

A Report by a Panel of the

# **NATIONAL ACADEMY OF PUBLIC ADMINISTRATION**

for the U.S. Congress and the Department of Defense



## ***Independent Assessment of the Department of Defense Review of Post-Employment Restrictions***

February 2012



National Academy of  
Public Administration®

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*A Report by a Panel of the*

NATIONAL ACADEMY OF  
PUBLIC ADMINISTRATION

*For the U.S. Department of Defense*

**Independent Assessment of  
the Department of Defense (DoD) Review of  
Post-Employment Restrictions**

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February 2012

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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## FOREWORD

With the increasing complexity of public missions and rapid technological changes, the federal government relies heavily upon a mix of civil servants and contractors to perform its work. With the blurring of boundaries between the public and private sectors, Congress and the Executive Branch have sought to prevent conflicts of interest and undue influence on public decision-making by imposing a variety of post-employment and related restrictions on federal employees. Due partly to its workforce size, mission importance, and procurement spending, the U.S. Department of Defense (DoD) has been a major focus of debates about whether additional restrictions are needed to protect the public interest.

Congress recently mandated that DoD review post-employment restrictions applicable to its personnel and that it engage the National Academy of Public Administration (the Academy) to assess its findings and recommendations. Also, DoD asked the Academy to identify effective practices for administering post-employment restrictions. The Panel of Academy Fellows convened for this study conducted an independent review and made recommendations to (1) improve the administration of existing restrictions and (2) gather the empirical information needed to conduct a stronger evaluation in the future. In addition, the Panel provides a readily understandable description of the complex set of post-employment restrictions affecting federal employees.

The Academy is pleased to have had the opportunity to assist Congress and DoD in assessing post-employment restrictions and their administration. I appreciate the leadership and stakeholders of DoD who provided important insight and context needed to inform the study. Also, I thank the members of the Academy Panel, who provided invaluable expertise and thoughtful analysis to this undertaking, and the professional study team that provided critical support to the Panel.

A handwritten signature in black ink that reads "Dan G. Blair". The signature is written in a cursive, slightly stylized font.

Dan G. Blair  
President and CEO  
National Academy of Public Administration

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## **ACROMYNS**

Academy, the	The National Academy of Public Administration
Academy Panel	A Panel of National Academy of Public Administration Fellows
Act, the	FY 2010 National Defense Authorization Act
AT&L	The Office of the Undersecretary of Acquisition, Technology, and Logistics
CAPs	Critical Acquisition Positions
COSEPUP	Committee on Science, Engineering, and Public Policy
DAEO	Designated Agency Ethics Official
DARPA	Defense Advanced Research Project Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DII	Defense Industry Initiative
DoD	The Department of Defense
DoD OIG	The Department of Defense Office of the Inspector General
DoD Panel	The Department of Defense Panel on Contracting Integrity
FFRDCs	Federally Funded Research and Development Centers
FY 20xx NDAA	Fiscal Year 20xx National Defense Authorization Act
GAO	U.S. Government Accountability Office
IFBEC	The International Forum on Business Ethical Conduct
IPA	Intergovernmental Personnel Act
JER	Joint Ethics Regulation
JCSEE	The Joint Committee on Standards for Educational Evaluation
OGC	Office of General Counsel
OGE	Office of Government Ethics
OSD	Office of the Secretary of Defense
PAS	Presidential Appointees confirmed by the Senate
PMs	Program Managers
POGO	Project on Government Oversight
SES	Senior Executive Service
WSARA	Weapons Systems Acquisition Reform Act

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## EXECUTIVE SUMMARY

Both DoD and the private sector must draw from a limited pool of individuals with the skills and experience needed to play their respective roles in carrying out the national security mission. The effective utilization and maintenance of this unique talent pool depends on a healthy exchange of personnel between DoD and the private sector.

While vitally important to the nation, this movement of individuals between public and private organizations offers the *potential* for conflicts of interest and the exercise of undue influence on government activities. Real and perceived abuses have led Congress and the Executive Branch over the past several decades to impose a variety of restrictions related to post-government employment intended to protect the public interest against the potential exercise of undue influence and conflicts of interest. Although it is generally recognized that the exchange of people between DoD and the private sector must be regulated, many believe that the body of post-employment restrictions that has evolved over time is so complex that it is deterring highly-qualified people from serving in DoD.

The challenge is to balance two goals: (1) protecting the public interest and (2) ensuring that DoD can attract and retain the talent it needs. This challenge underlies debates about whether more protections are needed following incidents of real and perceived abuse.

DoD was called upon to examine this issue of balance when Congress mandated that the DoD Panel on Contracting Integrity conduct a review of post-employment restrictions applicable to DoD personnel. The stated purpose of the review was “to determine if such policies adequately protect the public interest without unreasonably limiting future employment options of former Department of Defense personnel.”

Congress also directed the National Academy of Public Administration (the Academy) to conduct an independent assessment of DoD’s review and to develop its own recommendations. To complement this effort, DoD asked the Academy to undertake a review to identify effective practices that would help inform key recommendations and implementation actions.

The DoD report concluded that no new restrictions are needed to protect the public interest, but proposed examining whether to expand “cooling-off” period restrictions on representation to include joint commands and DoD Components. DoD also concluded that current restrictions have some impact on DoD’s access to talent, but determined that adding a narrow exception to the current waiver provision of 207(j) is all that need be done.

Due to methodological and analytical weaknesses in DoD’s review, the Academy Panel determined that the DoD report does not persuasively demonstrate that existing restrictions adequately protect the public interest and does not adequately address the impact of restrictions on DoD’s access to talent. Despite these deficiencies, the Panel believes that DoD correctly concluded that no additional restrictions are needed. Moreover, the Academy Panel concluded that DoD did not adequately address the complexity and lack of clarity of restrictions. It believes that complexity and lack of clarity play a role in discouraging some people from seeking

positions in DoD and contribute to public misperception of the effectiveness of existing restrictions. Therefore, existing restrictions should not be expanded until the significant challenges of complexity and lack of clarity are more fully addressed.

The Academy Panel makes recommendations for DoD to address these challenges in the near term by improving the administration of post-employment restrictions, while at the same time laying the basis for a stronger follow-up review in the next few years. The recommendations aimed at improving program administration include:

- Conducting a systematic analysis of the impact of the restrictions on DoD's ability to attract, recruit, and retain both civilian and military talent;
- Developing a comprehensive and focused strategy to help the workforce understand and abide by post-employment restrictions; and
- Conducting a separate study to identify the full scope of its acquisition workforce and clearly distinguish the subset of positions potentially subject to post-employment restrictions, including those engaged in developing requirements.

The Panel believes that Congress must partner with DoD to address the challenges of complexity and lack of clarity by facilitating DoD efforts to improve the administration of post-employment restrictions. To this end, the Panel recommends that Congress – in particular the House and Senate Armed Services Committees – conduct an analysis to assess the impact of post-employment restrictions on other legislative goals for the acquisition workforce, including those established in the Weapons Systems Acquisition Reform Act of 2009.

In its review of effective practices, the Academy Panel found that DoD is a leader among federal agencies in its efforts to promote awareness among its employees about post-employment restrictions. However, effective program administration has been hindered by weaknesses in program oversight. More generally, effective program administration is hindered by the lack of complete, accurate, and readily available data on personnel potentially affected by post-employment restrictions.

To improve the administration of post-employment restrictions, the Academy Panel makes five recommendations. These recommendations encompass targeted training and outreach, leveraging external industry-based ethics community resources, and improved oversight processes. (See Table 1 below for complete listing of the Academy Panel's recommendations.)

Overall, the Panel believes that DoD must develop a more proactive approach to administering post-employment restrictions in order to mitigate the complexity and lack of clarity that threaten DoD's access to talent and the public trust. It lays out the basic elements of such an approach in the concluding section of this report. The Panel also believes that Congress is an important partner in enabling this proactive approach.

