonly referred to 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 LEAVING DoD*)

A. Offers of Non-Federal Employment

A DoD official who is participating personally and substantially in a procurement for a contract in excess of the **simplified acquisition threshold** (currently \$250,000) and is contacted by a bidder regarding non-Federal employment or is seeking employment with a bidder shall:

- Report the contact, in writing, to his supervisor and SOCO; and
 - Reject the offer of non-Federal employment; or
 - Disqualify himself from further personal and substantial participation in the procurement until authorization to resume participation is granted in accordance with the conflict of interest rules (18 U.S.C. § 208) on the grounds that:
 - the offeror is no longer a bidder; or
 - all discussions with the offeror regarding possible non-Federal employment have terminated without an agreement for employment.
- (41 U.S.C. § 2103)

Disqualification is simple – Don’t do **ANY work on the task!** Further, the Federal Acquisition Regulations require an official who must disqualify, to submit a written notice of such disqualification to the contracting officer, source selection authority if other than the contracting officer, and immediate supervisor. The written notice must identify the procurement, describe the nature and specific dates of the official’s participation in the procurement, identify the offeror, and describe the offeror’s interest in the procurement.

An official must remain disqualified until such time as the agency, at its discretion, authorizes the official to resume participation in the procurement.

In addition to the procurement integrity restrictions, the conflict of interest statute, 18 U.S.C. § 208, prohibits an official from taking part in any particular matter, including a procurement of any amount, if the official has an existing employment relationship with the concerned contractor or is seeking employment with that contractor, unless a waiver or an authorization has been granted.

B. Definitions

1. *Personal and substantial* participation is 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;
- Evaluating bids or proposals;
- Selecting a source;
- Negotiating price or terms and conditions of the contract; or
- Reviewing and approving the contract award.

2. Participation solely in the following activities is *not personal and substantial* participation:

- Agency-level boards, panels, or advisory committees that review program milestones or evaluate and recommend alternate technologies or approaches for broad agency-level missions or objectives;
- General, technical, engineering, or scientific effort with broad application not directly associated with a particular procurement, although such effort may be subsequently incorporated into a particular procurement;
- Clerical functions supporting the conduct of a particular procurement;
- A-76 management studies, preparation of in-house cost estimates, preparation of most efficient organization” analyses, and furnishing data or technical support be used by others in developing performance standards, statements of work, or specifications; and
- Reviews conducted solely to determine compliance with regulatory, administrative, or budgetary procedures.

3. *Participating personally* means participating directly, and includes the direct and active supervision of a subordinate’s participation in the matter.

4. *Participating substantially* means that official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome.

5. *Seeking employment* includes making an unsolicited communication regarding potential future employment, engaging in negotiations for employment, or responding to an unsolicited communication regarding possible employment other than an immediate and clear rejection. Seeking employment does *not* include requesting a job application, but does include forwarding a resume. For a period of two months after sending a resume, an official is considered to be seeking employment unless the official or the company rejects the possibility of employment prior to that time.

II. EMPLOYMENT RESTRICTIONS (*AFTER LEAVING DoD*)

A. Accepting compensation from a DoD contractor

Per 48 C.F.R. 3.104-3(d) for a period of 1 year after the applicable *designated date*, a former official may not accept *compensation* from a contractor (prime contractor) that has been awarded a competitive or sole source contract in excess of \$10 million, if the former official served or acted in any of the following capacities:

- Procuring contracting officer, source selection authority, member of source selection evaluation board, or chief of financial or technical evaluation team:
 - If the official served in one of the positions listed above on the date the contractor was selected, but not on the date of award of the contract – the date the contractor was selected is the designated date.
 - If the official served in one of the positions listed above on the date of award of the contract – the date of award is the designated date.
- Program Managers, Deputy Program Managers, and Administrative Contracting Officers:
 - The designated date is the last date of service in the position.
- Officials who personally made any of the following decisions, the designated date is the date of decision:
 - Award contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess of \$10,000,000.
 - Establish overhead or other rates valued in excess of \$10,000,000.
 - Approve issuance of a contract payment in excess of \$10,000,000.
 - Pay or settle a claim in excess of \$10,000,000.

