DHA OGC ETHICS BRANCH INFORMATION PAPER ON POST-GOVERNMENT EMPLOYMENT – FORK IN THE ROAD

<u>Purpose</u>: Provide a short information paper on post-Government employment (PGE) restrictions for DHA civilian employees who are considering accepting the deferred resignation recently offered to Federal employees.

• Employees may contact their local ethics official or DHA HQ Ethics Branch (<u>DHA-OGCEthicsOffice@health.mil</u>) for more information.

Things employees may not do while on administrative leave (to include paid annual leave time):

- DHA employees may not work for a Federal Government agency in a different position while serving on administrative leave as a full-time DHA employee. (5 U.S.C. § 5533).
- Employees may not work for a Government contractor if their duties with the Government contractor require the employee to represent back to the Government (any Government agency) on behalf of their employer. (18 U.S.C. § 203 & 205).
- Employees involved in contracting award decisions for contracts exceeding \$10 million may not accept compensation from that contractor for a year. See below for more details on the Procurement Integrity Act.
- If the DHA employee is a medical provider (excluding dental providers), they may not treat TRICARE beneficiaries and receive compensation from another source.

Things employees may do while in an Administrative Leave status:

- Work for a private employer, even a DHA contractor, where the duties do not involve representing back to the Government. However, many employees may have off-duty employment approval requirements before engaging. Also, if an employee is recalled back to work, the employee may have to recuse themselves from working any action related to the off-duty employer.
- Work for a state or local government, provided duties to not conflict with current duties.
- Work for a non-profit.
- Work as a volunteer.
- Go back to school on the GI Bill or otherwise.

Off-Duty Employment Approval

• If you are a financial disclosure filer, you are required to speak with your supervisor and ethics official before you begin an off-duty employment activity with a prohibited source. If you are not a financial disclosure filer, it is still recommended that you speak with your supervisor and ethics official. Health care providers (other than dental) must receive approval in advance of working outside their MTF.

Seeking Post-Government Employment (PGE)

• Employees who are seeking employment and who are still working at DHA are required by regulation to remain impartial and required by law to avoid conflicts of interest. While employees are on administrative leave, they are still employed by the Government. If seeking employment with a non-Federal entity would lead a reasonable person to question an employee's impartiality or if negotiating with a future employer would conflict with the work the employee does at DHA, that must be addressed. Recusals should be put in place to address partiality and conflict concerns, at least until it is clear the employee is no longer responsible for their DHA duties. Employees are responsible for avoiding partiality and conflicts of interest and must raise concerns if there is an overlap between official work and their personal interests. OGC encourages employees seeking post-government employment with a non-Federal entity to talk with their supervisor and an ethics official as early as possible.

PGE Restrictions:

• Regardless of the administrative leave, there are several PGE restrictions that will apply when an employee officially leaves the Federal Government. If an employee is planning to work for a non-federal entity, it is highly encouraged to seek PGE guidance to address important limitations and restrictions that may be applicable. For guidance, employees (including former employees) should reach out to their local ethics official or DHA-OGCEthicsOffice@health.mil).

Here are some of the highlights:

• Lifetime Representational Ban (18 U.S.C. § 207(a)(1)) – This rule prohibits employees who personally and substantially participate in a contract / clinical investigations involving specific parties, to work for those outside parties and represent back to DHA on those same matters. It is considered 'side switching' and is in violation of a criminal statute. The lifetime ban refers to the life of a contract or clinical investigation, so if the contract expires, so does the ban.

Example: A DHA physician is involved with a clinical investigation where Company A is a participant. If the DHA physician leaves DHA to work for Company A, she may not

then represent back to DHA on that clinical investigation for the lifetime of that clinical investigation on behalf of Company A.

• Two Year Representational Ban (18 U.S.C. § 207(a)(2)) – Similarly, employees who supervise or have responsibility over any personnel that work on contracts / clinical investigations involving outside contractors have an additional ban. For two (2) years after leaving the DHA, they may not represent these contractors back to DHA regarding the particular matters (contracts / clinical investigations) under their responsibility or supervision.

Example: A DHA employee supervised a subordinate who personally and substantially participated in a contract with Medical Company A. The DHA supervisor for two (2) years may not represent Medical Company A back to DHA on that same contract that his subordinate worked.

• The Procurement Integrity Act - Compensation Ban (41 U.S.C. § 2104) limits a Government employee who participated in awarding a contract in excess of \$10 million or served as a contracting officer, source selection authority or member of a source selection team, technical evaluation team, program manager, or deputy program manager for a contract in excess of \$10 million from receiving any compensation for one (1) year from the time of the work was completed.

Example: DHA Finance Officer, served on a source selection board for a contract awarding Company X with a \$15 million contract. For one year from the time the DHA Finance Officer completed his work as a source selection officer, he may not receive any compensation from Company X.

If employees need further clarification or have additional questions, they may contact their local ethics official or DHA HQ Ethics Branch (<u>DHA-OGCEthicsOffice@health.mil</u>) for more information.