**Table 1. Summary of Panel Recommendations**

<b>PANEL RECOMMENDATIONS</b>	
<b>ASSESSMENT OF THE DOD REVIEW OF POST-EMPLOYMENT RESTRICTIONS</b>	
1.	<p><b>The DoD Panel on Contracting Integrity should review its recommendations and collaborate and consult, as appropriate, with the DoD Office of Inspector General (OIG), Office of General Counsel (OGC), and Office of Government Ethics (OGE) to (1) assess the feasibility of implementing those recommendations and (2) develop an integrated implementation strategy. This strategy would require the following steps:</b></p> <ul style="list-style-type: none"> <li>• Collaborate with DoD’s OIG and the OGE to jointly evaluate the feasibility of implementing the recommendations, prioritize those that can reasonably be implemented, determine needed resources, and develop timelines for implementation;</li> <li>• Assess in detail the impact and implications of expanding the one-year cooling off period to subordinate organizations of Joint Commands to ensure there are no unintended consequences;</li> <li>• Collaborate with OGE to ensure that the provisions of 18 U.S.C. §207(j) can be implemented to provide an exception for former personnel who possess unique knowledge in specialized fields and to accommodate FFRDC employees who seek to represent back to the government; and</li> <li>• Collaborate with DoD Components to develop a timeline for implementing the recommendations and provide necessary support for follow through.</li> </ul>
2.	<p><b>Given the complexity and lack of clarity in the extensive framework of post-employment restrictions, DoD should develop a more comprehensive and focused strategy to enhance transparency, improve DoD-wide harmonization, and achieve consistent interpretation of the restrictions. The strategy should include the following actions:</b></p> <ul style="list-style-type: none"> <li>• Develop a comprehensive document that distills and codifies the full body of laws, regulations, and policies into one set of clear, understandable guidance that DoD employees have access to on a daily basis;</li> <li>• Using that document, develop a set of “bright line” principles (similar to the ethics principles in Appendix G) embedded in the restrictions and engage Public Affairs Offices to communicate them widely and frequently to potentially affected employees; and</li> <li>• Conduct an informal workforce survey to (1) assess the level of understanding of the restrictions and the principles they support, (2) identify needed process improvements in administration of the restrictions, and (3) identify target</li> </ul>

## PANEL RECOMMENDATIONS

areas for a follow-up assessment.

3. **Given the importance of the acquisition workforce to the topic of post-employment restrictions, the Panel recommends that DoD conduct a separate study to identify the full scope of its acquisition workforce and clearly distinguish the subset of military and civilian positions and career fields potentially subject to post-employment restrictions, including those engaged in developing requirements. One goal of this study should be to clearly align DoD's own Critical Acquisition Positions with the acquisition functions cited in the study mandate.**
4. **The Under Secretary of Defense for Personnel and Readiness, in coordination with the DoD Office of General Counsel, should take the following actions to clarify the nature and scope of the DoD workforce affected by the restrictions:**
  - Work with the Components to accurately and completely identify the entire population of DoD employees to which the various post-employment restrictions apply;
  - Work with the DoD Components to identify the full scope of DoD organizations that employ personnel who perform duties in the scientific, engineering, and technical occupational areas that may be affected by the post-employment restrictions; and
  - Work with the Components and manpower/human resources policy staffs to develop (1) mechanisms to identify trends and patterns in violations of post-employment restrictions, (2) indicators of the adequacy of post-employment restrictions, and (3) more reliable data that can be used in a follow-up review.
5. **DoD's DAEOs should work with the Human Resources staff to conduct a more systematic and ongoing analysis of the impact of the post-employment restrictions on DoD's ability to attract, recruit, and retain military and civilian talent. To implement this recommendation, DoD could take the following steps:**
  - Examine ways to track and assess the impact of the restrictions on recruitment and retention of civilian talent in critical occupations;
  - Examine exit interviews of employees departing from all organizations that rely on technical, engineering, and scientific talent to determine whether the restrictions have any impact on their decisions to accept or leave employment with DoD, or to serve in positions that are not subject to post-employment restrictions;
  - Conduct an informal workforce survey to determine the extent to which post-employment restrictions affect their decisions to seek promotions to SES positions;

<b>PANEL RECOMMENDATIONS</b>	
	<ul style="list-style-type: none"> <li>• Gather information from new hires to determine at what point in recruitment and hiring processes they were informed of post-employment restrictions and their potential effects on career decisions of said hires; and</li> <li>• Review DoD and Component systems for tracking and assessing recruitment and retention of military personnel subject to post-employment restrictions, to include recruitment and retention in career fields and occupational specialties particularly subject to post-employment restrictions.</li> </ul>
6.	<b>In light of the deficiencies in the current review, DoD should conduct a follow-up review of post-employment restrictions and their administration across DoD Components in two to three years using a more methodologically and analytically sound approach that relies on better empirical evidence. The results of that review should be analyzed and reported to Congress with any necessary recommendations for process improvement, an implementation plan, and a timeline for addressing any new findings. The follow-up review should focus on (1) addressing changes in public perceptions regarding the effectiveness of restrictions in preventing personal conflicts of interest and (2) assessing the impact of the restrictions on DoD's ability to attract and retain talent.</b>
7.	<b>Beyond the actions taken by DoD, the Panel recommends that Congress (in particular, the House and Senate Armed Services Committees) conduct an analysis to assess the impact of the post-employment restrictions on other legislative goals affecting the acquisition workforce, including those outlined in the Weapons Systems Acquisition Reform Act of 2009 (Public Law 111-23, enacted on May 22, 2009), which seeks to motivate and recognize excellent performance by individuals and teams that comprise the Defense acquisition workforce.</b>
<b>EFFECTIVE PRACTICES REVIEW</b>	
8.	<b>DoD should consider providing voluntary training on post-employment restrictions targeted at DoD personnel involved in establishing requirements who do not receive annual training.</b>
9.	<b>DoD should consider undertaking targeted outreach supporting recruitment for positions important to DoD's mission where there is significant concern that misunderstanding of post-employment restrictions may be deterring potential highly qualified candidates.</b>
10.	<b>DoD should consider ways to collaborate more systematically with the Defense Industry Initiative and the International Forum on Business Ethical Conduct to (1) obtain regular feedback on the effectiveness of DoD ethics training and advice; and (2) stay abreast of innovations that might inform improvements in practice. DoD should leverage the Forum's efforts to harmonize standards across the defense industry.</b>

<b>PANEL RECOMMENDATIONS</b>
<b>11. The DoD should make it a priority to ensure that the ethics opinion database is organized to enable ethics officials to readily conduct searches as needed to support the goal of synchronizing ethics opinion letters across DoD.</b>
<b>12. DoD should consider establishing a formal system at the Department level for the review of written opinion letters regarding the applicability of post-employment restrictions. The goal of this review system should be to synchronize opinion letters across DoD.</b>



## **SECTION I.**

### **BACKGROUND AND INTRODUCTION**

The FY 2010 National Defense Authorization Act (the Act) mandated that the Department of Defense Panel on Contracting Integrity (the DoD Panel) review policies relating to post-employment restrictions applicable to the DoD<sup>1</sup>. The purpose of that review was “to determine if such policies adequately protect the public interest without unreasonably limiting future employment options of former Department of Defense personnel.” More specifically, the Act required that the review consider the extent to which current post-employment restrictions:

- (1) Appropriately protect the public interest by preventing personal conflicts of interest and preventing DoD officials from exercising undue influence on the DoD;
- (2) Appropriately require disclosure of personnel accepting employment with contractors of the DoD involving matters related to their official duties;
- (3) Use appropriate thresholds in terms of salary or duties, for establishment of such restrictions;
- (4) Are sufficiently straightforward and have been explained to DoD personnel so that such personnel are able to avoid potential violations of post-employment restrictions and conflicts of interest in interactions with former DoD personnel;
- (5) Appropriately apply to all personnel performing duties in acquisition-related activities, such as personnel involved in: the establishment of requirements; testing and evaluation; and the development of doctrine;
- (6) Ensure that the DoD has access to world-class talent, especially with respect to highly qualified technical, engineering, and acquisition expertise;
- (7) Ensure that service in the DoD remains an attractive career option.

The Act also required that the Secretary of Defense engage the National Academy of Public Administration (the Academy) to “assess the findings and recommendations of [DoD’s] review” and provide its assessment of the review to the Secretary of Defense along with any recommendations of its own.