EXCEPTION: This restriction does not prohibit an official from working for another division or affiliate of the contractor, provided such division or affiliate does not produce the same or similar products or services as the division or affiliate responsible for the contract in which the official was involved.

DoD personnel are encouraged to request advice on these rules prior to accepting compensation from a contractor from their agency ethics counselor.

B. Definitions

1. *Compensation* includes wages, salaries, honoraria, commissions, professional fees, and any form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than an individual, specifically in exchange for services provided by the individual.

2. A *\$10 million contract* is determined by the following:

- Value or estimated value at the time of award of the contract, including all options;
- Indefinite-delivery/indefinite quantity or requirements contract - total estimated value of all orders at the time of award under a contract;
- Any multiple award schedule contract, unless contracting officer documents a lower estimate;
- Basic Ordering Agreement - value of delivery order, task order or order under a basic ordering agreement;
- Claims - amount paid or to be paid in settlement of claim;
Estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

III. Requirement to Request an Opinion

- If you will be receiving compensation from a defense contractor within two years of leaving DoD, you are required to request a written opinion regarding the applicability of the post-employment restrictions to the activities you undertake on behalf the defense contractor. This requirement applies to any employee who participated personally and substantially in an acquisition with a value in excess of \$10M **and** who serves or served in: (1) an Executive Schedule position; (2) a Senior Executive Service position; (3) a general or flag officer position; or (4) in the position of 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. You must obtain this written opinion prior to accepting compensation from the contractor. See the website, <https://www.fdm.army.mil/AGEARWeb/requestor/landingReq.xhtml> for further information or to request an opinion online.

Additionally, all departing personnel may request from the appropriate ethics official formal written advice regarding the applicability of these procurement integrity provisions to their anticipated future employment.

QUESTIONS? If you have questions, even *after* you leave Government service, please call your ethics counselor or the DoD Standards of Conduct Office: (703) 695-3422. E-mail: OSD.SOCO@MAIL.MIL. Fax: (703) 695-4970.

Rev. 1/2021



U.S. Department of Defense Standards of Conduct Office

2024 SENIOR EMPLOYEE POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

Purpose: This document summarizes the Government ethics rules that may impose restrictions on your employment after departure from the Department of Defense (DoD).

Application: For purposes of these restrictions, General and Flag Officers; Presidential Appointees confirmed with the advice and consent of the Senate (PAS); and civilian personnel whose rate of base pay is at or above 86.5% of the basic rate for Executive Schedule Level II (\$191,944 in CY 2024).

Legal Notice: This information identifies statutes and regulations that restrict or otherwise affect activities of DoD personnel after they leave Government service. This information is a summary of the rules and is not intended to be legal advice. Departing personnel should consult with their local ethics official(s) for advice concerning their specific situation. **For OSD personnel only** - contact the Standards of Conduct Office (SOCO) at (703) 695-3422 or by e-mail at OSD.SOCO@MAIL.MIL.

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. Ethics officials are acting on behalf of the United States Government, and not as your personal representative. No attorney-client relationship is created.

I. REPRESENTATIONAL RESTRICTIONS AFTER LEAVING DOD (18 U.S.C. § 207)

A. One Year Cooling-Off Period: Agency Representational Ban

Simplified Rule: For *one year* after leaving a senior position, an official may not represent someone else, with the intent to influence, before the official's former agency regarding any official action.

Rule: For a period of one year after leaving a senior position, former *senior officials* may not make any communication or appearance on behalf of any other person, with intent to influence official action, before any officer or employee of the *agency* or agencies in which the official served within one year prior to leaving the senior position, in connection with any matter. 18 U.S.C. § 207(c).

Definitions:

- **Senior officials:** General and Flag Officers; PAS; and civilian personnel whose basic rate of pay is at or above 86.5% of the basic rate for Executive Schedule Level II.
- **Agency:**
 - For PAS – agency means all of DoD, (i.e. OSD, Military Departments, and DoD Agencies).
 - For all other senior officials¹ – agency means any of the following components in which the official served one year before leaving the senior position: **OSD, the Military Departments, DISA, DIA, DLA, NGA, NRO, DTRA, NSA, and DARPA.** For General and Flag Officers assigned outside of their Military Department during their last year, the term agency also includes both the component where assigned and the officer's Military Department. *For the purpose of this restriction, OSD is comprised of the DoD entities listed in the chart attached to the end of this handout.*

Example #1: An Army general who retires after spending his last tour of duty at DSCA will have a one-year cooling-off period with regard to all of OSD and the Army. For purpose of this restriction, DSCA is part of OSD.

