

## CHAPTER 5

EMPLOYMENT★0501 REPORTING REQUIREMENT★050101. General.

Certain retired members, as specified below, are required to adhere to laws and regulations pertaining to conflict of interest and civilian employment by the federal government.

★050102. Notification of Personnel Action

A. What Agencies Must File. Filing is required of each agency of the federal government in the legislative, executive, or judicial branch (including each corporation owned or controlled by the federal government and non-appropriated fund instrumentalities under the jurisdiction of the Armed Forces) or in the municipal government of the District of Columbia.

B. Where to File. The SF 50 (Notification of Personnel Action) or its equivalent must be sent by an employing agency to the Military Service responsible for administering retired pay of Regular commissioned officers or warrant officers retired for length of service, age, or noncombat-incurred disability.

C. When to File. Submit the SF 50 or its equivalent to the Military Service concerned whenever a retired member is added to the employing agency's rolls or whenever a change or termination of employment occurs.

D. Purpose of the Notification of Personnel Action. The Military Service concerned uses the Personnel Action to determine the application of the dual compensation and pay cap laws as they relate to the employment.

E. Explanation of Codes and Data Elements on the SF 50 (Blocks 5, 6, 24, and 45). Table 5-1 identifies codes for the tenure group, most commonly used codes for nature of action, and an explanation of abbreviations and data in the remarks section. Uniformed Service pay grades and basic titles are in Appendix I.

0502 FEDERAL EMPLOYMENT050201. Introduction

A. Various laws have been enacted that restrict the acceptance of federal civilian employment by retired commissioned officers and warrant officers. Generally the basis for these restrictions are:

1. Government economy, and

2. Expansion of employment opportunities.

B. The general provisions of the three major laws relating to dual compensation restrictions are in paragraphs 050202-050204, below.

C. During fiscal years 1983, 1984, and 1985, there was a dollar deduction from civilian pay equal to the military retired or retainer pay cost-of-living increase. The deduction is described in paragraph 050210, below.

050202. The Dual Office Act of 1894 (reference (aq))

A. Section 2 of the Act of July 31, 1894 (reference (aq)), as amended, prohibited a person from holding another office under the federal government when compensation or salary received from one office equaled or exceeded \$2,500 per annum. This prohibition did not apply to:

1. Retired officers when elected or appointed to public office,

2. Enlisted members retired for any cause, and

3. Retired officers who were retired for:

a. Injuries received in battle; or

b. Disabilities incurred in combat with an enemy of the United States; or

c. Disabilities resulting from any instrumentality of war in the line of duty during a period of war as defined in 38 U.S.C. 101 and 301 (reference (ar)).

B. Retired military personnel, unless specifically exempted, who were receiving retired pay were considered to be holding an office with compensation attached within the meaning of the Act (reference (aq)). Persons who rendered full-time service in regular civilian positions likewise held "an office to which compensation was attached." Accordingly, they were prohibited from holding another office where either the retired pay or civilian salary was \$2,500 or more per annum.

C. If the compensation of the retired officer was less than \$2,500, and he or she was subject to the 1894 Act (reference (aq)), the officer could have been appointed to a civilian position, provided the yearly civilian salary was less than \$2,500.

D. When the retired officer's pay exceeded \$2,500 per annum, the prohibition of the Act of July 31, 1894 (reference (aq)), could not be overcome by waiving or relinquishing either the retired pay or salary attached to the full-time civilian position. An appointment to a

civilian position made under such circumstances was illegal and had to be cancelled and the civilian salary refunded in full.

050203. Economy Act of June 30, 1932, as Amended (reference (as))

A. This Act did not render inoperative any portion of the Act of July 31, 1894 (reference (aq)). It placed a limitation of \$3,000 per annum on the combined total rates of pay received for, or on account of, commissioned service and the salary received when the appointment to the civilian position was authorized under the Act of July 31, 1894 (reference (aq)).

B. The limitation on the combined total rates of pay from both sources was increased to \$10,000 effective August 4, 1955.

1. If the civilian salary equaled or exceeded the \$10,000 limitation, payment of retired pay was suspended.

2. If civilian salary was less than the \$10,000 limitation but when combined with full retired pay exceeded the limitation, retired pay was reduced to keep combined income within the \$10,000 limitation.

3. If maximum per annum compensation payable under the civilian appointment when combined with annual retired pay totaled less than \$10,000, neither civilian compensation nor retired pay was subject to reduction.

C. While warrant officers, including retired temporary warrant officers not retired for injuries or incapacitation incurred in the line of duty, held an "office" within the meaning of the Act of July 31, 1894 (reference (aq)), they were not considered commissioned officers for dual compensation purposes under this Act (reference (aq)).

D. Enlisted members who received pay for or on account of commissioned service were subject to the 1932 Act (reference (as)) unless retired for wounds received in battle, disability incurred in combat with an enemy of the United States or as a result of an instrumentality of war. Enlisted members advanced on the retired list to commissioned officer rank retained the office of an enlisted member within the meaning of the 1894 Act (reference (aq)).

E. Members entitled to retired pay as officers or former officers in the Reserve Components of the Armed Forces were exempt from the dual compensation restrictions of the Economy Act of 1932 (reference (as)), as amended, if retired under authority of, and entitled to, retired pay under laws relating to Reserve Components of the Armed Forces.

050204. Dual Compensation Act of 1964 (reference (at))

A. This Act repealed all previous dual compensation statutes and combined all dual compensation restrictions into one act. Before December 1, 1964, restriction on federal

employment was governed by the Dual Office Act of 1894 (reference (aq)) or the Economy Act of 1932 (reference (as)), as amended.

B. The Act (reference (at)) provides that a retired commissioned or warrant officer of any Regular Component may receive full salary of any federal civilian office held but during the period for which salary is received, retired pay is reduced to an annual rate equal to the first \$2,000 plus one half of the remainder.

1. The \$2,000 base amount effective December 1, 1964, has been increased by later cost-of-living increases as shown in Table 5-4.

2. The term "civilian office" means a civilian office or position in the United States Government, including each corporation owned or controlled by the government and including non-appropriated fund instrumentalities under the jurisdiction of the Armed Forces.

C. Reduction in retired pay does not apply if retired pay is:

1. Based on a disability resulting from injury or disease received in the line of duty as a direct result of armed conflict, or

2. Caused by an instrumentality of war and incurred in the line of duty during a period of war.

050205. General Provisions

A. Retired pay may be subject to reduction under dual compensation laws for members employed by the federal government.

1. Table 5-2 identifies categories of members (Regular or non-regular) and specifies the statute governing pay reduction.

2. Civilian positions exempt from reduction are in Table 5-3. Exceptions to restrictions on retired pay for other positions may be made when warranted on the basis of special emergency government employment needs which cannot otherwise be met. These exceptions may be approved by the:

a. President of the Senate, with respect to positions in the Senate.

b. Speaker of the House, with respect to positions in the House of Representatives.

c. Architect of the Capitol, with respect to positions in the Office of the Architect of the Capitol.

d. Office of Personnel Management, subject to supervision and control of the President, with respect to all other positions.

e. Administrator of National Aeronautics and Space Administration (NASA) with respect to not more than 30 NASA employees appointed to scientific, engineering, or administrative positions under 42 U.S.C. 2473(c)(2)(A) (reference (au)).

f. The Governor of the Armed Forces Retirement Home Board with respect to physicians' positions in the Home.

g. The Board of Regents of the Uniformed Services University of Health Sciences, with respect to physicians' positions.

h. The Director of the Office of Personnel Management with respect to employees on a case-by-case basis. Effective February 14, 1991, the Director, at the request of the head of an Executive Agency, may waive dual compensation restrictions in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee. The Director may grant authority to the head of an agency to waive the dual compensation restrictions for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

i. The Director of the Administrative Office of the United States Courts, with respect to an employee in the Judicial Branch, has the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subparagraph A.2.h, above, with respect to any employee of an Executive Agency. Authority under this subsection may not be exercised with respect to a justice or judge of the United States, as defined in 28 U.S.C. 451 (reference (av)). Authority may be exercised with respect to an employee of an agency in the Legislative Branch, by the head of such agency; with respect to an employee of the House of Representatives, by the Speaker of the House of Representatives; and with respect to an employee of the Senate, by the Committee of Rules and Administration of the Senate. This became effective December 5, 1991.

