

## **IMPORTANT NOTICE**

This information is for individuals who are planning to leave Government service. It identifies statutes and regulations that restrict or otherwise affect activities of Government personnel while they are seeking employment. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, you should contact us to discuss particular situations.

Advice from TCJA ethics counselors 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. 423 (Procurement Integrity Act). Ethics counselors are acting on behalf of the United States, and not as your personal representative. There is no attorney-client relationship created by a consultation on these matters.

**REPRESENTATIONS TO THE GOVERNMENT:** While in Government service, including on terminal, transition, or separation leave, or associated TDY, you are prohibited from representing someone else, with or without compensation, and from accepting compensation for representational services provided by anyone, before any Federal agency or court regarding particular matters in which the Government is a party or has a substantial interest. (18 U.S.C. 203 and 205) "Representation" is interpreted very broadly while on terminal leave, and includes simply working in a federal workplace for a contractor--even if your contact with federal workers is limited to non-contract matters.

**OFF-DUTY EMPLOYMENT:** While on terminal, transition, or separation leave or associated TDY, you are still in Government service, and should consult with your supervisor before accepting off-duty employment. If you file a financial disclosure report, you must obtain written approval before you may go to work for a DOD contractor. (Section 2-206, JER)

**HOLDING A CIVIL OFFICE IN STATE OR LOCAL GOVERNMENT:** While on active duty (including terminal leave) military officers are prohibited by 10 U.S.C. 973 (b) from holding a "civil office" with a state or local gov't.

**CIVIL POSITION IN THE U.S. GOVERNMENT:** Military personnel on terminal leave are authorized to accept a civilian position 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)

**INTERVIEW EXPENSES:** You may accept travel expenses (meals, lodging, transportation) from a prospective employer if they are customarily provided in connection with bona fide employment discussions. If the performance of your official duties could affect a prospective employer, you must first be disqualified from acting on those matters. If these expenses exceed \$250, and you file a financial disclosure report (OGE 450 or SF 278), you must include them on your report.

### **United States Transportation Command (USTRANSCOM)/TCJA**



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### **United States Transportation Command (USTRANSCOM)**

OFFICE OF THE STAFF JUDGE ADVOCATE (TCJA)  
USTRANSCOMP 51-5, AUGUST 2009  
(EXPIRES AUGUST 2011)

## **EMPLOYMENT RESTRICTIONS WHEN LEAVING GOVERNMENT SERVICE**



**TEL: 618-229-1366**

# PRE-SEPARATION EMPLOYMENT RESTRICTIONS

ONCE YOU HAVE STARTED SEEKING EMPLOYMENT WITH A PROSPECTIVE EMPLOYER, YOU MAY NOT TAKE ANY OFFICIAL ACTION THAT COULD AFFECT ITS FINANCIAL INTERESTS.

AN OFFICER OR EMPLOYEE MAY NOT PARTICIPATE PERSONALLY AND SUBSTANTIALLY IN A PARTICULAR MATTER THAT, TO HIS KNOWLEDGE, HAS A DIRECT AND PREDICTABLE EFFECT ON THE FINANCIAL INTERESTS OF A PROSPECTIVE EMPLOYER WITH WHOM THE EMPLOYEE IS SEEKING EMPLOYMENT. (5 C.F.R. 2635.604)

"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.

"PERSONAL AND SUBSTANTIAL" PARTICIPATION - THIS MEANS THAT YOU ARE DIRECTLY PARTICIPATING IN THE MATTER OR THAT ONE OR MORE OF YOUR SUBORDINATES, WHOM YOU ARE DIRECTING, IS PARTICIPATING. ALSO, THE PARTICIPATION MUST BE OF SIGNIFICANCE TO THE MATTER, WHICH MAY BE BASED ON THE AMOUNT AND IMPORTANCE OF YOUR EFFORT. ONE ACT, SUCH AS APPROVING A CRITICAL STEP, MAY BE SUBSTANTIAL. LIKEWISE, IF YOU HAVE TO REVIEW AND APPROVE A CERTAIN STEP, AND WORK WOULD STOP IF YOU DIDN'T APPROVE, THEN YOUR PARTICIPATION IS SUBSTANTIAL, EVEN THOUGH IT MAY HAVE SEEMED LIKE A PAPERWORK EXERCISE TO YOU. ON THE OTHER HAND, AN ENTIRE SERIES OF PERIPHERAL ACTS MAY NOT BE SUBSTANTIAL.