Example #2: An Army general who retires after spending his last tour of duty at NRO will have a one-year cooling-off period with regard to NRO and the Army. NRO is not part of OSD for purposes of this restriction.

For Secretary of Defense Only: A two year ban prohibits communications or appearances before all DoD personnel and any official appointed to an Executive Schedule position listed in 5 U.S.C. § 5312-5316. 18 U.S.C. § 207(d).

B. Personal Participation: Lifetime Representational Ban

Simplified Rule: After you leave Government service, you may not represent someone else to the Government regarding *particular matters involving specific parties* that you worked on while in Government service. This ban remains for the lifetime of the particular matter.

Rule: A former Government officer or employee may not knowingly, with the intent to influence, make any communication to or appearance before an employee of the Executive or Judicial branches of the U.S. Government, on behalf of another person or entity in connection with a particular matter involving a specific party or parties, in which the officer or employee participated personally and substantially while employed as a Government employee and in which the United States is a party or has a direct and substantial interest. 18 U.S.C. § 207(a)(1).

¹ General and Flag Officers and civilian personnel whose basic rate of pay is at or above 86.5% of the Executive Schedule Level II.

Definitions:

- ***Particular Matter Involving Specific Parties:*** Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific non-Federal party or parties in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties. For example, a procurement may be a *particular matter*, but it might not become one involving *specific parties* until prospective or actual contractors are identified.
 - ***Particular Matters of General Applicability Not Covered.*** Legislation or rulemaking of general applicability and the formulation of general policies, standards, or objectives that are narrowly focused on the interests of a discrete and identifiable class of persons are not particular matters involving specific parties.
 - ***Specific parties at all relevant times.*** The particular matter must involve specific parties both at the time the official participated as a Government employee and at the time the former official makes the communication or appearance, although the parties need not be identical at both times.
- ***Personal*** participation means that you are directly participating in the matter or that you are actively directing one or more of your subordinates in their participation. Your participation does NOT have to be outcome determinative.
- ***Substantial*** participation means that the DoD official's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. If you are merely responsible for reviewing the matter for compliance with administrative or budgetary considerations, you are not substantially involved.

Example #1: A DoD official approved a specific university's grant application for a DoD research initiative. The former DoD official may not represent the university in relation to that grant as it is a particular matter involving specific parties in which the former DoD official participated personally and substantially as a DoD official.

Example #2: A DoD official performed certain feasibility studies for a possible procurement of a missile system. At the time the official was involved in the matter, DoD had not identified any prospective vendors. After the official left, DoD issued a request for proposals to construct the new system. The former DoD official now seeks to represent one of the offerors in connection with this procurement. Section 207(a)(1) does not prohibit the official from doing so. The procurement was not a particular matter involving specific parties at the time of the official's participation because specific parties had not yet been identified.

Example #3: A former DoD employee participated personally and substantially in the development of a policy establishing new safety standards that affect military aircraft manufacturers. While the policy is a particular matter of general applicability that is narrowly focused on the interests of a discrete and identifiable class of persons, non-Federal persons cannot be a "party" to a DoD policy. Therefore, it is not a matter involving specific parties, and Section 207(a)(1) would not prohibit the former employee from representing a non-Federal entity back to the Government in connection with this policy.

C. Official Responsibility: Two Year Representational Ban

Simplified Rule: For *two years* after leaving Government service, you may not represent someone else to the Government regarding *particular matters involving specific parties* that you did not work on yourself, but were pending under your responsibility during your last year of Government service.

Rule: For two years after the termination of Government service, a former DoD official may not knowingly, with the intent to influence official action, make any communication to or appearance before an employee of the Executive or Judicial branches of the U.S. Government, on behalf of another person or entity in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which the former DoD official knows or reasonably should know was actually pending under the former DoD official's responsibility within the last year of DoD service. 18 U.S.C. § 207(a) (2).

