

<p style="text-align: center;">SUMMARY OF MAJOR CHANGES TO DOD 7000.14-R, VOLUME 7B, CHAPTER 5 "EMPLOYMENT"</p> <p style="text-align: center;">Substantive revisions are denoted by a ★ preceding the section, paragraph, table or figure that includes the revision</p>		
PARA	EXPLANATION OF CHANGE/REVISION	EFFECTIVE DATE
050402.B Bibliography	Interim change R07-01 removes the dual compensation restriction for certain federal judges.	October 1, 1999
0501	Interim change R19-01 removes all references to dual compensation.	October 25, 2001
050202.E Bibliography	Interim change R19-01 removes all references to dual compensation.	October 25, 2001

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CHAPTER 5**EMPLOYMENT**0501 **NOTE: REPEAL OF REPORTING/REDUCTIONS**

Section 651, Public Law 106-65, October 5, 1999, repealed section 5532 of title 5, United States Code (U.S.C.) effective October 1, 1999. As a result, reductions in military retired pay based on 5 U.S.C. 5532 will not apply to periods of entitlement on or after October 1, 1999.

0502 **CONFLICT OF INTEREST**050201. **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](#), “Joint Ethics Regulation,” (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. However, they do not affect a convicted member's entitlement to receive retired pay.

050202. 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 5-1 for synopsis of decisions which relate to conflict of interest statutes.

050203. Withholding Retired Pay. Retired pay may be withheld when the employment falls under the category of activities prohibited under conflict of interest laws.

0503 FOREIGN GOVERNMENT EMPLOYMENT

050301. 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.

050302. 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. They 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.

050303. 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](#) of this volume for additional information.

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

050304. 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.

0504 FEDERAL JUDGES050401. 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 United States Court of Appeals for the Armed Forces are paid from the DoD Military Retirement Fund.

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

050402. Limitations

A. Title 10, (reference (c)) U.S.C. Judges. A person who is receiving a retirement annuity by reason of service as a judge of the United States 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 became a judge could not receive military retired pay while performing regular judicial active service as a judge. On and after October 1, 1999, this restriction has been repealed and military retired pay shall be resumed without reduction.

0505 SERVICE IN MILITARY FORCE OF NEWLY DEMOCRATIC NATIONS050501. 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.

050502. 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.

050503. 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 050502, above. The eligibility of such retired member's dependents to benefits also may not be terminated.

DECISIONS ON CONFLICT OF INTEREST			
SUMMARY			
No.	Reference	Condition	Decision
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 5-1. Decisions on Conflict of Interest

DECISIONS ON CONFLICT OF INTEREST			
SUMMARY			
No.	Reference	Condition	Decision
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.
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.

Table 5-1. Decisions on Conflict of Interest (Continued)

DECISIONS ON CONFLICT OF INTEREST			
SUMMARY			
No.	Reference	Condition	Decision
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 5-1. Decisions on Conflict of Interest (Continued)

EMPLOYMENT

0502 - CONFLICT OF INTEREST

050201.A	39 Comp Gen 366
050201.B	DoDD 5500.7, Enclosure 3, May 6, 1987
050201.D	Public Law 104-106, section 4304(b)(3), February 10, 1996
050202.A	Ltr, Dept of Justice, November 30, 1981 Public Law 100-180, December 6, 1987 Public Law 103-335, section 5001, October 13, 1994 Public Law 104-106, section 4304, February 10, 1996
050202.B	39 Comp Gen 366 Public Law 100-180, December 6, 1987
050202.C.1	40 Comp Gen 511
050202.C.2 & 3	MS Comp Gen B-181056, February 10, 1975
050202.C.4	<u>Seastrom vs U.S.</u> 147 Court of Claims 453, 1959
050202.C.5	56 Comp Gen 898
050202.C.6	53 Comp Gen 616
050202.C.7	43 Comp Gen 408
050202.C.8	MS Comp Gen B-203079, March 22, 1982
050202.D	41 Comp Gen 642, 646 MS Comp Gen B-198751, February 19, 1981

0503 - FOREIGN GOVERNMENT EMPLOYMENT

050301.B.2	58 Comp Gen 487 65 Comp Gen 382
050302.A	24 Op. Atty Gen 166 (1902) 53 Comp Gen 753
050302.C	<u>Maloolf vs United States</u> 242 F. Supp 175, 181 (1965)
050302.D	41 Comp Gen 715 MS Comp Gen B-152844, December 12, 1963 44 Comp Gen 130 53 Comp Gen 753 MS Comp Gen B-210346, June 2, 1983
050303.A	MS Comp Gen B-152844, December 12, 1963
050304	5 U.S.C. 7342 MS Comp Gen B-178538, October 13, 1977
050304.B	58 Comp Gen 487

0504 - FEDERAL JUDGES

	050401	10 U.S.C. 945
	050402	10 U.S.C. 942(e)(2)
		10 U.S.C. 945(f)
		28 U.S.C. 371(e)
		73 Comp Gen 8
★	050402.A	10 U.S.C. 942(e)(2)
		10 U.S.C. 945(f)
★	050402.B	28 U.S.C. 371(e), as amended by Public Law 106-398, section 654, October 30, 2000
		73 Comp Gen 8

0505 - SERVICE IN MILITARY FORCE OF NEWLY DEMOCRATIC NATIONS

	050501	10 U.S.C. 1060
	050502	10 U.S.C. 1060
	050503	10 U.S.C. 1060