IF YOU MERELY HAVE KNOWLEDGE OF THE MATTER, ROUTINE OR SUPERFICIAL INVOLVEMENT, OR INVOLVEMENT ON A PERIPHERAL OR ADMINISTRATIVE ISSUE, YOU ARE NOT "SUBSTANTIALLY" INVOLVED. IF YOU ARE NOT INVOLVED IN THE SUBSTANTIVE MERITS, YOU MAY NOT BE SUBSTANTIALLY INVOLVED, EVEN THOUGH YOU PUT A LOT OF TIME INTO THE MATTER. IF YOU ARE MERELY RESPONSIBLE FOR REVIEWING THE MATTER FOR COMPLIANCE WITH ADMINISTRATIVE OR BUDGETARY CONSIDERATIONS, YOU ARE ALSO NOT SUBSTANTIALLY INVOLVED.

"DIRECT AND PREDICTABLE EFFECT" - THERE MUST BE A CLOSE, CAUSAL LINK BETWEEN ANY ACTION TAKEN ON THE MATTER AND ANY EXPECTED EFFECT OF THE MATTER ON THE FINANCIAL INTEREST. AN EFFECT MAY BE DIRECT EVEN THOUGH IT DOES NOT OCCUR IMMEDIATELY. A MATTER THAT MAY AFFECT THE FINANCIAL INTEREST ONLY BECAUSE OF ITS EFFECTS ON THE GENERAL ECONOMY IS 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.

"SEEKING EMPLOYMENT" - IF THE ABOVE DEFINITIONS APPLY TO YOUR SITUATION, THEN YOU MAY NOT "SEEK" EMPLOYMENT UNLESS YOU FIRST DISQUALIFY YOURSELF. "SEEKING EMPLOYMENT" INCLUDES YOUR INQUIRIES REGARDING POTENTIAL FUTURE EMPLOYMENT, INCLUDING NEGOTIATIONS; AND YOUR RESPONSES, OTHER THAN AN IMMEDIATE AND CLEAR REJECTION, TO AN UNSOLICITED COMMUNICATION REGARDING POSSIBLE EMPLOYMENT. "SEEKING EMPLOYMENT" DOES NOT INCLUDE REQUESTING A JOB APPLICATION, BUT DOES INCLUDE FORWARDING A RESUME. IF YOU SEND A RESUME, YOU ARE CONSIDERED TO BE "SEEKING EMPLOYMENT" FOR 2 MONTHS UNLESS EITHER YOU OR THE COMPANY REJECTS THE POSSIBILITY OF EMPLOYMENT PRIOR TO THAT TIME.

**Disqualification:** Disqualification is simple — Don't do ANY work on the task! To help you accomplish this, DOD also requires that you give a written disqualification to your supervisor. (Section 2-204c of DOD 5500.7-R, Joint Ethics Regulation (JER)) The written disqualification must state that you will not participate in any official matter that

has a direct and substantial effect on the prospective employer(s) that you identified. The Office of the Staff Judge Advocate has sample disqualification forms.

**Withdrawal of Disqualification:** When negotiations have terminated with a decision not to work for the prospective employer, you may withdraw the disqualification.

**Supervisory Determination:** When you are "seeking employment," but have not yet entered into negotiations with the prospective employer, your supervisor may authorize your participation in a matter if he or she determines that the Government's interests outweigh the concern that the integrity of the agency's program and operation may be questioned. The supervisor must consider at least six factors and must consult with the Office of the Staff Judge Advocate before making the determination.

**Negotiating Employment:** Once you have started negotiating\* with a prospective employer, you may not take any official action that will affect the financial interests of that prospective employer.

An officer or employee may not personally and substantially participate as an official in a particular matter in which, to the officer or employee's knowledge, the officer or employee, his/her spouse, child, partner, organization in which the officer or employee serves as an officer, director, trustee, partner, or employee, or organization with whom he or she is negotiating or has any arrangement concerning prospective employment has a financial interest. An arrangement or negotiation for prospective employment is considered to create a financial interest of the officer or employee in the company with whom he or she is seeking employment. It has the same effect as if the employee purchased stock in the company. (18 U.S.C. 208)

\* "Negotiating" - any discussion 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.