Definitions: See the preceding section for the definitions of *particular matter involving specific parties* and *personal and substantial participation*.

- ***Official Responsibility*** means direct administrative or operating authority to approve, disapprove, or otherwise direct, Government actions. For instance, all particular matters involving specific parties under consideration in an agency are under the official responsibility of the agency head. It also includes a supervisor at any level having responsibility for the actions of a subordinate employee who actually participates in a matter. Official responsibility for a matter is not eliminated through a recusal or avoidance of personal participation in a particular matter involving specific parties.

Example: A DoD supervisor owned stock in Company A and was recused from participating in matters that could affect the financial interests of Company A. During the last year of the supervisor's DoD service, a subordinate personally and substantially participated in a contract with Company A. After retirement, the former DoD official is still subject to the Section 207(a)(2) two-year representational ban with regard to that contract. (If the supervisor personally directed the subordinate in participating in the contract, the supervisor would be subject to the Section 207(a)(1) "lifetime" representational ban.)

D. Trade or Treaty Assistance: One Year Representational Ban

Rule: For a period of one year after leaving Government service, former employees or officers may not knowingly represent, aid, or advise someone else on the basis of *covered information*, concerning any ongoing *trade or treaty negotiation* in which the employee participated personally and substantially in his or her last year of Government service. 18 U.S.C. § 207(b).

Definitions:

- ***Trade negotiations*** are those undertaken pursuant to the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2902).
- ***Treaties*** are international agreements that require the advice and consent of the Senate.
- ***Covered information*** means agency records accessible to the employee but exempt from disclosure under the Freedom of Information Act.

E. Assistance to Foreign Government: One Year Advice Ban

Rule: For a period of one year after leaving a senior position, former *senior officials* may not knowingly aid, advise, or represent a foreign government or foreign political party, with the intent to influence any officer or employee of any Federal department, agency, or Member of Congress. Unlike most other representational bans, this one ***does not permit*** behind-the-scenes assistance to a foreign government or political party AND the representation prohibition applies to all branches of the Federal Government. 18 U.S.C. § 207(f).

F. Exceptions to Representational Bans

There are exceptions to the restrictions of 18 U.S.C. § 207. For specific guidance, consult an ethics counselor.

Common exceptions include:

- Acting on behalf of yourself, not another
- Acting on behalf of the U.S. Government.
- Aiding, advising, and representing certain international organizations with prior

Secretary of State certification.

- Making statements based on special knowledge, if unpaid. (§ 207 (c), (d), and (e) only)
- Senior officials are not prohibited from representing state or local governments, hospitals, medical research organizations, or degree-granting institutions of higher learning, when making representations on those institutions' behalf. (§ 207 (c), (d), and (e) only)
- The lifetime and senior official representational bans do not apply to communications that furnish scientific or technological information with prior, published certification by the Secretary of Defense. (§ 207 (a), (c) and (d) only).
- Subject to limitations, certain testimony under oath is exempt from the prohibitions of 18 U.S.C. § 207.

G. Penalties and Injunctions

A violation may subject you to imprisonment for not more than five years, a criminal or civil fine, and a court order prohibiting you from engaging in the conduct in the future.

II. SECTION 1045 OF THE NDAA FOR FY 2018

Simplified Rule: This statute prohibits former senior officials from participating in *lobbying activities with respect to DoD*.

Rule: Effective December 12, 2017, Congress enacted additional post-Government employment restrictions for senior officials departing DoD after that date. Section 1045 restricts *lobbying activities with respect to DoD* by certain senior officials. Departing flag and general officers and senior civilian equivalents are prohibited from lobbying *covered executive branch officials in DoD* or *covered executive branch officials* outside of DoD pertaining to *a matter with respect to DoD*. The duration of the restrictions varies by seniority, as described below.

Duration:

- **Military officers in grades O-9 and O-10 and senior civilian equivalents** (SES/NCSSES/DISES at tier three and above and PAS officials) departing service after December 12, 2017 – **Two years** after date of retirement or separation.
- **Military officers in grades O-7 and O-8 and senior civilian equivalents** (SES/DISES at Tiers one and two) departing service after December 12, 2017 – **One year** after date of retirement or separation.