In addition to the review, the DoD requested that the Academy undertake a review of the effective practices used by other federal departments and agencies to inform key recommendations and implementation actions.

### **STUDY METHODOLOGY**

To guide its assessment, the Academy Panel and study team constructed its own unique assessment framework. The framework is drawn largely from the Program Evaluation

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<sup>1</sup> The DoD contracted with the Academy to provide research support for the DoD Panel’s review. The Academy’s role in this project was limited to helping collect data needed by the DoD Panel to accomplish its review. Toward this end, the Academy conducted interviews and focus groups with internal and external stakeholders. The Academy did not advise on the methodology of the DoD Panel review and was not involved in the formulation of the DoD Panel’s findings or recommendations to the Secretary of Defense. The Academy’s final report was submitted to DoD on November 15, 2010.

Standards issued by the Joint Committee on Standards for Educational Evaluation (JCSEE)<sup>2</sup> and supplemented by guidance and standards<sup>3</sup> issued by Government Accountability Office (GAO). The framework allowed the Academy Panel to assess not only the DoD findings and recommendations, but also the feasibility and utility of the DoD report.

The Academy Panel used this framework to assess the DoD review against four (4) categories of standards in the following areas: (1) design, (2) execution, (3) reporting, and (4) utility/feasibility. The framework is discussed in greater detail in Section 3 of this report.

To support its assessment of the DoD review against the framework, the Academy study team undertook a mix of primary and secondary research as needed to:

- Determine congressional intent for the review;
- Clarify DoD findings and recommendations;
- Learn more about the context of issues raised in the report;
- Obtain external stakeholder perspective on the review;
- Understand current post-employment restrictions and their application; and
- Learn more about the universe of DoD employees covered by the restrictions

The study team conducted interviews with congressional committee and personal staff in the House and Senate. These interviews were aimed at learning more about the background and intent of the mandated review and getting congressional perspective on how well the review addressed the issues. The study team also interviewed DoD officials to clarify the report's findings and recommendations and to get the perspective of component officials on particular findings and recommendations bearing on their particular domain.

The study team engaged two groups of external stakeholders representing different perspectives on how best to balance the goals of protecting public interest and ensuring DoD's access to talent. The study team convened a focus group of leaders from the contractor community including participants from the defense industry and Federally Funded Research and Development Centers (FFRDCs). Also, the team interviewed a senior attorney with the Project on Government Oversight (POGO), a leading public advocacy organization instrumental in the Revolving Door Working Group<sup>4</sup> study cited in the DoD report. Both stakeholder groups were engaged as part of the research supporting the DoD review. The contractor community focus

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<sup>2</sup> The JCSEE was founded in 1975 as a coalition of major professional associations concerned with the quality of evaluation. The JCSEE is approved by the American National Standards Institute to develop standards to guide and improve the quality of educational programs. The standard names and statements are under copyright to the JCSEE, are approved by the American National Standards Institute, and have been endorsed by the American Evaluation Association and 14 other professional organizations.

<sup>3</sup> U.S. Government Accountability Office, Government Auditing Standards, 2011 Internet Version, August 2011

<sup>4</sup> When its 2005 report was published, the Revolving Door Working Group included 15 members: American Corn Growers Association, Center for Corporate Policy, Center for Environmental Health, Center for Science in the Public Interest, Center of Concern/Agribusiness Accountability Initiative, Common Cause, Corporate Research Project of Good Jobs First, Edmonds Institute, Government Accountability Project, Institute for Agriculture and Trade Policy, Organization for Competitive Markets, Project on Government Oversight, Public Citizen, Public Employees for Environmental Responsibility, and Revolt of the Elders.

group and POGO interview provided perspective on the DoD report overall and individual findings and recommendations.

The study team reviewed available external studies assessing post-employment restrictions, including reports by the GAO and the Office of Government Ethics (OGE). The team also reviewed relevant statutes, executive orders, regulations, and agency guidance documents to ensure a full understanding of existing restrictions and their application. This review was complemented by an expert interview with the OGE.

The team also analyzed data on the DoD workforce to further define the population of DoD employees covered by existing post-employment restrictions, and to better understand the composition of the groups most likely to be affected by the restrictions.

## **Effective Practices Review**

In conducting the review, the study team drew on primary and secondary research including:

- Interviews with external experts in government and industry;
- Interviews with senior ethics officials at DoD and the services;
- Review of external expert studies and other expert resources available on-line;
- Review of federal and DoD-specific requirements applicable to ethics program administration; and
- Review of ethics community resources available on-line through web pages maintained by the DoD and component ethics offices, such as the Ethics Counselor Deskbook.

## **ORGANIZATION OF THE REPORT**

In addition to this background and introduction, the report includes the following four sections:

- **Section II** provides an overview and summary of the post-employment restrictions and their applicability to the DoD workforce.
- **Section III** provides the Panel's assessment of the DoD report and its individual findings and recommendations, along with the Panel's own findings and recommendations based on the review.
- **Section IV** discusses the Panel review of effective practices and the Panel's findings and recommendations in this area.
- **Section V** discusses the Academy Panel's advice to DoD on moving forward.

The report includes the following six appendices:

- Appendix A: Panel and Staff
- Appendix B: List of Individuals Contacted
- Appendix C: Framework for Assessing the DoD Review of Post-Employment Restrictions
- Appendix D: Congressional Mandate for the Study
- Appendix E: Summary of DoD Findings and Recommendations

- Appendix F: Summary of OGE Review of Agency Ethics Program Practices
- Appendix G: OGE's 14 Principles of Ethical Conduct

## SECTION II.

### SUMMARY OF POST-EMPLOYMENT RESTRICTIONS AND THEIR APPLICABILITY TO THE DOD WORKFORCE

The post-employment restrictions affecting DoD employees are embedded in a number of federal statutes, as well as both government-wide and DoD-specific regulations. Post-employment restrictions date back to 1872, although the first generally applicable criminal post-employment statute did not appear until 1944.<sup>5</sup> The body of restrictions has grown to become an increasingly complex set of guidelines making the interpretation, application, and enforcement of these post-employment restrictions inherently difficult for DoD and other federal agencies. Within this post-employment restrictions regime, requirements are dispersed across four different statutes, one executive order, three different government-wide regulations, and—for the purpose of this study—two DoD-specific regulations.

In addition to the large number of restrictions, the sheer length of a number of the individual restrictions themselves is indicative of the complexity and inherent difficulty of working within the post-employment restrictions regime. For example, the primary statute, 18 U.S.C. §207, is over 11 pages long and consists of 11 individual sections. In addition, DoD's guidance on post-employment restrictions is presented in an 18-page chapter as part of its extensive ethics guidance in the Department's 122-page Joint Ethics Regulations (DoD 5500.07.R). Furthermore, the post-employment restrictions regime continues to evolve. As recently as November 18, 2011, the Defense Federal Acquisition Regulation Supplement (DFARS) was amended to require contractors submitting proposals to the government to represent whether former DoD officials employed by that contractor are in compliance with the post-employment restrictions (76 FR 71826). This indicates that the already complex body of law defining post-employment restrictions may continue to expand. It is important to note, however, that none of these restrictions, individually, or in the aggregate, bar any individual, regardless of rank or position, from accepting employment with any private or public employer after leaving public service.

Post-employment restrictions are part of the broader ethics program administered by the DoD Office of General Counsel in accordance with applicable statutes, regulations, and policies. It is DoD's policy<sup>6</sup> that a single, uniform source of standards of ethical conduct and ethics guidance will be followed within DoD. The DoD Components<sup>7</sup> are charged with implementing and enforcing post-employment restrictions consistent with Office of Government Ethics (OGE) and DoD-wide guidance. Below the DoD headquarters level, ultimate responsibility for the ethics program rests with the Component Heads, who are responsible for personally establishing and maintaining the DoD Component's ethics program and for ensuring compliance with post-

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<sup>5</sup> Office of Government Ethics, *Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment*, January 2006, p. 11.

