

(c) *Disqualification statement*—(1) *Individuals required to file disqualification.*

(i) Any DoD employee required to submit a report of an employment contact shall submit to his supervisor a written statement disqualifying himself from participating in any “procurement function” involving the defense contractor until such time as the possibility of future employment with that defense contractor has been rejected by either party.

(ii) Procurement officials may be required to request recusal through formal procedures requiring written approval by the head of the contracting agency. See § 84.26(a).

(2) *Distribution of disqualification.* The disqualification statement shall be given to the DoD employee’s supervisor and the Ethics Counselor. It also should be provided to others who might contact the DoD employee regarding the defense contractor which is the subject of the disqualification.

(3) *Contents of disqualification.* The disqualification statement shall contain:

(i) The name, title, agency address, and telephone number of the DoD employee submitting the report;

(ii) The extent of disqualification (i.e., a description of duties affecting the defense contractor the DoD employee may not perform as a result of the disqualification);

(iii) Identification of the DoD employee or office that will handle duties during the disqualification period; and

(iv) An explanation of any other steps required to avoid potential conflicts of interests;

(v) If the statement is necessary only because of a second contact which was rejected, information in accordance with paragraphs (c)(3)(iii) and (c)(3)(iv) of this section.

(4) *Withdrawal of disqualification.* A DoD employee may withdraw a disqualification if employment discussions conclude with no arrangement regarding future employment, or if such an arrangement is ended, by notifying, in writing, the same individuals who received copies of his disqualification statement.

(5) *Review and retention of disqualification.* The supervisor, with the assistance of the Ethics Counselor, shall re-

view the disqualification statement to make sure it will prevent any conflict of interest and to determine whether the DoD employee can still carry out his responsibilities adequately. Both the supervisor and the Ethics Counselor shall retain a copy of the disqualification statement for three years.

(d) *Exception.* A DoD employee need not report the contact or disqualify himself from officially participating in a particular matter involving the defense contractor if the first contact was initiated by the defense contractor and the DoD employee immediately terminates the discussion and unequivocally rejects consideration of employment opportunities. If the contact is renewed by either the defense contractor or the DoD employee, all contacts must be reported.

(e) *Penalties.* An individual who fails to report an employment contact or to disqualify himself as required by paragraphs (a) through (c) of this section may be subject to the following administrative penalties:

(1) Prohibition of employment with the defense contractor concerned for up to ten years from the date of separation from DoD; and

(2) An administrative penalty not to exceed \$10,000.

#### § 84.28 DoD guidance.

(a) *Appearances.* DoD employees shall:

(1) Ensure that the prospect of employment does not affect the performance or non-performance of their official duties;

(2) Ensure that they do not communicate inside information to a prospective employer; and

(3) Avoid any activity that would affect the public’s confidence in the integrity of the Federal Government, even if it is not an actual violation of the law.

(b) *Written guidance.* DoD employees may obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor:

(1) Although the counseling and advice are given by DoD attorneys and involve the interpretation of law and

regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

(2) This counseling and advice is personal to the current or former DoD employee. It does not extend to the individual's business, employer, or prospective employer.

### Subpart I—Post-Government Service Employment

#### § 84.29 Office of Government Ethics regulation.

(a) See 5 CFR part 2637, "Regulations Concerning Post-Employment Conflict of Interest".

[5 CFR part 2637 applies only to DoD employees who left Federal Government service before 1991]

(b) See 5 CFR part 2641, "Post-Employment Conflict of Interest Restrictions".

[5 CFR part 2641 applies to DoD employees who left Federal Government service on or after January 1, 1991]

#### § 84.30 Guidance on 18 U.S.C. 207.

(a) *OGE guidance.* See Office of Government Ethics memorandum,<sup>22</sup> "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992.

(b) *DoD guidance.* The restrictions imposed by 18 U.S.C. 207(a), (c) and (d) do not apply to communications made solely to furnish scientific and technical information that are authorized by the Head of the DoD component.

(1) To obtain such an authorization in the case of former DoD employees:

(i) The head of the DoD component command or organization involved shall submit, in writing, to the Head of the DoD component a request that the former DoD employee be permitted to participate in a particular matter from which he would ordinarily be barred under 18 U.S.C. 207;

(ii) The Head of the DoD component or designee may determine in writing that such participation is appropriate if:

(A) The former DoD employee has outstanding scientific or technological qualifications;

(B) The national interest of the United States would be served by such participation;

(C) The former DoD employee has qualifications that are otherwise unavailable; and

(D) The Head of the DoD component or designee has consulted with the DoD component DAEO.

(2) In cases involving former Federal Government employees other than former DoD employees, authorization may be obtained in accordance with procedures in 18 U.S.C. 207(j)(5).

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

#### § 84.31 Post-employment counseling and advice.

(a) *Written advice.* Current and former DoD employees may obtain counseling and written advice concerning post-employment restrictions from the Ethics Counselor of the DoD component command or organization from which they are leaving, or have left, Federal Government service. Current and former DoD employees are, by statute, entitled to written advice from the DoD component DAEO or designee under 10 U.S.C. 2397b and 41 U.S.C. 423. See § 84.32 (a)(3) and (b)(3).

(1) Although ethics counseling and advice are given by DoD attorneys and involve interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

(2) Ethics counseling and advice are personal to the current or former DoD employee. They do not extend to anyone else, including his business, employer, or prospective employer.

(b) *Delegation of authority.* The DoD component DAEO may specifically delegate authority in writing for Ethics Counselors within the DoD component to provide written advice under 10 U.S.C. 2397b and 41 U.S.C. 423. In any case where the local Ethics Counselor does not have the authority by written delegation, he shall provide the counseling and obtain the request for advice

<sup>22</sup> Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.