

§ 84.16 Other conflict of interest laws.

(a) *Bribery and graft.* (1) [The following is a General Order] All DoD employees are prohibited from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting, or agreeing to receive anything of value to influence any official act, to influence commission of fraud on the United States, to induce committing or omitting any act in violation of a lawful duty, or to influence testimony given before an individual or non-Federal entity authorized to hear evidence or take testimony [end of General Order]. See 18 U.S.C. 201(b).

(2) [The following is a General Order] DoD employees are also prohibited, except as provided by law for the proper discharge of official duties, from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting, or agreeing to accept anything of value for or because of any official act performed or to be performed, or for or because of any testimony given or to be given before an individual or non-Federal entity authorized to hear evidence or take testimony [end of General Order]. See 18 U.S.C. 201(c).

(3) These prohibitions do not apply to the payment or receipt of witness fees authorized by law, certain travel and subsistence expenses to appear as a witness and value of time lost in attendance at a trial, hearing, or proceeding. Other prohibitions may apply. See 18 U.S.C. 201(d); 5 U.S.C. 5515 and 5751 and paragraph 66 of part IV, MCM, 1984 (10 U.S.C. 801-940).

(b) *Compensation related to matters pending Government decision.* OGE interpretation of prohibitions under 18 U.S.C. 203 appear in 5 CFR 2635.801(d)(3). These prohibitions do not apply to enlisted members. A DoD employee whose salary is not tied to the profitability of the non-Federal entity's Federal Government contracts does not violate this statute. See OGE opinion 86x9¹⁸ (informal). This statute prohibits receiving compensation for any representation, including those where there is no intent to be cor-

rupted or to provide preferential treatment. Representations can be either oral or written.

(1) The prohibition does not apply to a DoD employee's representation of himself, but this exception does not extend to the representation of a distinct, legal, non-Federal entity as a corporation, a partnership, or even a sole proprietorship. 18 U.S.C. 203(a)(2) prohibits an offer or payment of compensation, the solicitation or receipt of which is otherwise barred.

(2) The prohibitions apply to special Government employees but only in relation to a particular matter involving a specific party or parties in which the special Government employee participated personally and substantially or, absent such participation, if he served more than a total of 60 days in the preceding 365 days, in relation to any particular matter pending in the DoD agency.

(3) 18 U.S.C. 203 does not prohibit giving testimony under oath or making statements required to be made under penalty of perjury.

(4) 18 U.S.C. 203 does not prohibit representation, with or without compensation, of one's parents, spouse, child, or any person or estate the DoD employee serves as administrator, guardian or other personal fiduciary. This exemption is permitted only if approved by the DoD official responsible for appointing the DoD employee to his DoD position. The exemption may not be extended to the DoD employee's representation of any such person in matters in which the DoD employee has officially participated personally and substantially or in matters which, even absent such participation, are the subject of his official responsibility.

(5) The head of a department or agency may authorize a special Government employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the FEDERAL REGISTER that the national interest requires such representation.

(c) *Contracts with DoD employees.* Contracts for the procurement of goods

¹⁸Copies are available from Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

and services between the Federal Government and its employees are prohibited unless the needs of the Federal Government cannot otherwise be met. See 48 CFR 3.601 and 3.602.

(d) *Representation of others*—(1) *Prohibition under 18 U.S.C. 205.* 18 U.S.C. 205 prohibits DoD employees, other than enlisted members, whether or not they are employed for compensation, from personally acting as an agent or attorney for anyone else before a department, agency, or court in connection with any covered matter in which the United States is a party or has a direct and substantial interest or from prosecuting any claim against the Federal Government or receiving any gratuity or interest in such claim for assistance in prosecuting the claim. Covered matter means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(2) *Exceptions.* The following are excluded from the scope of 18 U.S.C. 205:

(i) Giving testimony under oath or making statements required to be made under penalty of perjury or representing another person, with or without compensation, in a disciplinary, loyalty, or other personnel administration proceeding;

(ii) Representing, with or without compensation, one's parents, spouse, child, or a person estate the DoD employee serves as a fiduciary, but only if approved by the DoD official responsible for appointing the DoD employee to this DoD position. This exception does not apply to matters in which the DoD employee has participated personally and substantially or which, in the absence of such participation, are the subject of his official DoD responsibility;

(iii) The head of a department or agency may allow a special Governmental employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the FEDERAL REGISTER that the national interest requires such representation;

(iv) For special Government employees, the prohibitions apply only to covered matters in which they participated personally and substantially as a special Government employee. Absent such participation, the prohibitions apply only if he served more than a total of 60 days during the preceding 365 days and the covered matter was pending in the DoD agency during that period.

(e) *Compensation from other sources.* (1) The provisions of 18 U.S.C. 209 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 209 do apply to enlisted members as follows: [The following is a General Order] an enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government [end of General Order].

(2) 18 U.S.C. 209 prohibits DoD employees from receiving pay or allowances or supplements of pay or benefits from any source other than the United States for the performance of official service or duties unless specifically authorized by law. Note that a task or job that is performed outside normal working hours does not necessarily allow acceptance of payment for performing it. If the undertaking is part of one's official duties, pay for its performance may not be accepted from any source other than the United States regardless of when it was performed.

