

RULES ON JOB HUNTING  
FOR  
DEPARTMENT OF DEENSE  
EDUCATION ACTIVITY  
EMPLOYEES



January 2012

## TABLE OF CONTENTS

I.	Introduction.	3
II.	Rules for Federal employees on seeking employment.	3
A.	<u>The financial interest rule</u> : The ban on seeking employment with a company while you're participating personally and substantially in a government contract or other matter in which the company has a financial interest. [18 USC 208(a); 5 CFR 2635.604; JER 8-200]	4
B.	<u>The employment contact reporting rule</u> : The requirement, when you are participating in a Federal procurement, to file a report, and to take other action, when you contact (or you are contacted by) a bidder or offeror in that procurement regarding possible employment. [41 USC 423(c); FAR 3.104-6]	5
C.	Reimbursement of interviewing expenses. [5 CFR 2635.204(e)(3)]	6
D.	The ban on communicating inside information to a prospective employer. [5 CFR 2635.703; JER 8-400b]	6
E.	After you accept the job offer--the ban on participating in any government matter in which a company has a financial interest, when you have an employment arrangement with the company. [18 USC 208(a); 5 CFR 2635.606(a)]	6
	Attachment: Format for Disqualification Letter	7

### Acronyms Found in this Pamphlet

CFR	Code of Federal Regulations
Comp. Gen.	U.S. Comptroller General
DoDD	DoD Directive
FAR	Federal Acquisition Regulation
JER	Joint Ethics Regulation (DOD 5500.7-R)
OGE	Office of Government Ethics
USC	United States Code

## I. INTRODUCTION.

This pamphlet covers the job hunting rules for current Federal employees (military and civilian).

Which rules apply to me? This pamphlet discusses many different rules on job hunting and post-government employment. If you are planning on seeking employment outside of the Federal Government, your best bet is to contact an ethics counselor in your Area DoDEA OGC office or in the Headquarters OGC office. An ethics counselor will provide you with a questionnaire to fill out and return. Based on the information you provide, the ethics counselor can provide you with written job hunting and post Government employment advice.

While this pamphlet summarizes the significant job hunting and post-government employment rules, it is not intended to be a full treatment of these subjects. Applying the rules to individual situations often requires careful analysis of several different rules, as well as the policies behind them. Deciding how the laws affect a particular situation is often difficult. This pamphlet should be used as general guidance, and should not be used to answer all of your questions. You should address specific questions to your Ethics Counselor.

Attorney-client privilege. Employees should know that, when they are seeking advice on the job hunting and post-government employment rules from an Ethics Counselor, their communications to and from the Ethics Counselor are **not** protected by the attorney-client privilege. [See 5 CFR 2635.107(b); JER para. 1-214, 9-500a] In DoD, Ethics Counselors are required to inform clients that there is no attorney-client privilege before communications begin. [JER 1-214]

Personal advice. In DoD, counseling and advice given to an employee on job hunting or post-government employment questions is considered to be personal legal advice to the employee. It may not be considered as legal advice to a prospective employer, or to any other company or non-Federal organization. [See JER para. 9-500b]

## II. RULES FOR FEDERAL EMPLOYEES ON SEEKING EMPLOYMENT.

Two Federal laws (which are discussed in sections II.A and II.B below) limit a Federal employee's ability to send resumes to companies or to discuss post-government employment with companies before leaving the government. These laws attempt to balance the employee's need to obtain post-government employment prior to leaving government service against the government's need for the continued undivided loyalty of the employee until separation or retirement.

**A. The financial interest rule: The ban on seeking employment with a company while you're participating personally and substantially in a government contract or other matter in which the company has a financial interest. [18 USC 208(a); 5 CFR 2635.604; JER 8-200]**

The Executive Branch ethics regulation states that an "employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment...." [5 CFR 2635.604(a)] This prohibition can be explained by breaking it into several different "sub-rules." The rules below talk about seeking employment with a "company," but they also apply to seeking employment with any other type of organization.

Rule 1: If you want to begin to seek employment with a company, and you are not participating personally and substantially in (1) any contract awarded to the company, (2) any source selection in which the company is competing, or (3) any other government matter in which the company has a financial interest, then you may contact the company regarding employment. You are not required to obtain permission from anyone before doing so.

Rule 2: If you want to begin to seek employment with a company, and you are currently participating personally and substantially in (1) any contract awarded to the company, (2) any source selection in which the company is competing, or (3) any other government matter in which the company has a financial interest, then you may not contact the company regarding employment until you stop participating in the matter. This may require the approval of your supervisor. The rule for DOD employees is that if you currently have duties involving a company, and you want to seek employment with that company, you are required to obtain written approval by your supervisor of your disqualification from all duties involving the company. [See JER 2-204c] A sample disqualification letter is an Attachment to this pamphlet. Your supervisor is not required to grant your request for disqualification. [See 5 CFR 2635.604 (Example 1) & .604(d)] Also, an employee (or the employee's supervisor) may notify the employee's co-workers about the disqualification to ensure that the employee does not become involved in a matter from which he or she is disqualified. [5 CFR 2635.604(d)].