B. Reduction in retired pay is not required when retirement is based on a disability:

1. Resulting from injury or disease received in line of duty as a direct result of armed conflict; or

2. Caused by an instrumentality of war and incurred in line of duty during a period of war (as defined in 38 U.S.C. 101 and 301) (reference (ar)).

C. If doubt exists as to whether a disability qualifies a member or her for exemption under the dual compensation statute, a special determination must be requested from the Military Service legal staff.

D. Reduction in retired pay is not required when a member is employed by an agency supported by a grant from the United States if the position was created by the state and the salary is paid out of funds which have been receipted for by the state and have become state funds. However, employment in a cooperative position between state and federal governments, where an employee is entitled to benefits of Federal Employee's Group Life Insurance and civil service retirement deductions are made from pay, is subject to the dual compensation restrictions.

E. Retired members who are employed by schools participating in the Junior Reserve Officers' Training Corps Program are entitled to receive their full retired pay without reduction. They also receive an additional amount of not more than the difference between their retired pay and the active duty pay and allowances which they would receive if ordered to active duty. One-half of that additional amount is paid to the institution concerned by the Secretary of the Military Department concerned, from funds appropriated for that purpose.

F. Indebtedness resulting from erroneous payment of retired pay due to dual compensation is collectible when discovered after 6 years from the last period of employment ONLY if the United States General Accounting Office is notified within the 6-year period. Otherwise, the overpayment is barred from recovery. Automatic collection is possible and required within 6 years immediately after the last period of federal employment.

050206. Time Limit for Accepting Employment. The Dual Compensation Act of 1964 (reference (at)) prohibits the employment of any retired member of the Armed Forces in the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces) within 180 days immediately after retirement, except:

A. When the appointment is authorized by the Secretary of a Military Department or designee, and if appropriate, approved by the Office of Personnel Management;

B. The minimum rate of basic compensation for the office has been increased by Presidential authority in order to recruit or retain well qualified individuals; or

C. A state of national emergency exists.

050207. Restrictions for Members Retired Before December 1, 1964

A. The criteria in paragraphs 050204 and 050205, above, automatically apply to:

1. Members retired before December 1, 1964, who were employed on Nov 30, 1964, if they elected before March 1, 1965 to become subject to the restrictions of the 1964 Act (reference (at)).

2. Members retired before December 1, 1964, who were not employed on Nov 30, 1964, and later became employed by the federal government.

3. Members retired before December 1, 1964, who were employed on Nov 30, 1964, and later had a break in federal employment of 30 days or more regardless of any election made to remain subject to statutes in effect before December 1, 1964.

B. For members who were employed on Nov 30, 1964, and did not elect to become subject to the 1964 Act, (reference (at)), the dual compensation statutes in effect on Nov 30, 1964 governing retired pay reduction remain applicable:

1. Under the Economy Act of 1932 (reference (as)), combined retired pay and civilian federal salary may not exceed \$10,000 in one calendar year. (Before August 4, 1955, the limitation was \$3,000 per calendar year.)

2. The total amount of salary earned during a calendar year is applied toward the \$10,000 limitation, even though the daily or monthly rate, when calculated on an annual basis, would exceed \$10,000 per year.

3. A refund of amounts withheld from the member's retired pay or collection from the member may be required to adjust the account.

050208. Experts and Consultants

A. The term "expert" means a member with a proficiency in a particular skill who is employed by the federal government to perform specific service in return for a fixed fee or a specific daily rate of pay only on those days when such service is performed.

B. The term "consultant" means a person with a special knowledge who may be employed by the federal government to give professional advice in return for a fixed fee or a specific daily rate of pay only on those days when such advice is given.

C. The head of any department, when authorized by law, may procure the temporary (not longer than 1 year) or intermittent services of experts or consultants.

D. Experts and consultants are permitted to renew appointments from year to year. A different appointment is one in which the duties and responsibilities are recognizably different from those of the previous assignment and cannot be considered a continuation, outgrowth, or extension of the assignment.

E. Method of computing retired pay overpayment due to employment is in paragraph 050303, below.

050209. Civil Service Reform Act of 1978 (reference (aw))

A. The provisions of the Civil Service Reform Act of 1978 (reference (aw)) apply to any officer or enlisted member of a Regular or Reserve Component who retired after January 11, 1979, and becomes employed in a federal civilian position. The restrictions imposed

on Regular officers and warrant officers under the Dual Compensation Act of 1964 (reference (at)) remain in effect for such members.

B. The provisions of this Act do not apply to:

1. Regular officers retired on or before January 11, 1979, and eligible to receive retired pay, whether employed before or after January 11, 1979. Members are subject only to the 1964 Act (reference (at)).

2. Reserve officers and Reserve enlisted members, otherwise eligible to receive retired pay but for the fact they are not age 60, and employed by the federal government in any position on October 13, 1978, so long as the individual continues to hold any such position without a break in service of more than 3 days.

3. Retired Reserve officers and retired Regular or Reserve enlisted members eligible to receive retired pay on or before January 11, 1979, whether employed by the federal government before or after January 11, 1979.

4. Members whose retired pay is computed in whole or in part based on a disability resulting from injury or disease received in the line of duty as a direct result of armed conflict, or caused by an instrumentality of war and incurred in line of duty during a period of war.

C. The full base pay of the civilian position is retained. The amount of civilian pay used in this determination includes, for members employed by the Legislative Branch, temporary pay increases, even though they may be intended as bonuses. If the amount of pay (not including locality pay) for the civilian position combined with retired pay exceeds the rate of pay currently paid for positions classified at Level V of the Executive Schedule, a reduction is required in retired pay. See Table 5-9 for Executive Schedule Level V rates and dates.

1. The amount of each reduction may not result in retired pay, when combined with civilian pay, being at a rate less than the current rate paid for Level V of the Executive Schedule.

2. The amount of retired pay used in this reduction excludes the amount of retired pay waived in order to receive disability compensation from the Department of Veterans Affairs.

3. For retired Regular officers, the amount of retired pay used in this reduction is the amount remaining after the reduction in subparagraph C.2, above, if applicable, and further reduced by the amount of the reduction required under the Act of 1964 (reference (at)).

4. The cost of participation in a survivor benefits program or a veterans insurance program is not considered in computing the required reduction, unless the remainder is inadequate to cover that cost.

D. When combined civilian pay and retired pay exceeds Level V, the amount of the reduction to retired pay will be deposited to the general fund of the Treasury of the United States.

E. The reduction does not apply if the member is employed on a temporary (full or part-time) basis, for the first 30-day period for which the member receives pay.

F. A limited 5-year waiver authority has been designated to the Office of Personnel Management to meet special or emergency employment needs of the government with regard to civilian medical officer positions. However, if there is a break in service of 3 or more days, the waiver is terminated.

G. The limitation on the amount received applies to any one pay period rather than for any given calendar year or fiscal year. The amount of the retired pay reduction is not refundable even though the retiree's combined retired pay and civilian salary for the entire year may be less than the annual pay for Level V of the Executive Schedule.

H. Leave Without Pay (LWOP) during a period of pay cap reduction is treated the same as during a period of dual compensation reduction.

050210. Deductions From Civilian Pay for Increases in Military Retired or Retainer Pay. Under Public Law 97-253 (reference (ax)), each federal agency deducted from the civilian pay of a member or former member of a Uniformed Service, an amount equal to the cost-of-living increase in military retired or retainer pay under 10 U.S.C. 1401a(b) (reference (c)) in April 1983. Public Law 98-270 (reference (ay)), repealed this provision before any further reductions could be made as set out in Public Law 97-253 (reference (ax)). The deduction in civilian pay did not apply if a member's retirement was based on war or combat-incurred injury or disability. The annual amount of the increase was computed as the difference between the adjusted gross before and after the cost-of-living increase. The adjusted gross equals gross less VA compensation less SBP/RCSBP/RSFPP less dual compensation less pay cap.