Definitions:

- ***Lobbying activities with respect to DoD*** means:
 - Lobbying contacts and other lobbying activities with ***covered executive branch officials outside of DoD pertaining to a matter with respect to DoD***. Some behind-the-scenes assistance is prohibited.

- Lobbying contacts with ***covered executive branch officials in DoD***. Behind-the-scenes assistance is not prohibited.
- ***Covered executive branch officials***: the President, Vice President, any officer or employee in the Executive Office of the President; PAS officials; O-7 and above; Non-Career SES; and Schedule C. Career SES are not covered executive branch officials for purposes of applying the restrictions in Section 1045.
- ***Covered executive branch officials in DoD***: Has the same meaning as *covered executive branch officials*, but does not include the President, Vice President, or any officer or employee in the Executive Office of the President.
- ***A matter with respect to DoD***: A matter in which DoD is an identifiable party, such as contract or litigation proceedings. A matter is not considered to be with respect to DoD simply because DoD may benefit from or be affected in some way by the matter.

For purposes of the restrictions in Section 1045, separate agency components pursuant to Part 2641.302 of Title 5, Code of Federal Regulations do not apply. Exceptions to the representational bans referenced above in Section F, are also applicable to the Section 1045 restrictions. **For a more detailed explanation of this post-Government employment restriction, see [DoD Instruction 1000.32, “Prohibition of Lobbying Activity by Former Senior Officials.”](#)**

III. PROHIBITED COMPENSATION (18 U.S.C. § 203)

Rule: Former DoD officials are prohibited from sharing in any compensation for representational services before the Executive and Judicial Branches of the Federal Government, rendered personally or by another, at a time when the former employee was still employed by the DoD. This prohibition may affect former DoD officials who share in the proceeds of a partnership or business for representational services that occurred before the official left DoD. Examples of such representational activities include lobbying, consulting, and legal representation.

IV. PROCUREMENT INTEGRITY ACT COMPENSATION BAN (48 C.F.R. 3.104-3(d))

Rule: For a period of one year after the applicable *designated date*, a former official may not accept *compensation* from a prime contractor that has been awarded a competitive or sole source contract in excess of \$10 million, if the former official served or acted in any of the following capacities:

Capacity:

- Procuring contracting officer;
- Source selection authority;
- Member of source selection evaluation board; or
- Chief of financial or technical evaluation team.

Designated Date:

- If the official served in one of the positions listed above on the date the contractor was selected, but not on the date of award of the contract – the date the contractor was selected is the designated date.
- If the official served in one of the positions listed above on the date of award of the contract – the date of award is the designated date.

Capacity:

- Program Manager or Deputy Program Manager for an Acquisition program
- Administrative Contracting Officer

Designated Date:

- The designated date for the above positions is the last date of service in the position.

Capacity:

- Personally made any of the following decisions:
 - To award contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess of \$10,000,000;
 - To establish overhead or other rates valued in excess of \$10,000,000;
 - To approve issuance of a contract payment in excess of \$10,000,000;
 - To pay or settle a claim in excess of \$10,000,000.

Designated Date:

- The designated date for the above positions is the last date of service in the position

Definitions:

- **Compensation** includes wages, salaries, honoraria, commissions, professional fees, and any form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than an individual, specifically in exchange for services provided by the individual.
- A **\$10 million contract** is determined by the following:
 - Value or estimated value at the time of award of the contract, including all options;
 - Indefinite-delivery/indefinite quantity or requirements contract - total estimated value of all orders at the time of award under a contract;
 - Any multiple award schedule contract, unless contracting officer documents a lower estimate;
 - Basic Ordering Agreement - value of delivery order, task order or order under a basic ordering agreement;
 - Claims - amount paid or to be paid in settlement of claim;
 - Estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

Exception: This restriction does not prohibit an official from working for another division or affiliate of the contractor, provided such division or affiliate does not produce the same or similar products or services as the division or affiliate responsible for the contract in which the official was involved.