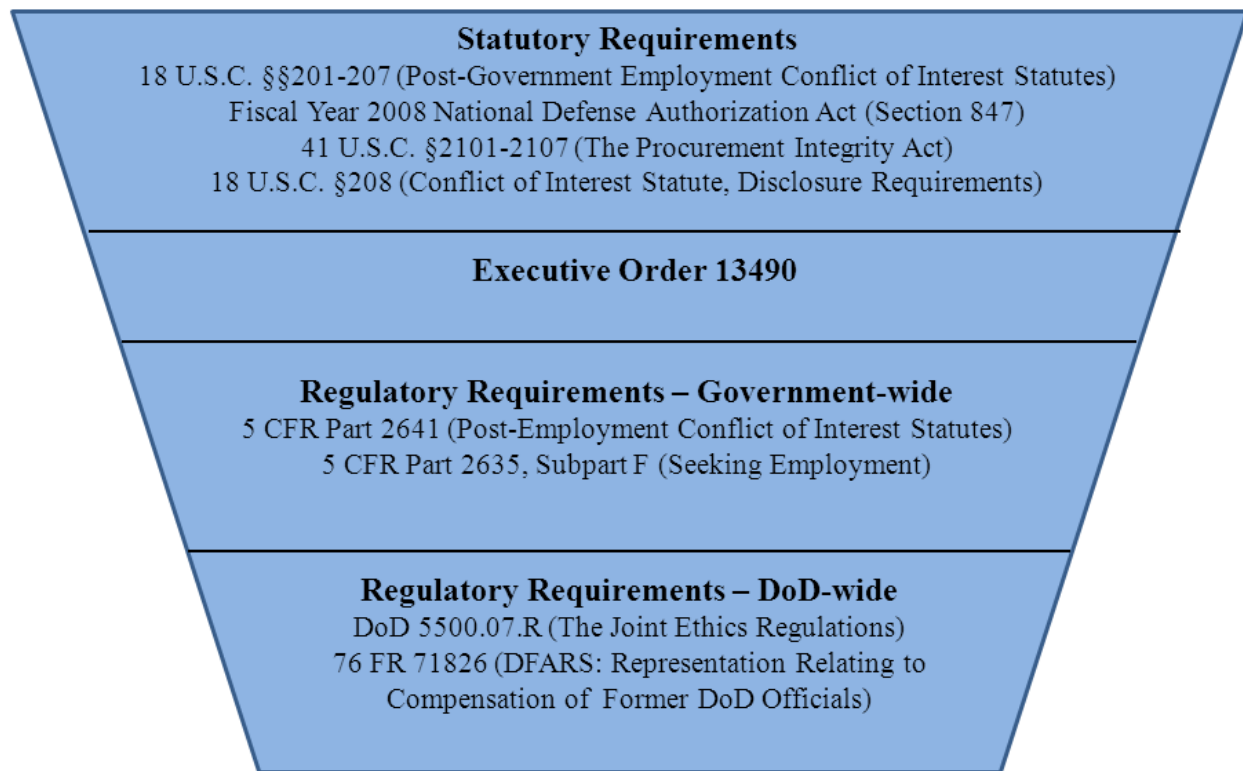
<sup>6</sup> DoD Joint Ethics Regulation, DoD 5500-07.R, dated November 29, 2007, p.3.

<sup>7</sup> Appendix B of 5 C.F.R. 2641 defines the DoD Components as (1) Department of the Army, (2) Department of the Air Force, (3) Department of the Navy, (4) Defense Information Systems Agency, (5) Defense Intelligence Agency, (6) Defense Logistics Agency, (7) Defense Threat Reduction Agency, (8) National Geospatial-Intelligence Agency, (9) National Reconnaissance Office, and (10) the National Security Agency.

employment restrictions. The Component Head is responsible for appointing a Designated Agency Ethics Official (DAEO) to oversee and supervise the Component's ethics program for both civilian and military employees. The DAEO's responsibilities include implementation and administration of all aspects of the DoD Component's ethics program, including post-employment restrictions.

Figure 2-1 shows the hierarchy of the post-employment restrictions applicable to DoD employees.

**Figure 2-1. The Hierarchy of Post-Employment Restrictions**



Each category of restrictions is discussed below.

## **STATUTORY REQUIREMENTS**

Post-employment restrictions governing DoD employees are included in Section 207 of title 18 U.S.C.; Section 847 of the Fiscal Year 2008 NDAA; and Sections 2101-2107 of 41 U.S.C., the Procurement Integrity Act. Additionally, Section 208 of 18 U.S.C. prevents conflict of interest on the part of DoD personnel by making it a crime to personally and substantially participate in a particular matter that has a direct and predictable effect on his or her financial interest.

## **Section 207 of 18 U.S.C. Restrictions on former officers, employees, and elected officials of the Executive and Legislative Branches.<sup>8</sup>**

The provision of federal law with applicability to the broadest range of DoD employees is a criminal statute, codified at 18 U.S.C. §207. Section 207 places restrictions on the post-employment activities of individuals leaving government service or high-level Executive Branch positions to prohibit such individuals from engaging in certain activities on behalf of persons or entities other than the United States government. Some restrictions in Section 207 apply to all DoD employees, regardless of level of position or subject matter addressed. Other restrictions in this section apply only to employees holding positions at certain levels of authority or pay. Since its enactment in 1962, Section 207 of title 18 U.S.C. has been amended several times. As a consequence of these amendments, former Executive Branch employees are subject to varying post-employment restrictions depending upon the date they terminated government service (or service in a “senior” or “very senior” employee position).

The Section 207(a)(1) **lifetime restriction** prevents a former federal employee who, while employed by the government, participated personally and substantially in a particular matter involving specific parties from “switching sides” and representing back to the U.S. government on behalf of a non-federal entity with the intent to influence. This lifetime ban is a narrow, case-specific restriction that in practice would apply to an individual who worked substantially on a particular government matter such as a specific contract, a particular investigation, or a certain legal action, involving specifically-identified private parties, and who then leaves the government and attempts to represent those private parties before the government on that same specific matter. This restriction does not, however, prohibit the former employee from providing “behind-the-scenes” assistance to another person who might then approach the government.

The Section 207(a)(2) **two-year restriction** is similar to the lifetime restriction in Section 207(a)(1). However, the Section 207(a)(2) restriction only lasts two years from the termination of government employment and does not require personal and substantial participation like the lifetime ban, but only that there was a particular matter involving specific parties that was actually pending under the former employee’s official responsibilities within one year prior to termination of employment. This two-year restriction, while specific in its time limitation, is potentially broader in matters covered, as it does not require that the former government employee had personal and substantial involvement in the matter while working for the government, but merely that it was under his or her official responsibility.

The Section 207(c) **one-year restriction prevents former “senior employees”** from representing any entity on any matter to personnel of that employee’s former agency for a period of one year from the date of termination of employment with that agency. This one-year “cooling off” period holds regardless of whether or not the individual worked on that matter. “Senior employees” covered by this

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<sup>8</sup> Section 207 of 18 U.S.C. does not apply to enlisted personnel.

restriction include those paid under the Executive Schedule<sup>9</sup> and those who served at the military rank of 0-7 or above – including any individual whose rate of pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$155,440.50 for 2010 and 2011). This restriction differs from the first two in that it is applied more broadly to any matter on which the former employee seeks official action by the employee’s former department or agency, regardless of whether or not the former official had worked on the matter while with the government. Since the one-year “cooling-off” period applies to communications to one’s former agency or department in the Executive Branch, it does not restrict former Executive Branch officials from leaving the government and then immediately “lobbying” the United States Congress, its Members, or employees.<sup>10</sup>

Section 207(d) is similar to Section 207(c), except that it is a **two-year ban and applies to “very senior personnel”** of the Executive Branch and its agencies. These “very senior personnel”<sup>11</sup> include any person who serves in the position of the Vice President of the United States, is employed in an Executive Branch position at a rate of pay payable for level I of the Executive Schedule (\$199,700) or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule (\$179,700)<sup>12</sup>, or is appointed by the President<sup>13</sup> or Vice President.<sup>14</sup> Similar to the “cooling-off” period for “senior” employees, these restrictions on “very senior” officials do not prohibit any former Executive Branch official from leaving the federal government and immediately lobbying the Congress.