#### 0503 PAY ADJUSTMENTS

##### 050301. Effective Date for Reduction

###### A. Permanent (Full-Time or Part-Time) Appointments

1. Reduction in retired pay is required effective with the first day of employment with pay when employed in a permanent full-time appointment.

a. A member of a Uniformed Service, while in a terminal leave status pending retirement, may accept a civilian office or position in the United States Government, its territories or possessions, or the government of the District of Columbia. The pay of that office or position may be received in addition to pay and allowances from the Uniformed Service for the

unexpired portion of the terminal leave (5 U.S.C. 5534a (reference (az)), Public Law 90-93 (reference (az)), 56 Comp Gen 855 (reference (ba))).

b. Reduction in retired pay for employment which begins before retirement is effective with the first day of entitlement to retired pay.

c. Employment before retirement is subject to the time limit contained in paragraph 050206, above, prohibiting employment with the Department of Defense immediately after retirement.

2. Reduction is required effective the 31st calendar day when employed in a part-time appointment regardless of hours worked per day, but only for the days for which the employee actually receives pay.

3. When a member is in a leave-without pay status for an entire day which is normally a working day, no reduction in retired pay is required for that day.

B. Temporary (Full-Time or Part-Time), Intermittent, and When Actually Employed (WAE) Appointments

1. Reduction of retired pay is not required for the first 30-day period for which salary is received. The 30-day exclusion does not apply to more than one appointment aggregating more than 30 days within the same fiscal year nor to a reappointment to the same position in the succeeding fiscal year. Reduction is required effective the 31st calendar day for a full-time temporary appointment, and effective with the 31st actual day worked for a temporary part-time or intermittent appointment.

2. Temporary full-time is regular employment with a limited duration. The 30 days are calculated by the full-calendar period employed including Saturdays and Sundays.

3. Temporary appointments may be renewed yearly as long as an employer has the authority to renew them. If a member is serving under more than one appointment, the first period for which the member is paid in an aggregate of 30 days in the fiscal year from all positions in which employed is exempt from reduction.

4. A second appointment conversion which meets the following conditions is not a new appointment, but rather an extension in the original appointment; therefore, a new 30-day exemption is not allowed when there is no change in:

a. The appropriation to be charged with the salary and traveling expenses; and

b. The department or agency under which the service is to be performed; and

c. The position.

5. In determining the aggregate of 30 days in a fiscal year (FY) for members employed under two or more appointments, the period July 1 through September 30, 1976 is treated as part of the FY 77 which began October 1, 1976. FY 77 is treated as a 15-month period for this purpose.

C. Temporary Appointment Pending Establishment of Register (TAPER). Reduction in retired pay is required effective with the first day of employment with pay.

050302. Effective Date for Termination of Reduction in Retired Pay. Full retired pay entitlement is restored effective the day after the last day for which civilian salary is received. Lump-sum payments of accrued leave have no effect on payment of retired pay.

050303. Computation of Reduced Retired Pay Under the 1964 Act (reference (as))

A. See Tables 5-5 and 5-6 for formulas and example for computing reduced retired pay and reduced taxable pay under the 1964 Act (reference (at)).

B. When a member is employed on an intermittent when actually employed (WAE) basis, divide the monthly reduced retired pay entitlement by 30 days to determine the daily rate of entitlements on the days worked for which salary is paid.

1. Do not prorate partial-day payments.

2. Reduce retired pay for each day civilian salary is received regardless of the number of hours for which salary is paid.

C. If the member's gross retired pay, or gross retired pay as reduced by the Department of Veterans Affairs (VA) waiver, amount is equal to or less than the dual compensation exempt portion, there is no reduction.

D. The amount of reduction in retired pay, regardless of the type of appointment, may not exceed the gross amount of civilian salary received.

050304. Computation of Reduced Retired Pay Entitlement Under the Economy Act of 1932 (reference (as))

A. If the retired member's civilian salary is equal to or exceeds the \$10,000 limitation of the 1932 Act (reference (as)), no entitlement to retired pay exists. If member's civilian salary is less than \$10,000 annually, retired pay is reduced to an annual rate sufficient to keep combined incomes within the \$10,000 limitation.

1. When a member receives VA compensation, deduct the VA compensation amount before determining the annual rate of retired pay payable, then determine whether the dual compensation provisions will further reduce retired pay.

2. This is an example of the method for computing reduced retired pay when a member is employed under an unlimited appointment on a per annum civilian salary:

\$ 640.90	Basic retired pay entitlement
<u>- 350.00</u>	Less VA compensation
290.90	Monthly gross retired pay available
<u>x 12</u>	
\$ 3,490.80	Annual retired pay payable
\$10,000.00	Limited combined income
<u>- 7,560.40</u>	Less civilian salary
2,439.60	Annual retired pay allowable
<u>÷ 12</u>	
\$ 203.30	Monthly retired pay allowable

B. A retired member could not have accepted appointments limiting the total number of days employed so that a combined civilian salary and retired pay may not exceed the \$10,000 limitation.

1. Limited appointments must state on the face of the appointment (Notification of Personnel Action) a specific number of days or hours for which consultative services are to be performed and the daily rate or hourly rate to be paid.

2. Compute the anticipated annual civilian income using the information shown on the Notification of Personnel Action. If the combined retired pay and civilian income exceed the \$10,000 limitation, retired pay must be adjusted accordingly.

C. Conversion to the 1964 Dual Compensation Act (reference (at)). The method of applying the \$10,000 limitation under the 1932 Act (reference (as)) for members who were subject to the provisions of the 1964 Act (reference (at)) beginning December 1, 1964, was an eleven-twelfths computation of \$10,000, or the combined rate of \$9,166.66.

050305. Effect on Pay - Dual Compensation Reduction and Department of Veterans Affairs (VA) Waiver

A. Retired pay is adjusted retroactively, first to effect a waiver because of VA compensation, and then further reduced under the dual compensation formula when these conditions exist:

1. A Regular commissioned officer or warrant officer accepts federal civilian employment, and

2. Immediately or concurrent with retirement, the member executes a waiver of retired pay in order to receive disability compensation from the VA, and

3. The award, though administratively delayed, is granted by the VA retroactive to the date of the waiver.

B. Retired pay is not adjusted retroactively for members who have a waiver of retired pay in effect in favor of VA compensation and who later accept employment with the federal government. Reduction as provided in subparagraph A, above, is effective with the first day of employment.

C. Retired pay is adjusted retroactively for members employed by the federal government who:

1. Have a waiver of retired pay in effect in favor of VA compensation, and

2. Receive a retroactive VA increase after the effective date of employment.

D. A DD Form 2279 (Request for Retroactive Waiver of Military Retired Pay) is completed by the member, authorizing the Department of Veterans Affairs to pay the member any additional compensation due. This form also authorizes the VA to deduct the overpayment of retired pay from the compensation and refund it to the DFAS-Cleveland Center.

#### 0504 CONFLICT OF INTEREST

##### 050401. General

A. Conflict of interest statutes are intended to safeguard the integrity of public administration and prevent government officials from using their positions and influence for personal gain.

B. The conflict of interest statutes applicable in general to those whose government service has ended accomplish these purposes by:

1. Imposing limitation in some cases upon the employment of former DoD procurement personnel by defense contractors;

2. Requiring the employment of such personnel by defense contractors in other instances be reported; and

3. Restricting the activities of former DoD officers and employees in representing or assisting their employers in claims-related matters or becoming personally involved in the process of "selling" to the government.

C. A comprehensive digest of laws, including conflict of interest laws applicable to retired military personnel, is set forth in DoD 5500.7-R (reference (bb)), Chapters 5 and 9, and Appendix A.

D. Although violation of conflict of interest laws may result in the imposition of criminal penalties (including fines and imprisonment) or administrative fines and sanctions, entitlement to military retired pay is directly affected only when:

★1. A retired Regular officer is convicted of violating 18 U.S.C. 281(a) (reference (bc)) during any period prior to October 13, 1994; or

2. Any member is convicted of violating the Hiss Act (5 U.S.C. 8311-8322) (reference (bd)).

E. Fines levied for convictions under other statutes may result in debts to the United States that may be collected in accordance with Chapter 28; they do not, however, affect a convicted member's entitlement to receive retired pay.

050402. Selling

★A. "Selling," as an activity under the conflict of interest laws, is prohibited during any time prior to October 13, 1994, under 18 U.S.C. 281(a) (reference (bc)). A retired Regular officer may not, during the 2-year period following retirement, represent any person in the sale of anything to the department in which the officer holds retired status. This statute has been interpreted by the Department of Justice as prohibiting a retired Regular officer from representing any party other than himself in connection with a contract for the sale of services or for the sale of supplies. Since an officer is disqualified from holding a position of honor, trust, or profit under the United States as a result of conviction, entitlement to retired pay ceases.

