

## FEDERAL ETHICS RULES AND FEDERAL CIVIL SERVICE RULES FOR RETIRING COAST GUARD FLAG OFFICERS

Retiring Coast Guard flag officers who transition into any type of non-federal employment (e.g. commercial sector, state government, local government, foreign government, private organization, ship registry, think tank, classification society, educational institution, etc.) are covered by all of the federal transition ethics rules summarized below.

Because restrictions are dependent on specific facts, and because this information is a summary of the rules, please contact your ethics official to discuss your situation. Ethics officials are available to provide advice both before and after you leave Government service. Flag officers should contact their servicing ethics attorney well in advance of their terminal leave inception date for complete, case-specific, detailed, transition ethics advice and guidance throughout the entire transition period.

A violation of any of the ethics rules summarized below could result in a federal investigation and prosecution for a felony violation of one or more federal criminal ethics statutes (imprisonment for not more than five years, a criminal or civil fine, and a court order prohibiting you from engaging in the conduct in the future).

Federal transition ethics rules cover three transition phases: pre-terminal leave; terminal leave; and post-retirement phases.

### PRE-TERMINAL LEAVE PHASE

There are no direct restrictions on the ability of transitioning flag officers to seek non-federal employment – even before entering terminal leave.

And, transitioning flag officers are generally permitted to accept a non-federal employer's offer to cover their travel expenses related to a bona fide employment interview. Flag officers should contact their servicing ethics attorney regarding any particular offer.

However, a flag officer who is participating personally and substantially in a federal (pre-award) procurement having a value in excess of \$150,000 must make an immediate written report to their boss and to their servicing ethics attorney if they have any type of employment contact with any known or anticipated bidder or offeror involved with that same procurement - regardless of the setting and regardless of which party initiates the employment contact. The flag officer must also immediately either reject the possibility of such employment or recuse himself or herself from all future involvement in that procurement.

Additionally, if a transitioning flag officer seeks employment with a prospective non-federal employer, that flag officer can no longer participate personally and substantially

in any particular matter in his or her Coast Guard capacity that will have a direct and predictable affect on that non-federal employer.

So, even though there are no direct restrictions on the ability of a flag officer to seek employment with non-federal employers before going on terminal leave, the federal ethics rules summarized immediately above and important appearance of impropriety concerns could preclude certain non-federal employment search activities before a flag officer's terminal leave inception date. To moot or avoid these ethics issues, some transitioning flag officers postpone all non-federal employment search activities until they enter terminal leave. Some postpone those activities until their official retirement date.

Transitioning flag officers must be careful to not prematurely disclose protected proprietary information to any non-federal employer.

Some transitioning flag officers are adversely impacted by the so-called one-year prime contractor compensation ban. A flag officer:

who functions as the Source Selection Official, member of the Source Selection Evaluation Board, or Head of any Evaluation Team – at the time the prime contractor is selected for a federal procurement having a value in excess of \$10 Million - cannot accept any compensation from that prime contractor for one year from that date (e.g. as an employee, consultant, or independent contractor),

who functions as the PM or DPM – on a federal contract having a value in excess of \$10 Million - cannot accept any compensation from the prime contractor for one year from the date the flag officer no longer functions in that capacity (e.g. as an employee, consultant, or independent contractor), or

who personally makes a federal procurement or contract decision having a value in excess of \$10 Million - cannot accept any compensation from the prime contractor for one year from the date of the decision (e.g. as an employee, consultant, or independent contractor).

### Stock Act Reporting Rule

*Per the 2012 Stock Act, at any time before retirement, Flag officers must notify their servicing ethics official within three days of negotiating for employment or entering into an employment arrangement with any non-federal employer using a DHS Form 360. Highly recommend that Flag officers contemplating non-federal employment consult with their servicing legal office before engaging in employment discussions with any non-federal entity.*

## TERMINAL LEAVE PHASE

A flag officer's legal and ethics status as a federal official does not change at all when the flag officer enters the terminal leave phase. Terminal leave flag officers continue to be fully bound by all federal ethics statutes, federal ethics rules and Coast Guard ethics rules – even though that person has no specific assigned Coast Guard duties.

Even though all ethics rules continue to apply to a flag officer on terminal leave, some have no practical adverse impact. For example, there is no longer any requirement to make a written report of any non-federal employment contact. And, there can no longer be any non-federal employment search-related conflict of interest problem.

But, a flag officer might be precluded by federal ethics concerns from working for a particular non-federal employer while on terminal leave. The flag officer's servicing ethics attorney will provide a determination as to whether a specific terminal leave non-federal employment is prohibited.

