DEPUTY SECRETARY OF DEFENSE
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OCT 25 2004

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Prevention of Violations of Post-Government Service Employment Restrictions

This directive-type memorandum establishes additional procedures to ensure that DoD personnel are aware of and comply with statutes and regulations that apply to their transition from Federal service to private employment.

Annual Certification: Starting immediately, DoD personnel who file Public Financial Disclosure Reports (SF 278) shall certify annually that they are aware of the disqualification and employment restrictions of 18 U.S.C. 207 and 208, and 41 U.S.C. 423, and that they have not violated those restrictions.

Annual Ethics Briefing: DoD Components shall include training on relevant Federal and DoD disqualification and employment restrictions in Annual Ethics Briefings.

Guidance for All Departing DoD Personnel: DoD Components shall provide guidance on relevant Federal and DoD post-Government service employment restrictions, as part of out-processing procedures, to all DoD personnel who are leaving Federal service.

This memorandum is effective immediately. Changes to DoDD 5500.7-R, Joint Ethics Regulation (JER), incorporating the substance of this memorandum, shall be issued within 180 days. Terms used in this memorandum are defined in the JER.

Paul Wolfowitz

Attachments
cc: Directive Division, C&D, WHS

OSD 15517-04

a. Civil Penalties. Individual violators may be subject to a civil fine not to exceed $100,000. Violators, other than individuals, may be subject to a civil fine not to exceed $1 million.

b. Administrative Sanctions. See subsection 10-300 through 10-304 of this Regulation.

SECTION 4. Annual Certification

8-400. Annual Certification. DoD employees who file the Public Financial Disclosure Report (SF 278) shall certify annually that they are aware of the disqualification and employment restrictions of 18 U.S.C. 207 and 208, and 41 U.S.C. 423 (references (b) and (c)), and that they have not violated those restrictions.

SECTION 5. DoD GUIDANCE

8-500. Appearances. DoD employees shall:

a. Ensure that the prospect of employment does not affect the performance or non-performance of their official duties;

b. Ensure that they do not communicate inside information to a prospective employer; and

c. Avoid any activity that would affect the public's confidence in the integrity of the Federal Government, even if it is not an actual violation of the law.

8-501. Written Guidance. DoD employees may obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor:

a. Although the counseling and advice are given by DoD attorneys and involve the 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.

b. 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.

SECTION *6*. REFERENCES

8-*600*. References

(a) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
(b) Title 18, United States Code, Sections *207 and* 208
(c) Title 41, United States Code, Section 423
(d) Federal Acquisition Regulation, Part 3.104, current edition

Communications made to an Ethics Counselor in seeking such advice are not privileged.

b. 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.

9-501. 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 41 U.S.C. 423 (reference (e)). 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 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.

9-502. Guidance for Departing DoD Employees: DoD Components shall provide guidance on relevant Federal and DoD post-Government service employment restrictions, as part of out-processing procedures, to DoD employees who are leaving Federal service.

SECTION 6. RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES

9-600. 41 U.S.C. 423 (reference (e))

a. Restrictions. This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(1) Each DoD Component is encouraged to provide 1 hour of official duty time to review a written AEB and to supplement the written AEB, including but not limited to, verbal briefings, in person or by telecommunications, computer-based methods, or recorded means, and ethics related articles in command communications, newsletters, and ethics electronic bulletin board systems.

(2) An IEO described in subsection 11-300.f., above, may satisfy the requirement for a written AEB for the same calendar year in which given.

(3) For DoD Components that verbally brief all of their other covered employees during 1 year of a consecutive 3-year period, 1997 shall be the first year of such briefings. Thereafter, verbal briefings shall follow in 3-year increments; e.g., 2000, 2003, 2006; etc.

(4) The following exceptions to verbal AEBs may apply:

(a) The DoD Component DAEO, or designee, may make a written determination that it is impractical to provide a verbal AEB once every 3 calendar years, under section 2638.704(d)(3)(iii)(A) of reference (a) in subsection 11-100., above. An IEO described in subsection 11-300.f., above, may satisfy the requirement for this exception for the same calendar year in which given.

(b) DoD employees who are special Government employees, who are officers in the uniformed services who serve on active duty for 30 or fewer consecutive days, or who are designated employees (subsections 2638.704(d)(3)(iii)(B), 2638.704(d)(3)(iii)(C), and 2638.704(d)(3)(iii)(D) of reference (a)), in subsection 11-100., above, may be given written AEBs, in accordance with section 2638.704(d)(3)(i) of reference (a). An IEO described in subsection 11-300.f., above, may satisfy the requirement for this exception for the same calendar year in which given.

c. Each DoD Component shall maintain records to track that the requirements of section 2638 of reference (a) in subsection 11-100., above, including the method of training provided to covered employees, have been met.

d. DoD Components shall include training on relevant Federal and DoD disqualification and employment restrictions in Annual Ethics Briefings.

11-302. Annual Ethics Training Plans. Each DoD Agency (see definition of "Agency" in subsection 1-201., above) shall develop a written plan for annual ethics training for a calendar year by the beginning of that year, in compliance with section 2638.702(c) of reference (a) in subsection 11-100., above. The DoD Components that are not Agencies shall submit annual ethics training plans to DoD SOCO by December 31st of the prior year for approval and inclusion in SOCO's ethics training plan.