B. The prohibition against selling has been broadly interpreted to include virtually all activities involved in the selling process and to apply in any case reasonably within the scope of the statute where the conduct at which it was directed could arise.

C. The following activities are examples of conduct by retired Regular officers that might be interpreted as selling:

1. Contacting military installations or consulting with DoD officials to obtain information on current or projected military needs and suggesting new lines of potential product development to member's employer.

2. Attending precontract negotiations or preproposal conferences with other members of the employer's firm.

3. Making contacts to promote goodwill that directly or indirectly may result in sales to Uniformed Services agencies or their nonappropriated fund instrumentalities.

4. Giving demonstrations and explaining products with a view toward an eventual sale on behalf of an employer.

5. Making contacts at social functions sponsored by the employer with Uniformed Services personnel who are in positions to influence procurement.

6. Making calls at installations to render technical assistance, update catalog materials, or provide information on companies represented.

7. Contacting procurement and budget personnel on behalf of the employer to discuss general trends in the military environment.

8. Conducting promotional seminars on supplies or products already sold by the employer to the Department of Defense.

D. Whether the retired officer acted in good faith, was ignorant of the law, or will experience financial hardship, has no effect upon the requirement to withhold retired pay for the period of statutory violation.

E. See Table 5-7 for synopsis of Comptroller General decisions as they relate to conflict of interest statutes.

050403. Withholding Retired Pay. Retired pay may be withheld when the employment falls under the category of activities prohibited under conflict of interest laws.

#### 0505 FOREIGN GOVERNMENT EMPLOYMENT

##### 050501. Background

A. Employment of retired members by a foreign government is restricted. The primary restriction is in article 1, section 9, clause 8 of the Constitution of the United States (reference (bf)), which reads: "No Title of Nobility shall be granted by the United States: And no person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign state." The Comptroller General interpreted this to prohibit employment of all retired personnel, including members of the Fleet Reserve or Fleet Marine Corps Reserve, by a foreign government unless congressional consent is granted.

B. The conditions for accepting foreign employment were modified by Public Law 95-105, section 509(a)(1) and (2) (reference (bg)). The Congress granted consent for retired members to accept employment or compensation from foreign governments if the members obtain the approval of the Secretary concerned and the Secretary of State before acceptance.

1. The approval by the Secretary concerned and Secretary of State for a member to accept foreign employment is only effective prospectively from the date the approval is granted and may not be made retroactively to authorize foreign employment and compensation received before approval is granted.

2. The compensation received from the foreign government without approval is considered received by the retired member for the United States. A debt in favor of the government is created which is to be collected by withholding from retired pay. The debt is an amount equal to the compensation received from the foreign government. When the compensation earned during the period of unauthorized employment exceeds the amount of retired pay accrued during the same period, only the retired pay amount may be collected.

050502. Legislative History

A. The history of the constitutional provisions under consideration indicates that the condition intended to be avoided is the exercise of undue influence by a foreign government upon retired members of the United States.

B. In determining the existence of an employer-employee relationship between a retired member and a foreign government, or instrumentality thereof, the common law rules of agency are applied to determine whether such instrumentality has the right to control and direct an employee in performance of his or her work and the manner in which the work is done.

C. There are at least five criteria that may be considered in determining whether the relationship of employer and employee exists. These are:

1. The selection and engagement of the employee
2. The payments of wages
3. The power to discharge
4. The power to control the employee's conduct

5. The relationship of the work to the employer's business, whether the work is a part of the regular business of the employer.

D. The decisive test to determine the existence of an employer-employee relationship is whether the employer has the right to control and direct the employee in the performance of his or her work and in the manner in which the work is to be done. Additionally, the Comptroller General has ruled that a corporation incorporated in the United States, which maintains a separate identity and appears to be a separate legal entity from its dominant shareholder, does not necessarily become an instrumentality of a foreign government when its principal shareholder is a foreign corporation substantially owned by a foreign government.

050503. Types of Employment

A. Employment by educational or commercial institutions owned, operated, or controlled by a foreign government is included within the scope of this restriction.

B. Employment with a foreign government which requires acquisition of foreign citizenship results in forfeiture of entitlement to retired pay. See Chapter 6, Foreign Citizenship, for additional information.

C. Employment by international agencies, such as the United Nations, is not prohibited.

050504. Adjustment to Retired Pay

A. Withhold retired pay in an amount equal to the amount of compensation received from the foreign government. Compensation includes salary, free transportation, household goods shipments at employer's expense, housing allowances, and gifts. To determine the amount to be withheld from a member on account of the nonmilitary elements of compensation, the value should be set fairly, considering the actual value or estimates of the compensation received. A gift of more than minimal value is deemed to have been accepted on behalf of the United States. It is deposited by the donee for use and disposal as property of the United States.

B. Amounts of retired pay withheld from members of the Uniformed Services who accept foreign employment without congressional consent, as required by the United States Constitution, should be treated as though the member has no entitlement to them and should not be "held in trust" for them pending possible future congressional consent to their receipt.

0506 FEDERAL JUDGES050601. General

A. Title 10, U.S.C. Judges. A person who has completed a term of service as a judge of the U.S. Court of Appeals for the Armed Forces may be eligible for a retirement annuity upon separation from civilian service in the federal government. Retirement annuities and survivor annuities for judges retired from the U.S. Court of Appeals for the Armed Forces are paid from the DoD Military Retirement Fund.

B. Title 28, U.S.C. Judges. Any justice or judge of the United States appointed to hold office during good behavior may retire after meeting age and service requirements.

050602. Limitations

A. Title 10, U.S.C. Judges. A person who is receiving a retirement annuity by reason of service as a judge of the U.S. Court of Appeals for the Armed Forces, and who

subsequently is appointed to a position in the federal government, is entitled to the higher of the retirement annuity as a judge or the pay for the federal government position.

B. Title 28, U.S.C. Judges. A member who becomes a judge may not receive military retired pay while performing regular judicial active service as a judge. When the member later retires from judicial active service or enters senior status as a judge, military retired pay shall be resumed or commenced without reduction.

#### 0507 SERVICE IN MILITARY FORCE OF NEWLY DEMOCRATIC NATIONS

##### 050701. Background

A. The Congress has consented to a retired member of the Uniformed Services accepting employment by, or holding an office or position in, the military forces of a newly democratic nation and accepting compensation associated with such employment, office, or position.

B. The Secretary concerned and the Secretary of State jointly shall determine whether a nation is a newly democratic nation.

##### 050702. Approval Required

The consent provided for a member of the Uniformed Services to accept employment or hold an office or position shall apply to a retired member only if the Secretary concerned and the Secretary of State jointly approve the employment or the holding of such office or position.

##### 050703. Continued Entitlement to Retired Pay and Benefits

The eligibility of retired members to receive retired or retainer pay and other benefits arising from the member's status as a retired member of the Uniformed Services may not be terminated by reason of employment or holding of an office or position consented to in paragraph 050702, above. The eligibility of such retired member's dependents to benefits also may not be terminated.