The Department of Justice is charged with enforcement of these criminal statutes under 5 C.F.R. §2641.103(a), which – if violated – may result in five years of imprisonment and/or a \$50,000 fine per violation.

The DoD report provides an excellent matrix summarizing the applicability to DoD employees of the main restrictions in 18 U.S.C. §207. The matrix is presented in Table 2-1.

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<sup>9</sup>Executive Schedule positions are the highest-ranked appointed positions in the executive branch of the government. There are five levels within the Executive Schedule, with salaries currently ranging from \$145,700 to \$199,700.

<sup>10</sup> Congressional Research Service, *Post-Employment, “Revolving Door,” Laws for Federal Personnel*, May 12, 2010, p.5.

<sup>11</sup> The Secretary of Defense is the only person at DoD to whom this restriction would apply.

<sup>12</sup> [http://www.opm.gov/oca/compmemo/2010/2011PAY\\_Attach1.pdf](http://www.opm.gov/oca/compmemo/2010/2011PAY_Attach1.pdf)

<sup>13</sup> 3 U.S.C. §105(a)(2)(A).

<sup>14</sup> 3 U.S.C. §106(a)(1)(A).



**Table 2-1. Matrix of Coverage of 18 U.S.C. §207 Restrictions**

<b>Personnel Status</b>	<b>1-Yr Cooling Off (Statutory)</b>	<b>2-Yr Cooling Off (By Pledge)</b>	<b>Representation Ban (2-Yr)</b>	<b>“Matter” Lifetime Ban</b>
<b>1. Political</b>				
a. Presidential Appointees Confirmed by Senate (PAS)	Yes	Yes	Yes	Yes
b. Non-career SES	Yes	Yes	Yes	Yes
c. Schedule C – Supervisor	No	No	Yes	Yes
d. Schedule C – Non Supervisory	No	No	No	Yes
<b>2. Civilian</b>				
a. SES – Salary = or > \$155,440.50	Yes	No	Yes	Yes
b. SES – Salary < \$155,440.50	No	No	Yes	Yes
c. GS Grade Supervisor	No	No	Yes	Yes
d. GS Grade Non-Supervisory	No	No	No	Yes
<b>3. Military</b>				
a. Flag & General Officer	Yes	No	Yes	Yes
b. Officer – Supervisor	No	No	Yes	Yes
c. Officer – Non Supervisory	No	No	No	Yes
d. Enlisted	No	No	No	No

Personnel Status	1-Yr Cooling Off (Statutory)	2-Yr Cooling Off (By Pledge)	Representation Ban (2-Yr)	“Matter” Lifetime Ban
<b>4. Special Govt. Employees (SGEs)<sup>15</sup></b>				
a. Consultant – Supervisor >60 days	No	No	Yes	Yes
b. Consultant – Supervisor = or < 60 days	No	No	Yes	Yes
c. Consultant – Non Supervisory >60 days	No	No	No	Yes
d. Consultant – Non Supervisory = or <60	No	No	No	Yes
e. Advisory Committee Member >60	No	No	No	Yes
f. Advisory Committee Member = <60	No	No	No	Yes
<b>5. Highly- Qualified Experts<sup>16</sup></b>				
a. If paid at or above \$155,440.50 in 2010 and supervise	Yes	No	Yes	Yes
b. If paid as in (a) and does not supervise	Yes	No	No	Yes
c. If paid less than \$155,440.50 in 2010 and supervise	No	No	Yes	Yes
d. If paid in (c) and does not supervise	No	No	No	Yes

<sup>15</sup> Special Government Employees include all consultants and members of advisory committees. Should an individual work for the government either as an employee or as an SGE, for more than 60 days during the immediately preceding period of 365 consecutive days, then the individual cannot represent their employer before the government (18 U.S.C. §§ 203 and 205).

<sup>16</sup> A Highly-Qualified Expert is an individual possessing expert knowledge or skills not available in DoD that are needed to satisfy an emerging and relatively short-term non-permanent requirement.

<b>6. Intergovernmental Personnel Act (IPA)<sup>17</sup></b>				
a. If paid at or above \$155,440.50 in 2010 and supervise	Yes	No	Yes	Yes
b. If paid as in (a) and not supervise	Yes	No	No	Yes
c. If paid less than \$155,440.50 in 2010 and supervise	No	No	Yes	Yes
d. If paid as in (c) and not supervise	No	No	No	Yes

*Source: DoD report, p. 18.*

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<sup>17</sup> The Intergovernmental Personnel Act provides for the temporary assignment of personnel between the Federal Government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations.

## **Fiscal Year 2008 National Defense Authorization Act, Section 847**

Section 847 of the FY 2008 NDAA requires that certain current and former officials expecting to work for a DoD contractor **within two years of leaving DoD must request a written opinion regarding the applicability of post-employment restrictions** to that individual's activities prior to receiving compensation from said contractor. This section applies to:

- Those officials who have participated personally and substantially in an acquisition exceeding \$10 million and who also serve or have served in an Executive Schedule position,
- Senior Executive Service or General or Flag Officer positions compensated at a pay rate of 0-7 or above, or
- Those who serve or have served as a program manager, deputy program manager, procuring contract officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount exceeding \$10 million.

A request for an opinion letter must be submitted in writing by the employee to the appropriate ethics official, who must provide the written opinion regarding the applicability of post-employment restrictions to the employee making the request within 30 days of receiving the request. Each written request and the subsequent written opinion are to be retained by the DoD in a central repository for no less than five years, and are subject to periodic reviews conducted by the Inspector General of the DoD. DoD contractors are prohibited from knowingly compensating a former DoD official without confirming that the former official has sought and received an opinion letter.

## **41 U.S.C. §2101-2107, The Procurement Integrity Act**

The Procurement Integrity Act **prohibits former government officials previously involved in DoD contracts exceeding \$10 million from accepting compensation from a DoD contractor for a period of one year after the “designated date.”** For those officials who acted in the capacity of procuring contract officers, source selection authorities, members of source selection evaluation boards, or chiefs of financial or technical evaluation teams, the designated date is either the date of selection or the date of award – depending on when that official served. For program managers, deputy program managers, and administrative contracting officers, the designated date is the last day of service in those positions.

The one-year cooling off period also applies to officials who personally made any of the following decisions in contracts that exceeded \$10 million: (1) awarding contracts, subcontracts, or modifications of contracts or subcontracts, or tasking or delivering orders; (2) establishing overhead or other rates; (3) approving issuance of a contract payment; or (4) paying or settling a claim. In these scenarios, the designated start date of the one-year cooling off period begins on the date of the decision.

One rare, but important, exception noted in the DoD report is that former officials may accept compensation from any division or affiliate of the contractor that does not produce the same or similar products or services as the entity responsible for a contract worth \$10 million or more.

### **18 U.S.C. §208 – Conflict of Interest Statute**

This statute establishes that it is illegal for Executive Branch personnel to participate personally and substantially in a particular matter that has a direct and predictable effect on that employee's financial interest. Federal employees cannot participate in any particular matter involving a private or commercial organization with whom they are negotiating for employment. DoD personnel must either terminate any such employment negotiations that may constitute conflicts of interest or disqualify themselves from participating in the particular matter with the DoD. "Negotiating" means a communication with another person or their intermediary with the mutual view toward reaching an agreement on possible employment. The restriction does not prohibit requesting a job application or submitting a resume "or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class."<sup>18</sup>

### **Other Statutory Restrictions**

In addition to the post-employment restrictions that apply to DoD employees as members of the Executive Branch, certain restrictions specific to the Legislative Branch could also ultimately affect DoD employees with prior employment history in the legislative area.<sup>19</sup> Specifically, the Ethics Reform Act of 1989 added post-employment restrictions for Members of Congress and certain senior congressional staffers, effective January 1, 1991.<sup>20</sup> Titled the "Honest Leadership and Open Government Act," the law includes criminal provisions that prohibit former Members of the House from "lobbying" or making advocacy communications on behalf of any person to current Members of either House of Congress, or to any Legislative Branch employee, for one year after the individual leaves Congress. Members of the Senate are prohibited from similar post-employment advocacy, but for a period of two years after leaving the Senate. Additionally, senior staff employees are subject to certain one-year "cooling off" periods regarding their advocacy contacts with their former offices. Furthermore, both former Members and former senior staff are limited in representing official foreign interests before the U.S. government, and in taking part in certain trade and treaty negotiations for one year after leaving congressional service.