V. RESTRICTIONS FOR RETIRED MILITARY PERSONNEL AND RESERVISTS

A. Foreign Employment

Rule: The Emoluments Clause of the U.S. Constitution prohibits retired military personnel and reservists from receiving pay from *Foreign Governments* without Congressional authorization. This may extend to receipt of pay from a U.S. contractor or subcontractor for providing services to a Foreign Government and profit sharing at any commercial firm or business. In 37 U.S.C. § 908, Congress has authorized the Secretary of State and Secretary of the appropriate Military Department to approve such receipt of pay. Each Military Service has implementing procedures for this approval process. The penalty for violating the Emoluments Clause is forfeiture of retired military pay received during the period of the violation. *Foreign Governments* may include educational and commercial entities that are substantially owned or controlled by foreign governments.

B. Employment During Transition Leave

1. Holding a civil office in state or local government: While on active duty (including transition leave) military *officers* are prohibited by 10 U.S.C. § 973(b) from holding a "civil office" with a state or local government.

2. Civilian position in the U.S. Government: Military personnel on transition leave are authorized to accept a civilian position, career, or non-career, 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. While on transition leave, military personnel are still active-duty service members, and the restrictions that apply to them while on active duty still apply. For example:

- Restrictions on political activities.
- Restrictions on outside employment. If permission prior to engaging in outside employment is required, that requirement will most likely carry over to transition leave. *Check with your supervisor.*

4. Restriction on representing others to the Federal Government: During transition leave:

- ***Military officers*** may not represent anyone before an agency or court of the Federal Government, with or without compensation, on a matter in which the United States is a party or has a substantial interest. 18 U.S.C. §§ 203, 205. Enlisted members are not subject to 18 U.S.C. §§ 203 or 205.

- For example, *military officers* may not interact or appear on behalf of their non-Federal employer before Federal employees – whether or not in a Federal workplace. Being present in a Federal workplace on behalf of a non-Federal employer is a representation, with limited exceptions. *Military officers* on transition leave may work for a non-Federal employer, but only "behind the scenes" at the non-Federal employer's office, or otherwise away from the Federal workplace.

VI. BIDEN ADMINISTRATION RESTRICTIONS FOR POLITICAL APPOINTEES

Political appointees signed the Ethics Pledge set forth in Executive Order 13989, committing to additional ethics obligations including the following post-Government employment restrictions:

1. Upon leaving Government service, the political appointee may not lobby any covered Executive Branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that the political appointee register under the Foreign Agents Registration Act, for the remainder of the Administration or two years following the end of the political appointee's appointment, whichever is later. **For the purpose of this provision, "lobby" means to act as a registered lobbyist.**

2. A senior political appointee's one year cooling off period under 18 U.S.C. § 207(c) is extended to two years and also prohibits communicating with senior White House Staff.

3. During the one year period following the end of the political appointee's departure from Federal service, the political appointee may not materially assist others in making communications or appearances that the political appointee is prohibited from undertaking under any of the 18 U.S.C. § 207 representational restrictions described in Section I of this handout. Specifically, the political appointee may not: (a) hold him/herself out as being available to engage in *lobbying activities* in support of any such communications or appearances; or (b) engage in any such *lobbying activities*. For the purpose of this provision, *lobbying activities* has the same meaning as the Lobbying Disclosure Act. 2 U.S.C. § 1602. ***This provision prohibits behind the scenes activities.*** See [OGE Legal Advisory LA-22-07](#), dated November 14, 2022

VII. REQUIREMENT TO REQUEST AN OPINION (FY2008 NDAA, SECTION 847)

If a DoD official will be receiving compensation from a defense contractor within two years of leaving DoD, the DoD official is required to request a written opinion regarding the applicability of the post-Government employment restrictions to the activities s/he will undertake on behalf of the defense contractor. This requirement applies to any DoD official who participated personally and substantially in an acquisition with a value in excess of \$10M **and** who serves or served in: (1) an Executive Schedule position; (2) a Senior Executive Service position; (3) a general or flag officer position; or (4) in the position of acquisition 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. The DoD official must obtain this written opinion prior to accepting compensation from the contractor.

