

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.

and necessary supporting information from the DoD employee and forward it to the DoD component DAEO or designee who has been specifically delegated the authority in writing to issue the written advice.

**§ 84.32 Restrictions resulting from procurement activities.**

(a) *10 U.S.C. 2397b—(1) Restrictions.* This statute prohibits the following three categories of former DoD employees from accepting compensation from the concerned defense contractor during the two-year period after separation from DoD:

(i) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of a GS/GM-13, who:

(A) On a majority of their working days during a two-year period prior to separation;

(B) Performed a procurement function relating to a defense contract;

(C) At a site or plant owned or operated by the defense contractor and which was the DoD employee's principal work location.

(ii) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a GS/GM-13, who:

(A) On a majority of their working days during the two-year period prior to separation;

(B) Performed a procurement function related to a major defense system and;

(C) In the performance of the procurement function, participated personally and substantially on any occasion and in a manner involving decision-making responsibilities with respect to a contract for the system;

(D) Through contact with the defense contractor; and

(iii) 0-7s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a Senior Executive Service position, who during the two-year period prior to separation, acted as a "primary representative of the United States" in negotiation of a defense contract in an amount in excess of \$10 million or settlement of an unresolved claim exceeding \$10 mil-

lion. An unresolved claim is valued by the greater of the amount of the claim or the amount of the settlement.

(2) *Penalties and effective dates.* Former DoD employees who knowingly violate this statute are subject to a civil fine up to \$250,000. Defense contractors who knowingly offer or provide any compensation to individuals in violation of this statute are subject to a civil fine up to \$500,000.

(i) The effective date of this law was April 16, 1987. The law does not prohibit the continuation of defense contractor employment begun or compensation accepted before then. If an employee separated from DoD prior to April 16, 1987, the statute does not apply. However, former DoD employees who were still employed or on active duty on or after April 16, 1987 must comply fully with its provisions, if within its scope.

(ii) For the period of December 1, 1989 until May 31, 1991, the statute was suspended and employment or acceptance of compensation during that period could not violate the statute. Questions about the effect of the suspension should be referred to the local Ethics Counselor.

(3) *Written opinion.* (i) Before accepting compensation from a defense contractor, a DoD employee or former DoD employee is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such written opinion shall be submitted in writing to the Ethics Counselor serving the DoD component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request.

(ii) Ethics Counselors who have not been delegated authority in writing to issue 10 U.S.C. 2397b written opinions shall promptly forward the request to the DoD component DAEO or designee who has such authority.

(iii) Written opinions shall be issued within 30 days of receiving the request together with all necessary information.

(iv) A written opinion that this statute is not applicable to a specific situation, if based on a complete disclosure of all relevant information, creates a