These Legislative Branch restrictions must be recognized as part of the complex system of post-employment restrictions that come into play when an individual is hired, promoted, or leaves DoD.

## **DISCLOSURE REQUIREMENTS**

The Congressional mandate directing the DoD review requires it to determine whether the current post-employment restrictions appropriately require disclosure of personnel accepting

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<sup>18</sup> 5 C.F.R. §2635.603(b)(1)(ii).

<sup>19</sup> Legislative Branch requirements, while relevant in establishing the cumulative impact of the entire scope of post-employment restrictions, have limited impact on current DoD employees.

<sup>20</sup> P.L. 110-81, September 14, 2007.

employment with contractors of DoD involving matters related to their effective duties. These disclosure requirements, while not the central focus of the Panel’s assessment of the DoD report, are relevant to the more comprehensive conflict of interest prevention regime and the promotion of ethics and compliance across government agencies.

The first disclosure requirement, in accordance with 41 U.S.C. §2103, states that government personnel participating personally and substantially in competitive federal agency procurements above the current simplified purchase threshold must immediately submit a written report to their supervisor and Ethics Counselor if they contact or are contacted by a bidder/offeror in said procurement. A federal employee interested in working for the contractor in the future must disqualify himself or herself from further personal and substantial participation in the procurement project. The disqualification lasts until the designated ethics official states otherwise.

The second disclosure requirement is the annual financial disclosure applicable to all DoD political appointees, General and Flag Staff Officers appointed at O-7 and above, members of the Senior Executive Service, and all other DoD officials deemed to have significant procurement decision-making authority. Senior officials file an OGE 278 Public Financial Disclosure Form and other DoD personnel file an OGE Form 450 Confidential Financial Disclosure Form for the purpose of identifying and mitigating actual or potential conflicts of interest by illuminating filers’ financial interests and outside activities. Both forms require that the filer report the future employer, anticipated duties, and the date that employment was accepted for any arrangements the employee has entered into for future employment outside of the DoD.

## **EXECUTIVE ORDER 13490**

Executive Order 13490, which is also referred to as “the Obama Ethics Pledge,” was signed by the President on January 21, 2009. The Executive Order requires those senior political appointees subject to the 18 U.S.C. §207(c) one-year cooling off restriction from representing anyone or any entity before their former Department for a total of two years (one under the “cooling-off” period, plus an additional year as a part of the Executive Order) from the end of their appointment. Furthermore, all political appointees may not lobby a “covered Executive Branch official or non-career Senior Executive Service appointee” as a “registered lobbyist” until after the end of the administration. This mandated “two-year cooling-off period” is based on the duties and salary thresholds established in 18 U.S.C. §207(c), and applies regardless of whether or not the position requires Senate confirmation.

## **REGULATORY REQUIREMENTS – GOVERNMENT-WIDE**

In addition to the above statutory requirements, 5 C.F.R. Part 2641 and Part 2635, Subpart F establish government-wide regulatory requirements that specify the content and applicability of the various statutes, particularly 18 U.S.C. §207-208, to former federal employees.

## **Post-Government Employment Conflict of Interest Statutes [5 C.F.R. Part 2641]**

Part 2641 gives a detailed description of the content of 18 U.S.C. §207 and its applicability to former employees serving at various levels of the Executive Branch or independent agencies. Part 2641 – as DoD states – is a “robust, detailed, comprehensive, and exhaustive post-government employment regulation.” Part 2641 dissects each prohibition in 18 U.S.C. §207, describing the applicability, exceptions and waivers to, and the commencement and length of each individual restriction. As DoD indicates, definitions to help clarify vague terms—such as “intent to influence,” “particular matter,” “personal and substantial participation,”—and over 120 examples are included in the over 40-page regulation to illustrate what does and does not constitute a violation of the criminal statutes.

## **Seeking Employment [5 C.F.R. Part 2635, Subpart F]**

Part 2635, Subpart F specifically addresses the requirement established by 18 U.S.C. §208(a) that an employee disqualify himself or herself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person from whom they are seeking employment. The term “seeking employment” encompasses actual employment negotiations as well as more preliminary efforts to obtain employment – such as sending an unsolicited resume. However, the regulation also describes some applicability exceptions. The six-page document provides several definitions and 15 examples to illustrate what does and does not constitute a violation of the “seeking employment” rule.

## **REGULATORY REQUIREMENTS – DOD-WIDE**

DoD-specific post-employment regulatory requirements, as they apply to all DoD military and civilian personnel, are stated in the DoD Joint Ethics Regulations. Additionally, the recent amendment to the Defense Federal Acquisition Regulation Supplement, found in 76 FR 71826, adds a new requirement for DoD contractors to ensure employees who were former DoD officials are in compliance with the established post-employment restrictions.

## **Joint Ethics Regulations [DoD 5500.07.R]**

The Joint Ethics Regulation (JER) is DoD’s supplemental ethics regulation. The JER applies to all DoD personnel (with some exceptions for enlisted personnel) and, in addition to giving guidance on 18 U.S.C. §207, 5 C.F.R. 2635, 5 C.F.R. Part 2641, and Executive Order 13490, Chapter 9 addresses post-employment restrictions unique to DoD military and civilian personnel. It also outlines the availability of post-employment counseling and advice through DoD ethics counselors. One regulatory example that DoD shares in its report, is the requirement for all non-enlisted DoD personnel to receive a post-employment briefing prior to termination of DoD employment. DoD also uses the JER example in Chapter 8 that requires that all public financial disclosure filers in DoD certify annually that they are aware of and have not violated the disqualification and employment restrictions established in 18 U.S.C. §207, 18 U.S.C. §208, and 41 U.S.C. §§2101-2107. Chapter 11 of the JER also requires discussion of disqualification and employment restrictions during annual DoD ethics briefings.

## **Defense Federal Acquisition Regulation Supplement: Representation Relating to Compensation of Former DoD Officials [76 FR 71826]**

On June 6, 2011, an amendment was proposed to the DFARS (at 76 FR 32846) to add a requirement for contractors submitting proposals to DoD to represent whether former DoD officials employed by the contractors are in compliance with post-employment restrictions. Effective November 18, 2011, the DFARS amendment adds a new representation requirement for contractors to complete and provide as part of each proposal a representation to ensure that the contractor's employees who are former DoD officials are in compliance with the post-employment restrictions established by 18 U.S.C. 207, 41 U.S.C. 2101-2107, and 5 CFR Part 2635 and 2641.

In summary, the statutes and regulations covering post-employment restrictions present a vast array of dispersed requirements affecting DoD employees. When the scope and complexity of the workforce is considered, the challenge of ensuring compliance becomes even more daunting.

### **GENERAL CHARACTERISTICS OF THE DOD WORKFORCE**

Given the immense size and diversity of the DoD workforce, post-employment restrictions cannot be considered in a vacuum. While upholding ethical values for current and former government employees and preventing conflicts of interest are important goals, it is also important to ensure that these restrictions appropriately cover all groups within the vast DoD workforce who have the potential to exert undue influence in their post-government employment while also preserving DoD's access to world-class talent.

