

both officer and enlisted and both regular and reserve, by a foreign government unless Congressional consent is first granted. See 44 Comp. Gen. 130.

(ii) Employment by educational or commercial institutions owned, operated, or controlled by a foreign government is included within the scope of this restriction.

(iii) The penalty for violation is withholding the retired military member's retired pay in an amount equal to the foreign salary illegally received. See 61 Comp. Gen. 306.

(2) Congress has consented to the acceptance of civil employment with a foreign government by, among others, retired regular military members and reserve military members, if both the Secretary of the Military Department and the Secretary of State approve the employment. See 37 U.S.C. 908. Because approval is prospective only, foreign civil employment should not be accepted until approval has been obtained. Retired military members who wish to accept such employment should submit a written request for approval to the Secretary of their Military Department through appropriate channels. The request must fully describe the contemplated employment and the nature and extent of the involvement with the foreign government.

(3) A former military member desiring employment with a foreign government or any foreign business interest may be required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 *et seq.* Any person who acts as an agent of a foreign principal must file a registration statement with the U.S. Attorney General.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, 20032, Apr. 24, 1995]

**§ 84.34 Restrictions on former senior appointees.**

Executive Order 12834 (58 FR 5911) requires contractual ethics commitments regarding post-Government service employment from full-time, non-career Presidential, Vice-Presidential or agency Head appointees in an Executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule, except for those appointed as members of the senior for-

eign service or solely as uniformed service commissioned officers. See Executive Order 12834 and OGE Form 203,<sup>24</sup> "Senior Appointee Pledge," January 1993, and OGE Form 204,<sup>25</sup> "Trade Negotiation Pledge," January 1993.

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

**§ 84.35 Restrictions on dealing with current or former DoD employees.**

(a) *General rule.* Current DoD employees shall not knowingly deal, on behalf of the Federal Government, with current or former DoD employees whose participation in the transaction violates any statute or DoD directive, regulation or policy.

(b) *Terminal leave.*

(1) Military members on terminal leave may accept civilian employment with the Federal Government and are entitled to the pay of that civilian position in addition to the pay and allowances to which entitled while on terminal leave. See 5 U.S.C. 5534a.

(2) A military officer on active duty may not accept a civil office with a State or local government, nor may he perform the duties of such an office. See 10 U.S.C. 973(b)(3). This applies while the military officer is on terminal leave. See 56 Comp. Gen 855.

**§ 84.36 Reports of DoD and defense related employment (DD form 1787).**

(a) *Individuals required to file.* The following former DoD employees are required by 10 U.S.C. 2397 to file DD Form 1787 with their former DoD component:

(1) Each former DoD employee of a DoD component who:

(i) Served at a pay rate equal to or greater than the minimum rate for a GS/GM-13, or served on active duty at least ten years and held the grade of 0-4 or above at any time during his service;

(ii) Within the two-year period immediately following termination of service or employment with the DoD component, is employed by a defense contractor who, during the preceding one-

<sup>24</sup>Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

<sup>25</sup>See footnote 23 to § 84.34.

year period, was awarded \$10 million or more in defense contracts; and

(iii) Is employed by or performs services for the defense contractor and receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor.

(2) Compensation is received by a reporting individual if it is paid to a business entity with which the reporting individual is affiliated in exchange for services rendered by that reporting individual;

(3) A rate of \$25,000 per year equates to \$12 per hour.

(b) *Time of filing.* A former DoD employee shall file a report with his former DoD component DAEO or designee within 90 days of entering on duty with the defense contractor.

(c) *Review.* (1) When the report is filed, the DoD component DAEO or designee shall review the report to determine whether:

(i) Each item is completed and sufficient information is provided; and

(ii) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, and related laws and regulations.

(2) The DoD component DAEO or designee need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the DoD component DAEO or designee will resolve any apparent violations to ensure there are no actual violations.

(3) If the DoD component DAEO or designee believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the DoD component DAEO or designee.

(4) When the DoD component DAEO or designee has completed the review and accomplished any necessary remedial action, he shall sign and date the report and dispose of it in accordance with paragraph (d)(2) of this section.