Rule 3: When you are in the process of seeking employment with a company, you may not participate in (1) any contract awarded to the company, (2) any source selection in which the company is competing, or (3) any other government matter in which the company has a financial interest. When people are told they may not "participate" in a matter, they often think they are only prohibited from making decisions on the matter. This is incorrect; the prohibition is much broader than that. When you are prohibited from "participating" in a government matter (because you are seeking employment with a company), this means you may not do ANY of the following on the matter:

- Make decisions regarding the matter,
- Give advice to others about the matter,
- Make recommendations to others about the matter,
- Give an approval / disapproval regarding the matter,
- Conduct evaluations regarding the matter,

- Assign work or taskings to others in connection with the matter. or
- Participate in an investigation regarding the matter.

As mentioned above, if you are in the process of seeking employment with a company, you may not participate in any government matter in which the company has a financial interest. However, you are permitted to provide purely factual information to other employees about such matters, and you are permitted to receive purely factual information from other employees about such matters (e.g. status updates, briefings, etc.).

Rule 4: Clients often ask if they may work on a government matter that involves one division of a company while they're seeking employment with a different division of the company. This is not permitted. If you're participating in a government matter in which any division of a company has a financial interest, then you are prohibited from seeking employment with any division of the company. [See 18 USC 208(a); 5 CFR 2635.604]

Rule 5: Military members are not required to have an approved retirement or separation date, or to have applied for retirement or separation, before beginning to seek employment.

Rule 6: Disqualification, once granted, may be withdrawn after employment discussions have ended and the employee has notified the company of his or her decision not to accept employment. [5 CFR 2635.606(b)]

If you have any questions on the rules on seeking employment, contact your ethics counselor.

**B. The employment contact reporting rule: The requirement, when you are participating in a Federal procurement, to file a report, and to take other action, when you contact (or you are contacted by) a bidder or offeror in that procurement regarding possible employment. [41 USC 423(c); FAR 3.104-3(c)]**

If a Federal employee who is participating personally and substantially in a procurement contacts, or is contacted by, a bidder or offeror in that procurement regarding possible employment for that employee, the employee must promptly report the contact in writing to the employee's supervisor and to the designated agency ethics official (or designee), AND either (1) reject the possibility of employment, or (2) disqualify himself or herself from further personal and substantial participation in the procurement.

The disqualification must continue until the agency has authorized the employee to resume participation in the procurement on the grounds that (1) the company that the employment contact was with is no longer a bidder or offeror in the procurement, or (2) all discussions between the employee and the company regarding possible employment have terminated without an agreement or arrangement for employment. [41 USC 423(c); FAR 3.104-3(c)] This rule applies only to contracts in excess of the simplified acquisition threshold, which is generally \$100,000. [FAR 2.101]

**C. Reimbursement of interviewing expenses. [5 CFR 2635.204(e)(3)]**

Federal employees may accept reimbursement from prospective employers for meals, lodging, transportation, and other benefits in connection with bona fide employment discussions if:

-- The employee does not have duties that can affect the interests of the prospective employer (if so, the employee must first become disqualified from such duties). AND

-- The benefits the employee receives are "customarily" provided by the prospective employer to the people with whom it is discussing employment (i.e. the benefits you receive are not more extravagant than the benefits received by others who are competing for the same or a similar position with the prospective employer). [5 CFR 2635.204(e)(3)]

**D. The ban on communicating inside information to a prospective employer. [5 CFR 2635.703; JER 8-400b]**

Federal employees are prohibited from using "non-public information" to further their own private interests, or the private interests of any other person, company or organization. [5 CFR 2635.703(a)] This rule prohibits Federal employees from disclosing non-public information to companies or other organizations with which they are seeking employment. In addition, in DOD there is a specific rule that DOD personnel may not communicate inside information to a prospective employer. [JER 8-400b]

**E. After you accept the job offer -- the ban on participating in any government matter in which a company has a financial interest, when you have an employment arrangement with the company. [18 USC 208(a); 5 CFR 2635.606(a)]**

If a Federal employee has an employment arrangement with a company, the employee is prohibited from participating, in his or her official capacity, in any government contract, source selection, or any other government matter, in which the company has a financial interest. [18 USC 208(a); 5 CFR 2635.606(a)]. The next page contains a sample letter that you must prepare to disqualify yourself from participating in any government matter related to that company's financial interests.

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Notice of Disqualification

1. Pursuant to the requirements of Section 2-204, DOD 5500.7-R, the *Joint Ethics Regulation* (JER), this is to provide written Notice of Disqualification as I have a financial interest in the following organization(s) because (state specific reason(s) ):

(Name the company (ies) or organization(s) here)

2. As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment. This means that I cannot act directly or through others in deciding, approving or disapproving such official matters; nor may I recommend, investigate, advise, or otherwise contribute to or influence such official matters.

3. Accordingly, any official matter that will conflict with the above-listed financial interest(s) must be handled without my knowledge or participation. If such official matter would otherwise have required my personal decision, approval or disapproval, the matter should be referred to (give the position name of your alternate) for action.

Your Signature

DISTRIBUTION:

Immediate Supervisor

Immediate Subordinates

Any others who should know

CF: Ethics Counselor (DoDEA OGC)