All flag officers – while on terminal leave - are flatly prohibited from representing any non-federal employer to any person in – or to any part of - the executive or judicial branches of the federal government - in connection with any particular matter whatsoever - even particular matters that the flag officer never participated in and never was officially responsible for prior to entering terminal leave. In effect, all parts of the executive and judicial branches are off limits for all non-federal employer representational activities while on terminal leave.

Although this type of non-federal employment is unlikely for a transitioning flag officer, all flag officers are prohibited from working out of any federal facility as a support contractor employee – while on terminal leave. This is a terminal leave non-federal employment location rule only.

## POST RETIREMENT PHASE

### One Year Cooling-Off Period

For the first year of retirement, all flag officers are prohibited from representing any non-federal employer to any person in – or to any part of - the entire DHS regarding any matter whatsoever, even matters that the flag officer never personally worked – and never was officially responsible for - while in active Coast Guard service. In effect, the entire DHS is off- limits for one year to all retired flag officers for all non-federal employer representational activities, communications, and contacts.

### Lifetime Representational Ban

All flag officers are prohibited from ever switching sides and representing any non-federal employer to any person in – or to any part of - the executive or judicial branches of the federal government – in connection with any of the same particular matters that the

flag officer participated in personally and substantially at any time while in Coast Guard service.

#### Two Year Representational Ban

For the first two years of retirement, all flag officers are prohibited from switching sides and representing any non-federal employer to any person in – or to any part of - the executive or judicial branches of the federal government in connection with any of the same particular matters that the flag officer was officially responsible for during his or her last year of Coast Guard service.

#### Trade or Treaty One Year Representational Ban

For the first year of their retirement, all flag officers are prohibited from aiding or advising any foreign entity (i.e. any foreign government, foreign government agency, or foreign political party), or represent someone else regarding trade or treaty negotiations that you worked on during your last year of Government service.

#### Assistance to a Foreign Government: One Year Advice Ban

For the first year of their retirement, all flag officers are prohibited from knowingly aiding advising, or representing a foreign government or foreign political party, with the intent to influence any officer or employee of any Federal department, agency, or Member of Congress. Unlike most other representational bans, this one does not permit behind-the-scenes assistance to a foreign government or political party, and the representation prohibition applies to all branches of the Federal Government.

#### Emoluments Clause Restriction

All retired flag officers (regardless of how long they have been retired) are prohibited from going to work for (e.g. as an employee, consultant or independent contractor) any foreign government, any foreign government agency, or any entity that is owned or controlled by any foreign government or foreign government agency (e.g. foreign maritime advisory boards, nationalized companies, certain ship registries, etc.) – unless the retired flag officer first obtains written permission from the DHS Secretary's Office and the Secretary of State's Office. Failure to obtain advance written permission can result in the loss (recoupment) of all Coast Guard retired pay during the non-approved foreign employment period. Any Coast Guard retiree considering foreign employment of any kind should seek ethics advice from their servicing legal office. The appropriate office for resolving questions relating to foreign employment and for receiving Coast Guard and Department of State approval is CG-1M13.

#### Prohibited Compensation Rule

After you leave Government service, you may not accept compensation for representational services, which were provided by anyone while you were a Government employee, before a Federal agency or court regarding particular matters in which the Government was a party or

had a substantial interest.

This prohibition may affect employees who leave the Government and share in the proceeds of a partnership or business for representational services that occurred before the employee terminated Federal service. (Examples: lobbying, consulting, and law firms). 18 U.S.C. § 203. This is separate and distinct from the procurement-related compensation restrictions.

### Department of Defense (DoD) Lobbying Ban

Section 1045 of the 2018 National Defense Authorization Act established new post-federal-service lobbying restrictions on former flag (and general) officers and DoD SES personnel. This rule is in addition to the restrictions cited above and incorporates certain portions of the Lobbying Disclosure Act. The rule bars engaging in lobbying activities with certain DoD officials *or with respect to DoD matters to certain non-DoD officials* (collectively referred to as “covered executive branch officials”) during the applicable prohibition periods described below. These restrictions *include behind-the-scenes activity supporting lobbying contacts during the applicable cooling off period*.

This rule:

Prohibits military officers in grades 0-9 and 0-10 and "DoD civilian equivalents" departing Federal service after December 12, 2017, from engaging in "lobbying activities" with respect to DoD for two years after date of retirement or separation.

Prohibits military officers in grades 0-7 and 0-8 and "DoD civilian equivalents" departing Federal service after December 12, 2017, from engaging in "lobbying activities" with respect to DoD during the one year period after date of retirement or separation.

The term Lobbying Activities means *lobbying contacts* and efforts directed at *covered executive branch officials* in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, as well as coordination with the lobbying activities of others.

