

FEDERAL ETHICS RULES AND FEDERAL CIVIL SERVICE RULES FOR TRANSITIONING COAST GUARD ENLISTED MEMBERS

All transitioning Coast Guard enlisted members (member(s)) 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.

Military members with ethics questions should contact their servicing legal office 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 investigation and either military justice or administrative action as appropriate.

Federal transition ethics rules cover three transition phases: pre-terminal leave; terminal leave; and post-official transition (i.e. retirement) phases.

PRE-TERMINAL LEAVE PHASE

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

And, transitioning enlisted members are generally permitted to accept a non-federal employer's offer to cover their travel expenses related to a bona fide employment interview. Please contact your servicing legal office regarding clearance for a particular offer.

However, any member who is participating personally and substantially in a federal (pre-award) procurement having a value in excess of \$250,000 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 member 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 member seeks employment with a prospective non-federal employer, that member 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 member 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 (as a practical matter) preclude certain non-federal employment search activities before a member's terminal leave inception date. To moot or avoid these ethics issues, some transitioning members postpone all non-federal employment search activities until they enter terminal leave. Some even postpone those activities until their official transition date.

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

Some transitioning members could be adversely impacted by the so-called one-year prime contractor compensation ban. The rule is that a member:

who functions as the Procuring Contracting Officer, 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 (e.g. as an employee, consultant, or independent contractor) from that prime contractor for one year from that date,

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

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

Most enlisted members do not hold any of the listed positions within the Coast Guard and such a case limiting Post Government Service Employment under the one-year compensation ban would be unusual.

TERMINAL LEAVE PHASE

A member's legal and ethics status as a federal official does not change when they enter terminal leave. Military members on terminal leave 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 member 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 concern where a member holds no federal responsibilities.

Coast Guard officers, but not enlisted members, 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, while on terminal leave. As a matter of Coast Guard policy, if an enlisted member intends to serve in a representational capacity for a non-federal employer in a Coast Guard workspace while on terminal leave they should gain approval from their servicing legal office and receiving Command.

POST OFFICIAL TRANSITION PHASE - RETIREMENT

All retired officers and enlisted members, active and reserve (this rule applies only to retired military members), 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 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 at least the Coast Guard retired pay for 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.

FEDERAL CIVIL SERVICE EMPLOYMENT RULES

A member on terminal leave is permitted to hold a federal civil service position and is permitted to draw all Coast Guard pay and allowances and all federal civil service pay while on terminal leave. A member who obtains a federal civil service position while on terminal leave continues that employment into the post-transition phase – and, if a retiree, will then draw all military retired pay and all federal civil service pay.

If a member transitions to federal civil service, the federal ethics rules summarized above do not apply – because the member's status as a federal official does not change.

However, as a general proposition, a transitioning military member cannot obtain a DOD civil service position for the first 180 days following their retirement unless the member obtains a written waiver to accept that position earlier. The DOD requires a transitioning member to obtain a waiver in order to enter a DOD position while on terminal leave.

Unlike transitioning into a federal position, there is a military policy that prevents transitioning members from obtaining an appointed or elected position with a state or political subdivision of a state while on terminal leave. Members should seek ethics advice before accepting or entering a State or municipal position.

The Lobbying Disclosure Act

The Lobbying Disclosure Act requires 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.

More information about the Lobbying Disclosure Act may be found here:

https://lobbyingdisclosure.house.gov/amended_lda_guide.html