(3) A DoD employee may continue to participate in bona fide pension, retirement, insurance, bonus, or other employee welfare or benefit plan maintained by his former employer. See 18 U.S.C. 209(b).

(4) Reserve military officers and certain temporarily commissioned military officers who are ordered to active duty may continue to receive compensation from individuals who furnished compensation to them prior to being ordered to active duty. See 10 U.S.C. 1033 and 50 U.S.C. App. 454(f).

(f) *Additional pay or allowances.* [The following is a General Order] DoD employees may not receive additional pay or allowances for disbursement of public money or for the performance of any other service or duty unless specifically authorized by law. See 5 U.S.C. 5536 [end of General Order].

(1) 5 U.S.C. 5536 precludes extra pay from the Federal Government for the performance of official duties. Subject to certain limitations, civilian DoD employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed. Absent specific authority, however, military member may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties. That a military member may have leisure hours during which no official duty is performed does not alter the result. See 52 Comp. Gen. 471 and 22 Comp. Gen. 127, 149.

(2) 5 U.S.C. 5536 applies to enlisted members and precludes enlisted members from supplementing their official salaries from outside sources for performing their official duties.

(g) *Interference with military duties.* Military officers on active duty (except while on terminal leave) may not accept employment if it requires separation from their organization, branch, or unit, or interferes with the performance of military duties. See 10 U.S.C. 973(a).

(h) *Civil office prohibition.* Regular military officers on the active duty list and retired regular military officers on active duty from more than 180 days may not hold civil office, unless expressly authorized by law. See 10 U.S.C. 973(b).

(i) *Assignment of reserves for training.*
(1) Personnel who assign reserves for training shall not assign them to duties in which they will obtain information that they or their private employers may use to gain unfair advantage over competitors. Reservists must disclose to superiors and assignment personnel information necessary to ensure that no conflict exists between their

duty assignment and their private interests.

(2) Commanders, or their designees, shall screen Reservists performing training to ensure that no actual or apparent conflict exists between their private interests and their duty assignment. While Reservists have an affirmative obligation under this rule to disclose material facts in this regard, receiving commands cannot assume compliance and shall independently screen incoming personnel to avoid conflicts of interests.

(j) *Commercial dealings involving DoD employees.* [The following is a General Order] A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this section [end of General Order].

(1) [The following is a General Order] This prohibition includes the solicited sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services [end of General Order].

(2) [The following is a General Order] Both the act of soliciting and the act of selling as a result of soliciting are prohibited. In both cases, however, a solicitation is necessary for a violation to occur. While the standard prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion or intimidation by the senior [end of General Order].

(3) Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the

DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may:

- (i) Cause actual or perceived partiality or unfairness;
- (ii) Involve the actual or apparent use of rank or position for personal gain; or
- (iii) Otherwise undermine discipline, morale, or authority.

(k) *Related rules.* (1) There is a prohibition on holding conflicting financial interests. See 5 CFR 2635.403, 18 U.S.C. 208, and 5 CFR part 2640.

(2) There are requirements regarding seeking outside employment. See 5 CFR 2635.601–2635.606 and subpart H of this part.

(3) There is a prohibition on engaging in outside employment or activities that conflict with official duties. See 5 CFR 2635.802.

(4) There are limitations on certain outside activities such as receipt of outside earned income by certain DoD Presidential appointees or non-career DoD employees, service as an expert witness, participation in professional associations, teaching, writing, speaking, or fundraising. See 5 CFR 2635.804–2635.808.

(5) There is a prohibition on the receipt of honoraria. See 5 CFR part 2636.

(6) There are prohibitions on the misuse of official position such as improper endorsements or improper use of non-public information. See 5 CFR 2635.701–2635.705.

(7) There are prohibitions on certain post-Government service employment. See subpart I of this part.

[59 FR 13214, Mar. 21, 1994. Redesignated and amended at 60 FR 20030, Apr. 24, 1995]

Subpart F—Political Activities

§ 84.17 Office of Personnel Management regulation.

See 5 CFR part 734, “Political Activities of Federal Employees.”

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.18 Political activities of civilian DoD employees.

(a) *Policy.*

(1) The policy governing the political activities of civilian DoD employees is derived from the Hatch Act Amendments, 5 U.S.C. 7321 through 7325. Guidance on the application of the Hatch Act Amendments is provided by the Hatch Act Hotline at the Office of Special Counsel at 1–(800) 854–2824.

(2) Primary enforcement responsibility under the Hatch Act Amendments lies with the Office of Special Counsel under 5 U.S.C. 1216(c); however, DoD Components have responsibility to investigate allegations of prohibited political activity by excepted service employees of the DoD Component.

(3) It is DoD policy to encourage civilian DoD employees and members of the Armed Forces to carry out the obligations of citizenship to the maximum extent possible consistent with the restrictions imposed by law and by this part.

(b) *Permissible activities.* Subject to paragraphs (b) and (c) of this section, civilian DoD employees may, in their personal capacities:

- (1) Be candidates for public office in nonpartisan elections;
- (2) Register and vote as they choose;
- (3) Assist in voter registration drives;
- (4) Express opinions about candidates and issues;
- (5) Contribute money to political organizations;
- (6) Attend political fundraising functions;
- (7) Attend and be active at political rallies and meetings;
- (8) Join and be an active member of a political party or club;