(5) If the DoD component DAEO or designee concludes that the reporting

individual is not in compliance with applicable laws or regulations, the DoD component DAEO or designee shall:

(i) Notify the reporting individual of the preliminary determination;

(ii) Afford the reporting individual an opportunity for personal consultation, if practicable;

(iii) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(iv) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

(6) When the DoD component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. Then the DoD component DAEO or designee shall sign and date the report as the reviewing official and dispose of it in accordance with paragraph (d)(2) of this section.

(d) *Disposition.*

(1) After the Ethics Counselor signs and dates the report, the Ethics Counselor shall send the original to the DoD Component DAEO or designee, who shall forward it, together with all other such reports that were received during the previous calendar year, to SOCO not later than March 15.

(2) The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787 is extracted and sent, together with all other such data from other such reports that were received during the previous calendar year for the entire DoD Component, by March 15 to the Defense Manpower Data Center (DMDC) where a consolidated report to Congress is compiled. DMDC will accept data only on computer disk using any common word processing software or ASCII.

(3) If steps ensuring compliance with applicable law and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD Component DAEO and take whatever other action might be required in accordance with subchapter J of this part.

(4) DD Forms 1787 shall be retained by SOCO for six years from the date of filing with SOCO.

(e) *Public availability of reports.* DD Forms 1787 must be made available for public examination upon request after the reports are filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

(f) *Penalties—(1) Administrative penalties.* Anyone failing to file a report or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397.

(2) *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20032, Apr. 24, 1995]

## Subpart J—Enforcement

### § 84.37 Enforcement of the provisions of the Joint Ethics Regulation.

Penalties for violation of the rules republished in, and prescribed by, this part include the full range of applicable criminal, civil and administrative sanctions for current DoD employees, including punishment under the UCMJ for military members. Many of the statutes that regulate the post-Government service employment activities of former or retired DoD employees also provide for specific criminal and administrative sanctions. This subpart sets out the requirements for reporting and inquiry to ensure that ethics-related laws and regulations are properly enforced and that appropriate administrative or disciplinary action is taken.

### § 84.38 Reporting procedures.

(a) *Reporting suspected violations.* With the exception of the provisions of 41 U.S.C. 423 that are addressed in paragraph (c) of this section, DoD employees who suspect that a violation of this part has occurred shall report the matter to any of the following:

(1) The DoD employee's agency designee;

(2) The suspected violator's agency designee;

(3) The head of the DoD component command or organization;

(4) Any Ethics Counselor;

(5) The DoD component's IG;

(6) The DoD component's criminal investigative office; or

(7) The DoD hotline or DoD component hotline.

(b) *Receipt of report.* (1) DoD component investigative offices shall consult local Ethics Counselors as appropriate to ensure that up-to-date expertise is applied in the investigation of each suspected violation of this part in recognition of rapidly changing rules and statutes in the ethics area.

(2) If a suspected violation is reported to some entity other than those named in paragraph (a)(4) through (a)(7) of this section, then the notified person shall promptly report the matter to his Ethics Counselor.

(3) An Ethics Counselor who receives a report shall review the facts and, if the facts tend to support a violation, report the allegation to the appropriate investigative organization or, through the chain of command or supervision, to the head of the DoD component command or organization of the suspected violator. In addition, the Ethics Counselor must ensure that the following is accomplished:

(i) If a violation of 18 U.S.C. 203, 205, 207, 208 or 209 is suspected, the matter shall be reported to the DoD component's criminal investigative organization. The investigative organization is responsible for investigating the allegation and notifying DoJ in accordance with DoD Directive 5525.7<sup>26</sup>. In addition, the Ethics Counselor shall:

(A) Report to the DoD component DAEO as follows:

(1) The name and position (optional) of the informant;

(2) The name and position of the suspect;

(3) The suspected offense;

(4) The facts, as known or believed;

(5) The status of any action being taken.

<sup>26</sup> See footnote 4 to § 84.7(d).