Lobbying contacts include written or oral communications to a covered executive or legislative branch officials on behalf of a client for financial compensation with limited exceptions. Additionally, lobbying contacts includes engaging in “behind-the-scenes” efforts in support of such lobbying contact.

Covered executive branch officials include any officer or employee in the Executive Office of the President, any officer or employee serving in an position in levels I-V of the Executive Schedule (e.g. political appointees); any flag or general officer, and any non-career official in a confidential, policy-making position (e.g. non-career SES or Schedule C appointees).

Restricted *lobbying activities* include engaging in oral, written, or electronic communications (or behind the scenes planning or preparatory to coordinate the lobbying

activities of others to do those things) to a covered executive branch employee with regard to the formulation, modification, or adoption of Federal legislation (including legislation proposals), rules, regulations, Executive orders, or any other program, policy or position of the United States Government. Also covered are contacts about the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license; but not technical communications made pursuant to those Federal arrangements).

Communications required by the terms of an existing contract with DoD are not prohibited.

The restrictions above only prevent the lobbying of certain DoD officials or other non-DoD federal executive branch officials relating to DoD matters. Former Coast Guard Flag officers may still have to register as a lobbyist under the Lobbying Disclosure Act if they intend to engage in lobbying activities as described above, but unrelated to DoD.

### The Lobbying Disclosure Act

In addition to the NDAA anti-lobbying provisions, the Lobbying Disclosure Act has long required people who engage in lobbying activity to register as a lobbyist in certain circumstances.

The term Lobbying Activities means *lobbying contacts* and efforts directed at *covered executive and covered legislative branch officials* in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, as well as coordination with the lobbying activities of others.

Lobbying contacts include written or oral communications to a covered executive or legislative branch officials on behalf of a client for financial compensation with limited exceptions. Additionally, lobbying contacts includes engaging in “behind-the-scenes” efforts in support of such lobbying contact.

Covered executive branch officials include any officer or employee in the President, Vice President, Executive Office of the President, any officer or employee serving in an position in levels I-V of the Executive Schedule (e.g. political appointees); any flag or general officer, and any non-career official in a confidential, policy-making position (e.g. non-career SES or Schedule C appointees). Similarly, Covered legislative branch officials includes Members of Congress, an elected officer of either House of Congress, an employee or any other individual functioning in the capacity of an employee of a Member of Congress, a committee of either House of Congress, the leadership staff of the House of Representatives or the leadership staff of the Senate, a joint committee of Congress and a working group or caucus organized to provide legislative services or other assistance to Members of Congress.

Restricted *lobbying activities* include engaging in oral, written, or electronic communications (or behind the scenes planning or preparatory to coordinate the lobbying activities of others to do those things) to a covered executive branch employee with regard to the formulation, modification, or adoption of Federal legislation (including legislation proposals), rules, regulations, Executive orders, or any other program, policy or position of the United States Government. Also covered are contacts about the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license; but not technical communications made pursuant to those Federal arrangements).

Communications required by the terms of an existing contract are generally not prohibited.

Additional information about the Lobbying Disclosure Act may be found at:

<https://lobbyingdisclosure.house.gov/ldaguidance.pdf>

## FEDERAL AND STATE CIVIL SERVICE EMPLOYMENT RULES

If a flag officer transitions to federal civil service (including SES service), the federal ethics rules summarized above do not apply – because the flag officer’s status as a federal official does not change.

But, there are non-ethics civil service rules that apply to transitioning – and transitioned – flag officers.

A flag officer on terminal leave is permitted to hold a federal civil service position (e.g. as a SES employee) and is permitted to draw all Coast Guard pay and allowances and all federal civil service pay while on terminal leave.

A flag officer who holds a federal civil service position while on terminal leave continues that employment into the retirement phase – and will then draw all military retired pay and all federal civil service pay.

Regarding DoD employment, a retiring flag officer cannot obtain any DOD civil service position (e.g. SES position) for the first 180 days of retirement unless the flag officer obtains a written waiver to obtain that position earlier. DoD’s position on the application of this statute is that Flag Officers on terminal leave must also be granted a waiver before accepting a DoD position within 180 days of their retirement date.

Unlike transitioning into a federal position, there is a federal law that prevents transitioning officers from obtaining an appointed or elected position with a state or political subdivision of a state while on terminal leave.

## FILING YOUR PUBLIC FINANCIAL DISCLOSURE REPORT (PFDR)

*All departing Flag officers must submit a “termination” PFDR within 30 days of their separation (retirement – not terminal leave) date or be subject to a \$200 late filing fee and possible referral to DOJ for substantial civil penalties. If the Flag officer will retire within 60 days of 15 May (the annual PFDR filing deadline) the annual and termination PFDR can be combined into a single filing. Please contact your ethics attorney to coordinate a timely submission.*

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