<b>EXPLANATION OF CODES AND DATA ELEMENTS SHOWN ON SF 50, NOTIFICATION OF PERSONNEL ACTION (REV-7/91)</b>			
<b>BLOCK 24 TENURE</b>			
<b>CODE NO.</b>	<b>EXPLANATION</b>		
0	Temporary		
1	Career		
2	Career-Conditional Appointment		
3	Temporary Appointment Pending Establishment of Register (TAPER)		
<b>BLOCKS 5 AND 6 NATURE OF ACTION</b>			
<b>CODE NO.</b>	<b>AUTHORITY</b>	<b>EXPLANATION</b>	
1.	100	CS Register	Career appointment by selection from register.
2.	101	315.301(a)	Career-conditional appointment by selection from register.
3.	110	316.402(a)	Temporary limited appointment by selection NTE 1 year.
4.	112	316.201	Temporary appointment pending establishment of register (TAPER); eligible for life insurance, health insurance, and bonds, but not eligible for CS retirement.
5.	113	316.402(a)	Temporary limited appointments outside register NTE 1 year.
6.	115	316.402(b)(1)	Appointments based on eligibility for reinstatement.
7.	130	5 U.S.C. 3304c	Career appointment.
8.	131	E.O. 10794	Career-conditional appointment.
9.	132	Cite specific authority (for example, law, reorganization, plan, etc.)	Mass transfer.
10.	140	330.201	Reinstatement career.
11.	141	330.201	Reinstatement career-conditional.
12.	160	Part 353, CS Register	Reemployment after military service.
13.	170	213.3102	Excepted appointment.
14.	171	213.312	Excepted appointment NTE (date).
15.	172	213.312	Excepted appointment - indefinite.
16.	173	213.312	Excepted appointment – conditional.
17.	181	Part 353, CS Regulations	Returned to duty from military.
18.	300 Series	None required with limited exceptions.	Separations.
19.	500	CS Register	Conversion to career appointment.
20.	510	CS Register	Conversion to career-conditional appointment.

**Table 5-1. Explanation of Codes and Data Elements Shown on SF 50, Notification of Personnel Action (Rev-7/91)**

CODE NO.	AUTHORITY	EXPLANATION
21. 520	Certification number and date	Conversion to temporary appointment NTE (date) from register.
22. 540	5 U.S.C. 3304(c)	Conversion to career appointment.
23. 541	E.O. 10794	Conversion to career-conditional appointment.
24. 550	213.213	Conversion to excepted appointment.
25. 552	213.312	Conversion to excepted appointment - indefinite.
26. 553	213.312	Conversion to excepted appointment - conditional.
27. 561	352.507	Conversion to reemployment.
28. 602	315.202	Conversion to career tenure.
29. 651	213.312	Conversion to excepted appointment NTE (date).
30. 712	351.603	Change to lower grade - RIF.
31. 720	351.603	Reassignment - RIF.
32. 721	335.102	Reassignment CAO register.
33. 894	5 U.S.C. 5337	Pay adjustment.
<b>BLOCK 45 REMARKS</b>		
<b>EXAMPLE</b>		
<p><u>LINE ENTRY</u> RETO/A11-1-74/309264307/05/REG/20/NONCOMBAT/NOT 5532(e) or 5 U.S.C. 5532(a), CS Reg 550.603 if granted by OPM.</p> <p>POSITION    A    B    C    D    E    F    G    H    I</p>		
<b>EXPLANATION</b>		
1.	A	RETO - Retired commissioned officer
2.	B	Military Service from which retired (A = Army)
3.	C	Date of retirement
4.	D	Social security number
5.	E	Retired grade (see table 5-3)
6.	F	Component (regular or nonregular)
7.	G	Retired grade (see table 5-3)
8.	H	Whether retired for combat disability
9.	I	Whether or not "position" is exempt

**Table 5-1. Explanation of Codes and Data Elements Shown on SF 50, Notification of Personnel Action (Rev-7/91) (Continued)**

<b>APPLICATION OF LAW - WHETHER TO REDUCE RETIRED PAY</b>				
<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
	<b>If</b>	<b>is</b>	<b>then officer's retired pay is subject to</b>	
			<b>\$10,000 limit of Act of June 30, 1932</b>	<b>loss of 1/2 retired pay in excess of \$2,000 per year limit of Act of 1964 (as amended)</b>
<b>1</b>	a Regular commissioned officer	retired for other than disability	No-unless employed on Nov 30, 1964 and elected to remain subject to limitations of the Act	Yes
<b>2</b>		appointed to public office by President with advice and consent of Senate	Yes	
<b>3</b>		retired for disability resulting from injury or disease received in line of duty and as a direct result of armed conflict; or caused by an instrumentality of war and incurred in line of duty during a period of war	No	No
<b>4</b>		retired for disability not as defined in rule 3 above	Yes	Yes
<b>5</b>	a Regular warrant officer	retired for reasons other than disability	No	
<b>6</b>		appointed to public office by President with advice and consent of Senate		
<b>7</b>		retired for disability resulting from injury or disease received in line of duty and as a direct result of armed conflict; or caused by an instrumentality of war and incurred in line of duty during a period of war		No
<b>8</b>		retired for disability not as defined in rule 3 above		Yes
<b>9</b>	a Regular warrant officer advanced on retired list to commissioned officer grade	retired for other than disability	Yes	
<b>10</b>		retired for disability resulting from injury or disease received in line of duty and as a direct result of armed conflict; or caused by an instrumentality of war and incurred in line of duty during a period of war	No	No

**Table 5-2. Application of Law - Whether to Reduce Retired Pay**

R U L E	A	B	C	D
			<b>then officer's retired pay is subject to</b>	
	<b>If</b>	<b>is</b>	<b>\$10,000 limit of Act of June 30, 1932</b>	<b>loss of 1/2 retired pay in excess of \$2,000 per year limit of Act of 1964 (as amended)</b>
<b>11</b>	a Regular warrant officer advanced on retired list to commissioned officer grade	retired for disability not as defined in rule 3 above	Yes	Yes
<b>12</b>	nonregular commissioned officers	retired for any reason	No	No
<b>13</b>		retired between August 7, 1947 and March 31, 1953, with commission under section 515 of the Officer Personnel Act of 1947	Yes	
<b>14</b>	an enlisted member	retired for any reason and receiving retired pay of enlisted member	No	
<b>15</b>		retired for any reason, advanced on retired list, and receiving commissioned officer grade pay	Yes	
<b>16</b>	a Reserve officer	retired for disability under the Act of April 3, 1939 or Title IV, CCA of 1949, as a Reserve officer who last served on active duty as a Regular warrant officer or enlisted member, with warrant officer or enlisted status terminated and the retired pay grade (temporary higher active duty grade under the Officer Personnel Act of 1947) is the same or higher than the Reserve grade		
<b>17</b>	an AUS warrant Reserve officer advanced on retired list to commissioned grade	retired for any reason		
<b>18</b>	a Reserve officer	retired under 10 U.S.C. 12731-12737	No	

**Table 5-2. Application of Law - Whether To Reduce Retired Pay (Continued)**

<b>CIVILIAN POSITIONS EXEMPT FROM DUAL COMPENSATION RESTRICTIONS (Includes But Not Limited to These:)</b>	
<b>Type Position and/or Employing Agency</b>	<b>Explanation</b>
1. Armed Forces Entrance and Examining Stations	Exception granted by Civil Service Commission (CSC) letter, dated June 19, 1972, to employment of retired military physicians to remain in effect as long as the member remains employed in that position. Exemption expired June 30, 1974 except for those appointed to the position before June 30, 1974.
2. Army Emergency Relief (AER)	Employment with AER is not considered employment with the federal government under Act of 1964. (26 Comp Gen 192)
3. Chaplains employed part time by Department of Veterans Affairs	The CSC exercised its authority to provide an exception to the reduction in retired pay. The exception applies to persons in positions where the duties typically do not require the services for more than 6 hours a day required reduction in retired pay. (United States Civ Svc Directive, April 4, 1966)
4. Fee basis physicians	Fee basis physicians on a contractual relationship do not occupy a "civilian office" within the purview of 5 U.S.C. 3101(3). (45 Comp Gen 81)
5. International organization	Civilian salary is paid from mixed funds contributed by several different countries. (27 Comp Gen 12)
6. Military Sea Transportation Service (MSTS)	Under provisions of 5 U.S.C. 5532(d), CSC has approved exemption from the dual compensation restrictions with reference to these seafaring positions in the MSTS: Radio officer - deck officer - engine officer; unlicensed skill deck positions requiring employee to have United States Coast Guard document as an able seaman; unlicensed skilled engine department positions requiring employee to have a United States Coast Guard document as a qualified member of engine dept., oiler, or fireman-watertender. The exception applies to retired regular officers now employed and who become employed during the period ending February 28, 1969. Exception will continue in effect for an individual who becomes subject to it for as long as he or she remains in one of the positions covered. The exception is subject to removal as the need requires.
7. Mutual Security Act	Employment is limited by the 1932 Act except when appointment as an expert or consultant under provisions of Section 530(a) of the Mutual Security Act of 1954; then position is exempt for all dual compensation statutes.
8. National Aeronautics and Space Administration (NASA)	The administrator of NASA may make exception to the restrictions with respect to not more than 30 NASA employees appointed to scientific, engineering, or administrative positions under 42 U.S.C. 2473(b)(2)(A).

