

## **DHA OGC ETHICS BRANCH INFORMATION PAPER POST-GOVERNMENT EMPLOYMENT - ETHICS RULES**

**Purpose:** Provide information on post-government employment (PGE) restrictions.

**Overview:** There are several PGE restrictions that apply when DHA personnel (military and civilian) leave the Federal Government. OGC highly encourages DHA personnel who are planning to work for a non-Federal entity (NFE) to seek PGE guidance to address important limitations and restrictions that may be applicable, as the rules are complicated, and each employee's situation differs according to the facts presented.

This information paper is divided into the following sections:

- i. [PGE Restrictions for DHA Personnel](#)
- ii. [Additional PGE Restrictions for DHA Senior Officials \(GO/FO/SES\)](#)

Please see the PGE Frequently Asked Questions for employees and Senior officials for additional information.

**Requesting a PGE Opinion** - You may request a PGE opinion by submitting the [DD Form 2945](#) to your local ethics official or DHA HQ Ethics Branch once you have a tentative job offer with a detailed description of your new duties. However, remember that it is never too early to reach out to an ethics official for general PGE guidance!

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

### **PGE Restrictions for DHA Personnel**

#### **For All DHA Military Officer and Civilian Personnel: Lifetime Representational Ban<sup>1</sup>**

**Rule** - After you leave Government service, you may not represent someone else to the Government regarding a particular matter (e.g., contract, grant, or clinical investigation) involving specific parties that you worked on while in Government service. This ban remains for the lifetime of the particular matter (e.g., the contract, grant, or clinical investigation). Your participation in the particular matter must have been personal and substantial.

This is considered “side switching” and is in violation of a criminal statute. A former employee may provide assistance to another person behind-the-scenes, provided that the assistance does not involve a communication to or an appearance before an employee of the United States.

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<sup>1</sup> 18 U.S.C. § 207(a)(1) (as implemented by 5 C.F.R. § 2641). Does not apply to enlisted personnel.

*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. She can, however, talk behind the scenes to an employee in Company A about the clinical investigation, (as long as the information is not non-public information.)*

### **For Personnel who Serve as Supervisors/Managers: Two Year Representational Ban<sup>2</sup>**

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.

Specifically, for two years after leaving the Federal Government, you 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 related to any particular matter (e.g., contracts, grants, or clinical investigations) under your responsibility at DHA during the last year of your Government service.

*Example: During the last year, a DHA employee supervised a subordinate who personally and substantially participated in a contract with Medical Company A. For two years after leaving the Federal Government, the DHA supervisor may not represent Medical Company A back to any Federal Agency on that same contract that his subordinate worked.*

### **For Personnel Working on Contracts Over \$10 Million: Compensation Ban under the Procurement Integrity Act<sup>3</sup>**

Rule - Federal Government personnel who serve 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 are prohibited from receiving any compensation from the contractor for one year from the time the work was completed.

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

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<sup>2</sup> 18 U.S.C. § 207(a)(2) (as implemented by 5 C.F.R. § 2641). Does not apply to enlisted personnel.

<sup>3</sup> 41 U.S.C. § 2104 (as implemented by 48 C.F.R. § 3.104).

## **For Personnel Working on Contracts Over \$10 Million: Requirement to Request an Opinion in the After Government Employment Advice Repository (AGEAR) System if Seeking Work for a DoD Contractor**

Rule - Section 847 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 requires certain former DoD personnel who worked on contracts exceeding \$10 million in their last two years at DHA, to receive an ethics opinion before accepting compensation with a DoD contractor. These personnel include the program manager, deputy program manager, contracting officer, source selection authority, member of a source selection team, chief of a financial or technical evaluation team for an acquisition in excess of \$10 million.

See the AGEAR System in the Financial Disclosure Management System for submitting requests for opinion letters at [www.fdm.army.mil](http://www.fdm.army.mil) (lower left side of sign-in page).

*Example: A DHA physician left DoD 6 months ago. While at DHA in his last year, he served on a source selection board for a \$20 million dollar contract. He has decided to apply for a position with Company A, a DoD contractor. The DHA physician may not accept any salary from Company A until he has a final PGE opinion issued through the AGEAR system.*

## **For Active Duty on Terminal Leave or for DHA Civilians on Administrative Leave**

Rule - Two Federal criminal conflict of interest statutes, 18 U.S.C. §§ 203 and 205, prohibit Government personnel from representing back to the Government on behalf of another or acting as an agent for another back to the Government. If personnel intend to work during their terminal leave or while on administrative leave, they must ensure their duties do not require them to represent their new employer back to the Government. This includes any part of the Federal Government, not just DoD, until the employee is no longer on terminal leave or on administrative leave. This rule does not apply to enlisted personnel.

*Example: A DHA civilian nurse decided to accept the Deferred Resignation Program and is currently on paid administrative leave. During this time, he may not take a job for a DHA contractor that would require him to represent back to the government on behalf of the contractor. He must wait to engage with Government personnel until after he has formally departed DHA.*

## **For Retiring Military Members and Current DHA Personnel**

Rule - The Emoluments Clause of the U.S. Constitution prohibits current Federal civilian and military personnel and retired military from working for a Foreign Government without specific approval from the relevant Service Secretary. This includes contractors operated or controlled by a foreign government.