VIII. SECTION 304 OF THE NATIONAL SECURITY ACT OF 1947 (50 U.S.C. § 3073A)

DoD officials who occupy a “covered intelligence position” (as defined in the National Security Act of 1947) may be subject to reporting requirements and other restrictions that limit the support they are permitted to provide to the government of a foreign country after departing Federal service. DoD ethics officials do not make determinations concerning the applicability of these provisions. DoD officials are advised to reach out to the appropriate DoD Security Office to obtain additional guidance.

VIII. ADMINISTRATIVE REMINDERS

A. Financial Disclosure Report: A DoD official who is a Public Financial Disclosure Report (OGE 278) filer must file a Termination report not later than the 30 days after separation. If the DoD official files more than 30 days late, the DoD official is subject to a \$200 late filing fee. In addition, if a DoD official knowingly and willfully fails to file this report, the DoD official will be referred to the Department of Justice which could result in imposition of substantial civil penalties in excess of \$50,000.

- Note: No Termination report is required if the official goes to another Federal public financial disclosure filing position within 30 days.

B. Use of Nonpublic Information: Even though a DoD official has left Federal service, s/he still may not use nonpublic information to further his/her own private interests, or those of another, including the DoD official’s non-Federal employer. Nonpublic information includes classified information, source selection data, information protected by the Privacy Act, proprietary information, information protected by the Trade Secrets Act, and other information that has not been made available to the public and is exempt from disclosure.

C. Accepting a Buy-Out: If a DoD official accepted a *buy-out* or separation payment, s/he has re-employment restrictions. *Please contact your personnel office if you are unsure of those provisions.*

D. Questions? Individuals should contact their local ethics official for information pertaining to the individual’s specific circumstances. For OSD personnel only - contact the Standards of Conduct Office (SOCO) at (703) 695-3422 or by e-mail at OSD.SOCO@MAIL.MIL.

OSD 18 U.S.C. § 207(c) “Cooling-Off” Limitations
Applicable to all senior DoD officials, except PAS appointees*
Not applicable to Section 1045 restrictions

Separate Designated DoD Components before whom you <i>may</i> appear:	Remaining DoD/OSD entities before whom you <i>may not</i> appear:
<ul style="list-style-type: none"> ✓ Defense Advanced Research Project Agency ✓ Defense Information Systems Agency ✓ Defense Intelligence Agency ✓ Defense Logistics Agency ✓ Defense Threat Reduction Agency ✓ Department of the Air Force ✓ Department of the Army ✓ Department of the Navy ✓ National Geospatial-Intelligence Agency ✓ National Reconnaissance Office ✓ National Security Agency 	<ul style="list-style-type: none"> ✗ Army-Air Force Exchange Service ✗ Armed Services Board of Contract Appeals ✗ Defense Acquisition University ✗ Defense Commissary Agency ✗ Defense Contract Audit Agency ✗ Defense Contract Management Agency ✗ Defense Finance and Accounting Service ✗ Defense Innovation Unit ✗ Defense Health Agency ✗ Defense Human Resources Activity ✗ Defense Media Agency ✗ Defense Microelectronic Activity ✗ Defense POW/MIA Office ✗ Defense Counterintelligence and Security Agency ✗ Defense Security Cooperation Agency ✗ Defense Strategic Capabilities Office ✗ Defense Technology Security Agency ✗ DoD Education Activity ✗ Chairman, Joint Chiefs of Staff (Joint Staff) <ul style="list-style-type: none"> ✗ Africa Command ✗ Central Command ✗ Cyber Command ✗ European Command ✗ Northern Command ✗ Pacific Command ✗ Space Command ✗ Special Operations Command ✗ Southern Command ✗ Strategic Command ✗ Transportation Command ✗ Missile Defense Agency ✗ National Defense University ✗ Office of DoD Inspector General ✗ Office of the Secretary of Defense ✗ White House Military Office ✗ Washington Headquarter Services ✗ Uniformed Services University of the Health Sciences

* Applies to “senior” personnel whose rate of *basic pay* is at or above 86.5% of the rate of Executive Schedule Level II, except appointees that are Presidentially-appointed and Senate confirmed (PAS). For PAS officials, the one year cooling-off ban extends to all of DoD, meaning all Military Departments and the other DoD components listed above.