**Table 5-3. Civilian Positions Exempt From Dual Compensation Restrictions**

Type Position and/or Employing Agency	Explanation
9. Nonappropriated Fund Activity	<p>Before December 1, 1964, employment not subject to 1932 Act. Effective December 1, 1964, employment under direct jurisdiction and supervision of an administrative official of the Armed Forces is subject to Act of 1964.</p> <p>Direct jurisdiction and supervision by administrative office must be determined by the agency personnel office in addition to the notice of employment with a nonappropriated activity before a conclusive determination of the applicability of dual compensation statute can be activated. (MS Comp Gen B-165534, December 17, 1968)</p>
10. Nonpersonal Service Contract	<p>A retiree employed by nonpersonal-service contract is not subject to dual compensation statutes. (26 Comp Gen 501 and 28 Comp Gen 50)</p> <p>Lecturers are considered under nonpersonal-service contracts. (23 Comp Gen 425 and MS Comp Gen B-134618, May 31, 1958)</p>
11. Retired Nurses	<p>If receiving pay under Act of June 20, 1930, 46 Stat 790, they were not considered retired officers June 22, 1944. On and after June 22, 1944, retired employed nurses who were receiving retired pay on basis of commissioned office became subject to the Act of 1932, as amended.</p>
12. US Soldiers' and Airmen's Home	<p>Subject to 1932 Act from date of appointment (Public Law 374, 78th Congress, June 28, 1944). The Governor of the Home may exempt at any time, not more than two physicians, if it is determined that such exemptions are necessary to recruit or retain well-qualified physicians for the Home. An exemption granted under this section shall terminate upon any break in employment with the Home by a physician of 3 days or more. (Public Law 99-145, Nov 8, 1985)</p>
13. VA Consultant	<p>Appointment to a position with the Department of Veterans Affairs under provisions of 38 U.S.C. 4114(a) as a consultant in a capacity on a fixed fee basis. (45 Comp Gen 559)</p>
14. VISTA (Volunteers in Service to America)	<p>Employees are not deemed to be federal employees except for the purpose of Internal Revenue, Social Security, Federal Employees Compensation and the Federal Tort Claims provisions of 28 U.S.C. (Public Law 88-452, August 20, 1964, Economic Opportunity Act of 1964)</p>
15. VA Doctor or Osteopath	<p>The Secretary of VA may make exception to the restrictions, when necessary, to meet special or emergency employment needs in DM&amp;S resulting from a severe shortage of well-qualified candidates which otherwise cannot be readily met. (Public Law 98-528, October 19, 1984)</p>

**Table 5-3. Civilian Positions Exempt From Dual Compensation Restrictions (Continued)**

Type Position and/or Employing Agency	Explanation
16. Uniformed Services University of the Health Sciences	The Board of Regents may exempt, at any time, not more than two physicians if it is determined that such exemptions are necessary to recruit or retain well-qualified physicians for the University. An exemption granted under this section shall terminate upon any break in employment with the University by a physician of 3 days or more. The effective date of this exemption is the first day of the month after the month the exemption is granted.
17. Board of Governors of the Federal Reserve Board	The Federal Reserve Board is a "nonappropriated fund" instrumentality and the only such instrumentalities covered by the law are those of the Armed Forces. ( <i>Denkler v. United States</i> , 782 F.2d 1003 (Fed. Cir. 1986) and Comp Gen Dec B-226074, June 3, 1988)
18. Contract for Health Services	Retired personnel are not subject to dual compensation restrictions when they enter into contracts with the government under the authority of 10 U.S.C. 1091 (Supp. IV 1986) to provide health care services (B-231565, Nov 14, 1988).
19. 1990 Decennial Census	Temporary Bureau of the Census employees carrying out the 1990 census of population are granted a 6-month exemption between August 16, 1989 and December 31, 1990. The period of this exemption is computed in the same manner as described in 5 U.S.C. 5532(a). However, any employee who was in a position subject to dual compensation restrictions immediately before being placed in the temporary position is not eligible for this exemption. On May 17, 1990 this exemption was revised to eliminate the 6-month limitation and grant exemption through December 31, 1990 to all temporary employees. Those employees whose 6-month exemption had expired were again exempt beginning with May 17, 1990. (Public Law 101-86 as amended by Public Law 101-293) (See exception B-244417, July 1, 1992)
20. National Civilian Community Corps	Members of the CCC's permanent cadre pursuant to Title 42, U.S.C., section 12619(c)(2), (Public Law 103-337, Section 640, October 5, 1994 and ASD (Force Management Policy) Memo, December 23, 1994)

**Table 5-3. Civilian Positions Exempt From Dual Compensation Restrictions (Continued)**

EXEMPT AMOUNT BASED ON COST-OF-LIVING INCREASES		
A	B	C
Effective Date	Percentage of Increase	Yearly Rate
December 1, 1964		\$2,000.00
September 1, 1965 (note 1)	4.4	2,088.00
December 1, 1966 (note 2)	3.7	2,074.00
April 1, 1968	3.9	2,154.89
February 1, 1969	4.0	2,241.09
Nov 1, 1969	5.3	2,359.87
August 1, 1970	5.6	2,492.02
June 1, 1971	4.5	2,604.16
July 1, 1972	4.8	2,729.16
July 1, 1973	6.1	2,895.64
January 1, 1974	5.5	3,054.90
July 1, 1974	6.3 (note 3)	3,247.36
January 1, 1975	7.3	3,484.42
August 1, 1975	5.1	3,662.13
March 1, 1976	5.4	3,859.89
March 1, 1977	4.8	4,045.16
September 1, 1977	4.3	4,219.10
March 1, 1978	2.4	4,320.36
September 1, 1978	4.9	4,532.06
March 1, 1979	3.9	4,708.81
September 1, 1979	6.9	5,033.72
March 1, 1980	6.0	5,335.74
September 1, 1980	7.7	5,746.59
March 1, 1981	4.4	5,999.40
March 1, 1982	8.7	6,521.39
April 1, 1983	3.3	6,736.60
	3.9 (note 4)	6,775.72
December 1, 1984	3.5 (note 4)	6,972.38
		7,012.87
December 1, 1986	1.3	7,104.04
December 1, 1987	4.2 (note 5)	7,402.41
	3.2 (note 6)	7,331.37
December 1, 1988	4.0 (note 5)	7,698.51
	3.0 (note 6)	7,551.31
December 1, 1989	4.7 (note 5)	8,060.34
	3.7 (note 6)	7,830.71
December 1, 1990	5.4 (note 5)	8,495.60
	4.4 (note 6)	8,175.26
December 1, 1991	3.7 (note 5)	8,809.94
	2.7 (note 6)	8,395.99
December 1, 1992	3.0 (note 5)	9,074.24
	2.0 (note 6)	8,563.91
December 1, 1993	2.6 (note 5)	9,310.17
	1.6 (note 6)	8,700.93
December 1, 1994	2.8 (note 5)	9,570.85
	1.8 (note 6)	8,857.55
December 1, 1995	2.6 (note 5)	9,819.69
	1.6 (note 6)	8,999.27
★December 1, 1996	2.9 (note 5)	10,104.46
	1.9 (note 6)	9,170.26

