

FEDERAL ETHICS RULES AND FEDERAL CIVIL SERVICE RULES FOR TRANSITIONING COAST GUARD NON-FLAG OFFICERS

All transitioning Coast Guard non-flag officers (the term “officer” below means non-flag officer) 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. Retiring officers are bound by additional rules identified below.

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 violation of one or more federal criminal ethics statutes.

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

PRE-TERMINAL LEAVE PHASE

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

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

However, an officer 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 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 an officer seeks employment with a prospective non-federal employer, that 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 an 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 (as a practical matter) preclude certain non-federal employment search activities before an officer's terminal leave inception date. To moot or avoid these ethics issues, some transitioning officers postpone all non-federal employment search activities until they enter terminal leave. Some even postpone those activities until their official transition date.

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

Some transitioning officers are adversely impacted by the so-called one-year prime contractor compensation ban. The rule is that an officer:

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.

TERMINAL LEAVE PHASE

An officer's legal and ethics status as a federal official does not change at all when the officer enters the terminal leave phase. Terminal leave 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 an 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, an officer might be precluded by federal ethics concerns from working for a particular non-federal employer while on terminal leave. The officer's servicing ethics attorney will provide a determination as to whether a specific terminal leave non-federal employment is prohibited.

All 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 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.

All 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.

An officer 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. An officer 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.

POST OFFICIAL TRANSITION PHASE

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

For the first two years following their transition, all transitioned 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 officer was officially responsible for during his or her last year of Coast Guard service – but did not participate in personally and substantially.

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

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

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

An officer 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.

An officer 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.

However, as a general proposition, a transitioning officer cannot obtain a DOD civil service position for the first 180 days of retirement unless the officer obtains a written waiver to obtain that position earlier. Generally, DOD will require 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 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.

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.

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 a 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