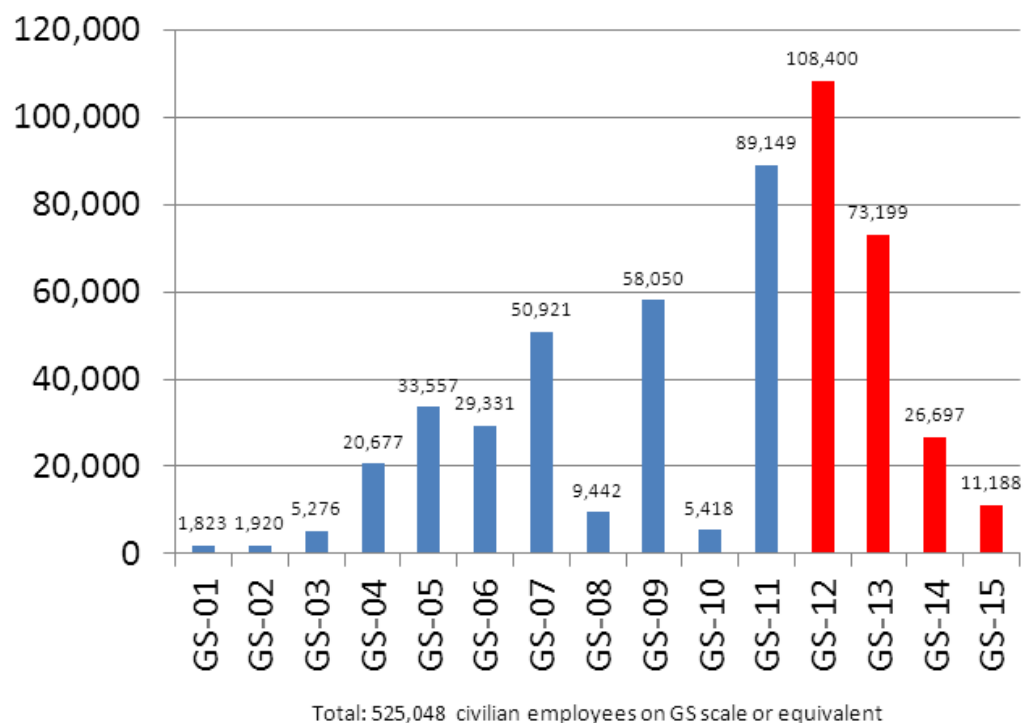
The scope and magnitude of the DoD workforce cannot be overstated. Figure 2-2 shows the distribution of civilian employees in General Schedule (and equivalent) positions.<sup>21</sup> As shown, the majority (over 300,000 employees or 57 percent) of DoD's General Schedule and equivalent workforce is dispersed across grades GS-12 through 15, where the post-employment restrictions are more likely to apply. As reflected in Figure 2-2, this represents a much larger population of potentially impacted employees than the 3,280 senior and political appointees that DoD indicated are most likely to be affected by the post-employment restrictions.

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<sup>21</sup> The data only show General Schedule and equivalent positions. An additional 151,183 DoD employees occupy blue-collar positions, which are much less likely to be affected by the post-employment restrictions. <<http://sia.dapp.dmdc.osd.mil/personnel/CIVILIAN/fy2011/june2011/consolid.pdf>>.



**Figure 2-2. Distribution of DoD Civilian Employees in General Schedule and Equivalent Positions**



*Source: DoD's Office of General Counsel*

In addition to DoD civilian employees, DoD has the added challenge of ensuring that its large military workforce complies with applicable post-employment restrictions. All non-enlisted military personnel are covered by the lifetime “matter” ban. While the DoD report identifies 950 General and Flag Officers also covered by the two-year representation ban, a certain portion of the remaining 237,056 officers with supervisory roles may also be covered by this restriction as well.

**Table 2-2. Active Duty Military Officers by Rank and Grade**

Rank/Grade – All	Army	Navy	Marine Corps	Air Force	Total – All Services
O10	12	10	4	13	39
O09	55	39	18	46	158
O08	107	76	32	103	318
O07	157	119	32	156	464
O06	4,534	3,430	697	3,536	12,197

<b>Rank/Grade – All</b>	<b>Army</b>	<b>Navy</b>	<b>Marine Corps</b>	<b>Air Force</b>	<b>Total – All Services</b>
O05	10,060	7,008	1,929	9,946	28,943
O04	17,395	10,601	3,930	14,484	46,410
O03	29,868	16,873	6,578	22,298	75,617
O02	11,267	6,522	3,618	7,297	28,704
O01	8,209	6,713	3,001	6,684	24,607
O00	0	1	0	0	1
<b>Total Commanding Officers</b>	<b>81,664</b>	<b>51,392</b>	<b>19,839</b>	<b>64,563</b>	<b>217,458</b>
W05	625	56	103	0	784
W04	2,576	459	279	0	3,314
W03	3,599	615	534	0	4,748
W02	6,793	486	885	0	8,164
W01	2,332	0	256	0	2,588
<b>Total Warrant Officers</b>	<b>15,925</b>	<b>1,616</b>	<b>2,057</b>	<b>0</b>	<b>19,598</b>
<b>TOTAL OFFICERS</b>	<b>97,589</b>	<b>53,008</b>	<b>21,896</b>	<b>64,563</b>	<b>237,056</b>

*Source: Defense Manpower Data Center on January 3, 2012. DRS #48981*

In addition to the officers depicted in the table, senior enlisted personnel who have significant influence on contracting actions are also covered under certain provisions of the Procurement Integrity Act. Table 2-2 illustrates the potential scope of military personnel covered by post-employment restrictions.

As illustrated by Table 2-3, a significant portion of the DoD General Schedule workforce is employed in scientific, technical, and engineering positions that may be impacted by the post-employment restrictions. Given the importance of these employees to the success of DoD's mission, it is necessary to examine carefully the impact of the post-employment restrictions on access to talent in these areas.

**Table 2-3. Civilian Employees in Scientific, Engineering, Technical, and Acquisition Fields**

<b>Occupational Group</b>	<b>Total Number of Employees</b>
GS-400 – Natural Resources Management and Biological Science Group	4,783
GS-600 – Medical, Hospital, Dental, and Public Health Group	32,502
GS-700 – Veterinary Medical Science Group	51
GS-800 – Engineering and Architecture Group	62,822
GS-1102 – Contracting Series	21,530
GS-1300 – Physical Sciences Group	6,125
GS-1500 – Mathematical Sciences Group	4,755
<b>TOTAL</b>	<b>132,569</b>

*Source: DoD*

Additionally, as illustrated in Table 2-4, DoD military officers who perform work in similar occupations increase significantly the number of DoD employees who are engaged in scientific, engineering, technical, acquisition, and other related occupations and thus may be covered by the complex regime of post-employment restrictions.

**Table 2-4. Military Officers in Scientific, Engineering, and Acquisition Fields**

<b>Occupational Group</b>	<b>Total Number of Employees</b>
Engineering and Maintenance Officers	31,248
Scientists/ Professors	14,013
Health Care Officers	28,068
Supply, Procurement, and Allied Officers	3,412
<b>TOTAL</b>	<b>76,741</b>

*Source: DoD Active Duty Master Personnel File*

## SENIOR LEVEL AND POLITICAL APPOINTEES

Some of the post-employment restrictions in 18 U.S.C. §207 apply solely to senior-level employees and political appointees. As indicated by Table 2-5, these employees make up a relatively small portion of the DoD workforce. However, given the broad scope of authority, responsibility, and influence inherent in these positions, it is critical that these officials be fully knowledgeable of the impact of the post-employment restrictions and that they have access to consistent and thorough advice on their applicability.

**Table 2-5. Categories of Senior Employees Covered by 18 U.S.C. §207**

Category of Employee	Numbers in Category
1. Presidential Appointees Subject to Confirmation by the Senate [PAS] (OSD and services)	54
2. Schedule C Employees (OSD and services)	134
3. Non-Career Senior Executive Service [SES(NC)] appointees (OSD and services)	94
4. General and Flag Officers [GO/FO]	
Army	317
Navy	247
Air Force	301
Marines	85
Total	950
5. Career Senior Executive Service [SES OSD and services]	1,276
6. Highly Qualified Experts [HQEs] (OSD only)	222
7. Science and Technology [STs] (OSD only)	151
8. Intergovernmental Personnel Act [IPAs] (OSD only)	99
9. Special Governmental Employee [SGEs] Consultants (OSD only)	300
<b>TOTAL</b>	<b>3,280</b>

*Source: DoD Report, p. 17*

## CRITICAL ACQUISITION POSITIONS (CAPs)

With respect to acquisition positions, Congress mandated that DoD examine whether the post-employment restrictions “appropriately apply to all personnel performing duties in acquisition-related activities, such as personnel involved in (a) the establishment of requirements, (b) testing and evaluation, and (c) the development of doctrines.” However, the study mandate did not

include a specific reference to DoD Critical Acquisition Positions (CAPs). Title 10 U.S. Code<sup>22</sup> requires that the Secretary of Defense establish an Acquisition Corps that includes CAPs. DoD policy<sup>23</sup> defines CAPs as “those senior positions carrying significant responsibility, primarily involving supervisory or management duties, in the DoD acquisition system. Those positions are designated by the Secretary of Defense, based on the recommendations of the DoD Component Acquisition Executives, and include any acquisition position required to be filled by an employee in the grade of GS/GM-14 or above, or military grade O-5, or above. CAPs also specifically include all the Program Executive Officers, the Deputy Program Executive Officers, the Program Managers (PMs), and the Deputy Program Managers for major defense acquisition programs, and the PMs of significant non-major programs. In Fiscal Year 2007, DoD had identified more than 15,000 CAPs<sup>24</sup> to include various types of engineers, auditors, computer scientists, price or cost analysts, technical assessment managers, customer liaison representatives, and others that have a role in the acquisition lifecycle.