Table 5-4. Exempt Amount Based On Cost-Of-Living Increases

## Notes:

1. The 4.4 percent cost-of-living index increase in retired pay authorized by Public Law 89-132, approved August 21, 1965 (79 Stat 545-548), increased the \$2,000 amount to \$2,088 a year (\$174 a month) effective September 1, 1965 for members entitled to retired pay computed on basic (A/D) pay rates authorized by laws in effect before September 1, 1965. Members who are entitled to retired pay based on A/D rates authorized by Public Law 89-132 are restricted to the \$2,000 amount plus one-half of the balance of their retired pay. See 45 Comp Gen 164.
2. In 46 Comp Gen 549 and 46 Comp Gen 575, it was held that the amount exempt from reduction for all members irrespective of the date of retirement would be \$2,074 effective December 1, 1966.
3. Because of an error in the Consumer Price Index for April 1974, the July 1974 cost-of-living increase was corrected from 6.4 percent to 6.3 percent. The dual compensation exemption amount was originally computed as \$270.87 monthly and \$3,250.41 yearly. No action is required to adjust the accounts that were reduced by the erroneous exempt amount for the period July 1, 1974 through December 31, 1974.
4. Under 5 U.S.C. 5532(b) and Section 301, Public Law 97-253, members who:
  - a. As of March 1, 1983 are under age 62, are entitled to retired pay on such date, and are holding a federal civilian position on April 1, 1983, are entitled to the exempt amount adjusted by 3.3 percent plus one-half the remainder of retired pay, if any; or
  - b. As of March 1, 1983 are age 62 or more, or military disability retirees who are entitled to retired pay and are holding a federal civilian position on April 1, 1983, are entitled to the exempt amount adjusted by 3.9 percent plus one-half the remainder of retired pay, if any.
  - c. As of December 1, 1984 are under age 62, are entitled to retired pay on such date and are holding a federal civilian position on Dec 1, 1984, are entitled to the exempt amount adjusted 3.5 percent to \$6,972.38 plus one-half the remainder of retired pay, if any; or
  - d. As of December 1, 1984 are age 62 or more, or military disability retirees who are entitled to retired pay and are holding a federal civilian position on December 1, 1984, are entitled to the exempt amount adjusted by 3.5 percent to \$7,012.87 plus one-half the remainder of retired pay, if any.
5. Applies to officers of the Regular Component who first became a member of a Uniformed Service before August 1, 1986.
6. Applies to officers of the Regular Component who first became a member of a Uniformed Service on or after August 1, 1986.

**Table 5-4. Exempt Amount Based On Cost-Of-Living Increases (Continued)**

FORMULA FOR COMPUTATION OF REDUCTION (ACT OF 1964)★					
A	B	C	D	E	F
<b>Multiply</b>	<b>multiply</b>	<b>subtract</b>	<b>subtract</b>	<b>divide</b>	<b>divide</b>
<b>Monthly gross retired pay by 12 months (note 1)</b>	<b>monthly VA compensation by 12 months (note 2)</b>	<b>results of column B from results of column A</b>	<b>the yearly rate Act of 1964 column C, Table 5-4, from column C (or column A if no VA comp)(note 3)</b>	<b>results of column D by 2</b>	<b>results of column E by 12. This is the monthly reduction Act of 1964</b>
EXAMPLES 1. 4,588.00 <u>   x 12</u> 55,056.00			55,056.00 <u>- 9,570.85</u> 45,485.15	<u>22,742.58</u> 2√45,485.15	<u>1,895.22</u> 12√22,742.58
2. 4,588.00 <u>   x 12</u> 55,056.00	170.00 <u>   x 12</u> 2,040.00	55,056.00 <u>-2,040.00</u> 53,016.00	53,016.00 <u>- 9,570.85</u> 43,445.15	<u>21,722.58</u> 2√43,445.15	<u>1,810.22</u> 12√21,722.58
3. 4,588.00 <u>   x 12</u> 55,056.00	790.00 <u>   x 12</u> 9,480.00	55,056.00 <u>-9,480.00</u> 45,576.00	45,576.00 <u>-9,570.85</u> 36,005.15	<u>18,002.58</u> 2√36,005.15	<u>1,500.22</u> 12√18,002.58

NOTES:

- Legend: Gross pay 4,588.00  
           SBP 171.43  
           VA Comp 170.00  
           VA Comp 790.00
- If member does not have VA Compensation, proceed to column D.
- Use the effective date Table 5-4, column A, to determine applicable yearly rate for computation.

Table 5-5. Formula for Computation of Reduction (Act of 1964)

<b>FORMULA FOR COMPUTING TAXABLE RETIRED PAY WITH ACT OF 1964 AND PARTIAL TAXABLE RETIRED PAY</b>						
<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
	<b>If retired pay</b>	<b>subtract</b>	<b>subtract</b>	<b>Divide</b>	<b>subtract</b>	<b>multiply</b>
<b>1</b>	is fully taxable	results of Table 5-5, column F, from gross monthly retired pay. Results equal taxable pay.				
<b>2</b>	is fully taxable with VA comp	results of Table 5-5, column F, from gross monthly retired pay	monthly VA comp from results column B. ★ Results equal taxable pay.			
<b>3</b>	is computed on years of service with disability pay	disability pay from gross monthly retired pay		results of column B by gross monthly retired pay; carry to 5, round to four decimal points	results of Table 5-5, column F, from monthly gross retired pay	results of column E by results of column D. Results equal taxable pay.
<b>4</b>	is computed on years of service with disability pay, VA comp	disability pay from gross monthly retired pay	monthly VA comp from gross monthly retired pay	results of column B by results of column C, carry to 5, round off to four decimal points	results of Table 5-5, column F, from results of column C	
<b>5</b>	is computed on years of service with disability pay, VA comp, and SBP	disability pay and cost of SBP from monthly retired pay	cost of SBP and VA comp from gross monthly retired pay			
<b>6</b>	is computed on years of service with disability pay	VA comp from gross monthly retired pay	results of Table 5-5, column F, from results of column B. Results equal taxable pay.			

**Table 5-6. Formula for Computing Taxable Retired Pay With Act of 1964 and Partial Taxable Retired Pay**

	A	B	C	D	E	F
	If retired pay is	subtract	subtract	divide	subtract	multiply
1	1,939.33 G.P.	1,939.33 <u>- 801.12</u> 1,138.21				
2	1,939.33 G.P. 139.00 V.A.	1,939.33 <u>-731.62</u> 1,207.71	1,207.71 <u>- 139.00</u> 1,068.71			
3	1,939.33 G.P. 775.73 D.P.	1,939.33 <u>-775.73</u> 1,163.60		$\frac{1,939.33 \times .6000}{1163.60}$	1,939.33 <u>-801.12</u> 1,138.21	1,138.21 $\times .60$ 682.93
4	1,939.33 G.P. 775.73 D.P. 139.00 V.A.	1,939.33 <u>-775.73</u> 1,163.60	1,939.33 <u>- 139.00</u> 1,800.33	$\frac{1,800.33 \times .6463}{1163.60}$	1,800.33 <u>- 731.61</u> 1,068.72	1,068.72 $\times .6463$ 690.71
5	1,939.33 G. P. 775.73 D. P. 139.00 V.A. 171.43 SBP	1,939.33 <u>- 775.73</u> <u>171.43</u> 992.17	1,939.33 <u>- 139.00</u> <u>- 171.43</u> 1,628.90	$\frac{1,628.90 \times .6091}{992.17}$	1,628.90 <u>-731.62</u> 897.28	897.28 $\times .6091$ 546.53
6	1,939.33 G.P. 775.73 D.P. 790.00 V.A.	1,939.33 <u>- 790.00</u> 1,149.33	1,149.33 <u>-406.12</u> 743.21			

**Table 5-6. Formula For Computing Taxable Retired Pay With Act of 1964 and Partial Taxable Retired Pay- Examples (Continued)**

<b>DECISIONS OF THE COMPTROLLER GENERAL-CONFLICT OF INTEREST</b>			
<b>SUMMARY</b>			
<b>No.</b>	<b>Reference</b>	<b>Condition</b>	<b>Decision</b>
1.	38 Comp Gen 470	Employment under a contract for personal services with a person who manufactures and/or sells supplies of war materials to military departments, but no personal connection with sales or promotion of sales, is not engaged in selling, contracting, or negotiating to sell.	Not considered in violation of 37 U.S.C. 801(c), as amended.
		Employment requires contact with military departments to promote goodwill.	Such activity will result in sales and is in violation, even though the actual sale is made by another employee of the firm or the sale was not a result of the contact.
2.	39 Comp Gen 366	Retiree signs a proposal and a contract for construction of air field improvements.	This is a violation even though retiree signed only as president of the firm.
3.	39 Comp Gen 751	Retiree contracts for and operates a concession on a military installation.	Not concerned with sale of anything to the Government; not a violation of 37 U.S.C. 801(c), (repealed by Public Law 103-355, October 13, 1994) as amended
4.	40 Comp Gen 511	Consultant to advise a military supplier concerning government needs and assist in designing and manufacturing products for current or future military need.	Not a violation as long as employee does not personally contact the military departments. If contact is made, there is a conflict of interest.
		Employee demonstrates and explains products to representatives of military.	Such activity is aimed at eventual sales and is a violation of statutes.
5.	41 Comp Gen 642	Operations manager, in which capacity employee continued sporadic contact with military.	A violation of statute.
6.	41 Comp Gen 677	Retiree negotiates a contract for shipment of household goods of military personnel which does not transfer ownership of the property to the government.	Such a contract is for performance of services only and does not represent a violation.
7.	41 Comp Gen 784	Retiree is executive of a firm which sells to the military. Vice president for sales reports to the executive.	No violation as long as executive does not sign a bid, proposal, or contract; negotiate a contract; contact the military; or perform liaison activities to promote sales.
8.	41 Comp Gen 799	Retiree performs analytical services for a firm selling to the military. Provides assistance, information, and advice, but does not engage in any activity to induce sales.	No violation unless other information indicates selling may be involved.