*Example: A DHA Army colonel pharmacist retires and is offered a lucrative position with the UAE to assist their government with setting up an efficient pharmaceutical distribution system. She may not accept this position without first obtaining approval from the Secretary of the Army.*



## **For All DHA Personnel: Prohibition on Use of Nonpublic Information<sup>4</sup>**

Rule - Even though a DoD employee has left Federal service, an employee may not use nonpublic information to further their own private interests or those of another, including their NFE 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.

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<sup>4</sup> 5 C.F.R. 2635.703(a).

## **Additional PGE Restrictions for DHA Senior Officials (GO/FO/SES)**

The following restrictions for DHA Senior Officials apply to General Officers (GO), Flag Officers (FO), and Senior Executive Service (SES) personnel hereinafter referred to as GO/FO/SES. Please note that these restrictions apply to GO/FO/SES, **in addition** to the restrictions outlined above.

### **STOCK Act – Notification to OGC within Three Days of Negotiations<sup>5</sup>**

Rule - All GO/FO/SES are required to file a statement notifying their ethics official of any negotiation or agreement for employment or compensation within three business days after commencement of the negotiation or agreement. A STOCK Act notice must be timely filed with your ethics official to prevent conflicts of interest.

### **One-Year Cooling Off Period<sup>6</sup>**

Rule - For one year after leaving Government Service, a DHA GO/FO/SES may not represent someone else, with the intent to influence, before the official's former agency regarding any official action. For military, this includes their Service (Department of Army, Navy or Air Force) and Office of the Secretary of Defense (OSD)/DHA. SES are barred from representing back only to OSD/DHA.

*Example 1: A DHA Air Force GO is planning to retire and work for a contractor that does business with DHA. She is asked to attend a meeting at DHA on behalf of the contractor. She does not plan to speak but will be in attendance. The cooling off period includes physical appearance if intended to influence may be considered an improper representation. Because she is a GO in the Air Force, she is also barred from engaging any member of the Air Force for a year after her retirement.*

*Example 2: A DHA SES departs the agency and takes up a position a professional organization that organizes health conferences. This former SES is prohibited from representing back to DHA or OSD regarding any conference planning matter for one year. This SES, would, however, be permitted to contact the Department of the Army or even the Defense Logistics Agency to help service set up a conference.*

### **Section 1045, NDAA FY 2018 Restriction<sup>7</sup>**

Rule - Congress enacted additional PGE restrictions for departing senior officials (GO/FO/SES) who left DoD after December 12, 2017. It restricts “lobbying activities” with respect to DoD matters by certain senior civilian officials and officers. Senior officials are prohibited from lobbying the DoD and certain other executive branch officials regarding DoD matters for a one-

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<sup>5</sup> The Stop Trading on Congressional Knowledge Act of 2012

<sup>6</sup> 18 U.S.C. § 207(c) (as implemented by 5 C.F.R. § 2641)

<sup>7</sup> DoD Instruction 1000.32

year period for SES Tier One & Two and GO/FO O-7 & O-8 or two-year period for SES Tier Three & Four and GO/FO O-9 & O-10 after departure.

This legislation limits the ability of former GO/FO/SES to work in positions requiring communications with certain DoD covered officials, or other Federal officials regarding DoD matters, while under the restriction. The limitation can prohibit behind-the-scenes activity supporting lobbying contacts during the applicable cooling off period. These restrictions are broader than the ‘One-Year Cooling Off Period’ explained above in that it restricts communications to all of DoD, yet more limited in that it is limited to communications to covered officials (GO/FO and Political Appointees). It is strongly advised that all senior officials consult with an ethics official before engaging in PGE as these restrictions are complex!

*Example: A DHA Brigadier General retires and takes a position with a DoD contractor. For one year after departure, this BG may not communicate with a GO or FO about a new contract matter as the GO/FOs are covered official under this rule.*

### **Requirement to Request an Opinion (AGEAR System)<sup>8</sup>**

Rule - DoD senior officials (GO/FO/SES) must obtain an ethics opinion in the AGEAR system before working for a defense contractor if, within the last two years, they personally and substantially participated in an acquisition in excess of \$10 million within the last two years of their service. Go to [www.fdm.army.mil](http://www.fdm.army.mil) to file in AGEAR.

### **Assistance to Foreign Government: One Year Advice Ban<sup>9</sup>**

Rule -- For a period of one year after leaving a senior position, former GO/FO/SES 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.

### **Financial Disclosure Report Filing**

Rule - A DHA employee who files a Public Financial Disclosure Report (OGE 278) in Integrity at [www.integrity.gov](http://www.integrity.gov) must file a Termination report not later than the 30 days after separation. If the DHA official files more than 30 days late, the DHA official is subject to a \$200 late filing fee. In addition, if a DHA official knowingly and willfully fails to file this report, the DHA official may 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.

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<sup>8</sup> Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA)

<sup>9</sup> 18 U.S.C. § 207(f) (as implemented by 5 C.F.R. § 2641)