**Table 5-7. Decisions of the Comptroller General-Conflict of Interest**

<b>SUMMARY</b>			
<b>No.</b>	<b>Reference</b>	<b>Condition</b>	<b>Decision</b>
9.	42 Comp Gen 32	Employee engaged in contracting activities, but later removed himself from any connection with a bid being considered by the military.	Is a violation only for contracts the employee signed before self-removal from such activity.
10.	42 Comp Gen 87	Over-the-counter sales by a retired Regular officer as owner or representative of the firm. Sales to military not the result of bid, proposal, or contract.	No violation.
		Employment activity which repairs equipment, sells public utilities or meals to military installations.	No violation since these activities are regarded as service rather than sale of tangible property.
		Supervisor responsibility over the sales department or salespersons, but makes no contacts in person or otherwise with military customers.	No violation.
		Retiree maintains lines of communication with military, but has no authority to make sales or negotiate contracts.	No violation.
		Retiree analyzes and reports on legislative or executive agency programs, attends conventions or meetings with military.	No violation unless for the purpose of making sales.
		Retiree arranges for travel and lodging, appointments, and general assistance for a corporation's office in Washington, D.C.	No violation.
		Retiree manages a local office of a company doing business with the military.	Depends on the scope of the job.
		Public relations activities.	Depends on the scope of the job.
		Liaison activities with representatives of foreign governments.	No violation of 37 U.S.C. 801 (c).
11.	42 Comp Gen 236	Precontract discussions with military personnel.	Depends on the nature of the discussions.
		Employment in a consultant firm that represents companies engaged in contracting or selling to military.	No violation solely by reason of such employment as long as selling for the companies is not involved.
		Contacts at places other than government offices, including social gatherings, which are made for the purpose of selling.	A violation of statute.

**Table 5-7. Decisions of the Comptroller General-Conflict of Interest (Continued)**

<b>SUMMARY</b>			
<b>No.</b>	<b>Reference</b>	<b>Condition</b>	<b>Decision</b>
12.	43 Comp Gen 408	Contact with procurement and budget personnel of the military to discuss general trends.	A violation, but see 42 Comp Gen 236.
13.	49 Comp Gen 85	Manufacturer's representative for companies selling to the military. Obtain data from invitations to bid, pass along to manufacturers, monitor progress of the contract, act as intermediary between military and manufacturer.	Considered liaison activities prohibited by 37 U.S.C. 801 (c).
14.	53 Comp Gen 616	Sales representative making calls on military for the purpose of technical assistance, updating catalog materials, providing information on productions and determining future markets.	Considered participating in the procurement process for the purpose of selling and is in violation of statute.
15.	53 Comp Gen 753	Foreign government.	Violation of article 1, section 9, clause 8 of the Constitution of the United States.
16.	B-203079, March 22, 1982	Retiree demonstrates an employer's product to customers in the Army and Air Force Exchange Service stores, stocks store with employer's sales literature, and takes inventory of company's sales.	No violation of 37 U.S.C. 801(c) (repealed by Public Law 103-355, October 13, 1994).
		Employee visits exchange service stores to perform warranty repairs on employer's product.	No violation.
		Conducts a seminar for the purpose of explaining the use of products already procured by the agency or service.	No violation.
17.	B-217096, March 11, 1985	Retiree employed by a law firm incorporated in Virginia as a professional corporation, serving as legal counsel for Office of Saudi Military Attache, an instrumentality of foreign government.	Violation of article 1, section 9, clause 8 of the Constitution of the United States.
18.	68 Comp Gen 240	Retiree employed by a DoD contractor discussed changes in specifications of a contract by coordinating a mutually satisfactory technical solution to a problem.	No violation.
19.	B-231498, June 21, 1989	During the period when retiree was employed by Arabian Oil Company (ARAMCO), if the corporation was owned by a foreign government, then the restrictions would be violated and any claim from the violation may be waived under 10 U.S.C. 2774.	Violation of article 1, section 9, clause 8 of the Constitution of the United States.

**Table 5-7. Decisions of the Comptroller General-Conflict of Interest (Continued)**

FORMULA FOR COMPUTATION OF REDUCTION (ACT OF 1978)								
A	B	C	D	E	F	G	H	I
From	subtract	multiply	subtract (note 1)	divide	Add	add	subtract	divide
Monthly gross retired pay	monthly VA compensation	result of column B by 12 months	annual exempt amount 1964 Act	result by 2	Annual exempt amount	annual civilian salary to result from column F (note 2)	Executive Level V salary from result of column G	result from column H by 12 (note 3)

Example:

A.	\$ 4,588.00	Monthly gross retired pay						
B.	- 170.00	VA compensation						
	\$ 4,418.00	Reduced retired pay						
C.	x 12	Months						
	\$ 53,016.00	Annual retired pay						
D.	- 9,570.85	Annual exempt amount (1964 Act)						
E.	43,445.15	Remainder of retired pay						
	= 2							
	\$ 21,722.58							
								To adjust within a pay period:
F.	+9,570.85	Exempt amount						
	\$ 31,293.43	Annual retired pay reduced by 1964 Act			=26 pay periods =		\$1,203.60 biweekly	
G.	+83,512.09	Annual civilian salary (note 2)			=26 pay periods =		\$3,212.00 biweekly	
	\$114,805.52						(note 4)	
	\$114,805.52	Annual combined salary			=26 pay periods =		\$4,415.60 biweekly	
H.	-108,200.00	Level V of the Executive Schedule			=26 pay periods =		\$4,161.54 biweekly	
I.	6,605.52	Annual pay in excess of Level V						
	= 12							
	\$ 550.46	Monthly reduction under Civil Service Reform Act of 1978 (note 3)					\$ 254.06 biweekly	

NOTES:

- Delete steps in column D, E, and F for a Reservist or enlisted member not subject to the 1964 Act. Add result of column C to column G and proceed with column H.
- The civilian salary equals the annual rate provided on the Standard Form 50 divided by 2,087 hours and multiplied by 2,080 (the actual number of hours a member is entitled to civilian salary) and divided by 26 pay periods.
- If the result of column I in the example leaves an insufficient amount to cover the cost of the member's participation in any survivor benefit program, the pay cap deduction is recomputed with survivor benefit program, the pay cap deduction is recomputed with the cost of that program collected from the result of column F.
- To adjust Leave Without Pay (LWOP), divide the biweekly civilian salary amount by 80 hours (or use the hourly rate as it appears on the employee's LES) and multiply the results by the number of LWOP hours taken within that biweekly period. The resultant adjustment in the retired pay reduction for the hours of LWOP (pay loss) cannot exceed the biweekly reduction under Civil Service Reform Act of 1978.

**Table 5-8. Formula for Computation of Reduction (Act of 1978)**

<b>EXECUTIVE LEVEL V RATES</b>	
January 11, 1979	\$47,500.00
October 1, 1979	\$50,112.50
January 1, 1982	\$57,500.00
December 18, 1982	\$63,800.00
January 1, 1984	\$66,400.00
January 1, 1985	\$68,700.00
January 1, 1987	\$70,800.00
February 8, 1987	\$72,500.00
January 1, 1989	\$75,500.00
January 1, 1990	\$78,200.00
January 1, 1991	\$101,300.00
January 1, 1992	\$104,800.00
January 1, 1993	\$108,200.00

**Table 5-9. Executive Level V Rates**