This category of personnel, which is dispersed throughout many DoD offices and all of its Components, deserves special attention with respect to the enforcement of post-employment restrictions. Duties assigned to CAPs carry a high level of influence and decision-making authority that can potentially create a conflict of interest for DoD employees who later transition to positions in contractor organizations. However, CAPs are not specifically mentioned in the law that mandated the DoD review or referenced in the statutes and regulations dealing with post-employment restrictions, and thus, do not fit precisely with Congress’ stated definition of acquisition personnel. Therefore, to achieve proper coverage and compliance, DoD will have to ensure that CAPs are analyzed against the requirements in the Congressional mandate.<sup>25</sup>

## CONCLUSION

The significant and growing number of post-employment restrictions, combined with DoD’s large and diverse workforce, poses an important management and organizational challenge. The Academy Panel recognizes the inherent difficulties facing DoD in responding to Congress’ request, as well as the organizational implications addressing those issues entail. However, the Panel also believes it is important to fully and accurately address the effectiveness of post-employment restrictions in protecting the public interests while not hindering DoD’s access to talent.

Against this backdrop, DoD has a critical responsibility and obligation to provide all DoD employees, upon entry into the Department, complete, clear, and accurate information about the full scope of post-employment restrictions that apply to their positions. In addition, all DoD employees have a personal and professional responsibility to fully understand the potential impact of the restrictions on their current and future employment status. DoD employees must understand that they have a responsibility to know what restrictions apply to them at any given

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<sup>22</sup> U.S. Code Title 10, Subtitle A, Part II, Chapter 87, Subchapter III, Section 1731.

<sup>23</sup> DoD Instruction Number 5000.58, dated January 14, 1992, amended through January 21, 1996, p.32.

<sup>24</sup> <http://www.dau.mil/workforce/default.aspx>.

<sup>25</sup> The Panel notes that DoD’s Recommendation E-1 proposes creating a crosswalk between the CAPs and the ethics requirements; however, the Panel recommends that the crosswalk be designed to address the specific categories of work included in the Congressional mandate.

time, and that they must make every effort to comply with them. Failure to do so can have the unfortunate effect of adversely impacting their careers and reputations long after they have completed many years of dedicated public service.

## **SECTION III.**

### **ASSESSMENT OF THE DOD REVIEW OF POST-EMPLOYMENT RESTRICTIONS**

As discussed in Section II, post-employment restrictions affecting the DoD workforce are dispersed across several different statutes, an executive order, and both government-wide and DoD regulations. Often referred to as “revolving door” rules, the post-employment restrictions are intended to restrict federal employees from engaging in certain activities on behalf of private parties after they leave government service. Congress directed DoD Panel on Contracting Integrity to review policies relating to post employment restrictions “to determine if such policies adequately protect the public interest without unreasonably limiting future employment options of former Department of Defense personnel.” Under this mandate, DoD was directed to examine several specific “matters” (described in Section I) relevant to the broader issue of the adequacy of the post-employment restrictions. DoD conducted its review over a period of several months and submitted its report to Congress on July 8, 2011.

This section presents the Academy Panel’s independent assessment of the DoD review of post-employment restrictions. In addition to assessing the individual findings and recommendations presented in the DoD report, the Academy Panel broadened the scope of the review to assess the overall quality of the report, including the feasibility and utility of the recommendations it presents. This section includes the following:

- An overview of the DoD report;
- A discussion of DoD’s methodology for conducting the review;
- An assessment of the DoD report and its individual findings and recommendations against the Academy Panel’s *Assessment Framework*; and
- A set of findings and recommendations resulting from the Academy Panel’s assessment.

To ensure a fair and balanced assessment, the Academy Panel took into account the challenges DoD faced in conducting the review, as well as other factors that had a bearing on the outcome of the review.

#### **OVERVIEW OF THE DOD REPORT**

DoD’s report includes an analysis of each of the seven “matters” identified in the study mandate (Section 833 of the FY 2010 NDAA) along with DoD’s findings and recommendations regarding each individual matter. To facilitate its analysis, DoD converted each of the seven “matters” to a separate question and presented its findings as straightforward responses to those questions. Based on its analysis, DoD presented 12 recommendations to address its seven findings regarding the suitability and effectiveness of the existing post-employment restrictions. DoD’s recommendations range from proposed changes in an existing database to a suggested change in an existing statute. Two of DoD’s recommendations propose expanding the coverage of certain post-employment restrictions and require action by the DoD General Counsel. Another recommendation calls for adding an exception that would exempt from the restrictions in 18

U.S.C §207 certain employees who possess “unique knowledge or perspectives” deemed critical to the mission. In addition, DoD presents several recommendations aimed at improving consistency in the interpretation and application of the restrictions, including additional training and education for DoD employees. The report also includes two recommendations that seek to improve DoD’s ability to accurately identify and ensure proper coverage of employees performing acquisition-related duties. Finally, DoD provides one recommendation to address the impact of the restrictions on DoD’s access to world-class talent, especially with respect to highly-qualified technical, engineering, and acquisition expertise.

While DoD presented a variety of different recommendations, the report concludes that the post-employment restrictions are adequate to protect the public interest, and therefore does not call for additions to the existing body of statutes, regulations, and policies that comprise the post-employment restrictions affecting DoD employees.

### **DoD Panel’s Methodology**

The DoD report describes research that included a detailed review of the restrictions, as well as an examination of independent data and reports collected by DoD’s Panel on Contracting Integrity. Specifically, the DoD Panel collected and reviewed pertinent case law, reports issued by the U.S. Government Accountability Office (GAO), and scholarly articles related to post-employment restrictions. The DoD Panel also reviewed comments from a survey of key leaders in the DoD acquisition community that was conducted for the purpose of establishing a values-based ethics culture in the Department — a distinctly different goal from the mandated review of post-employment restrictions. In addition, the DoD Panel reviewed and analyzed the results of questionnaires sent to members of the Defense Science Board<sup>26</sup> and the DoD Panel on Contracting Integrity.<sup>27</sup> The questionnaires were designed to capture information to specifically address the seven matters in the study mandate. DoD also used focus groups and interviews to gather information from the public and private sectors. Additionally, as mentioned in Section I of this report, DoD engaged the Academy under a specific fact-gathering arrangement to conduct focus groups and individual interviews – entirely separate from this assessment of the DoD review required by section 833 of the FY 2010 NDAA.

The DoD Panel analyzed data from these sources to develop its findings and recommendations; however, as discussed later in this section, the evidence and rationale supporting some of the findings and recommendations are not always clear.

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<sup>26</sup> The Defense Science Board was chartered to provide independent advice and recommendations on scientific, technical, manufacturing, acquisition process, and other matters of special interest to the Department of Defense.

<sup>27</sup> The Panel on Contracting Integrity was created pursuant to Section 813 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year 2007 (Public Law 109-364), which directed DoD to establish a Panel on Contracting Integrity consisting of senior leaders representing a cross-section of the Department. The Panel’s purpose is twofold: (1) review progress made by DoD to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur, and (2) recommend changes in law, regulations, and policy to eliminate the areas of vulnerability.



### **Background Information on the Post-Employment Restrictions**

DoD's report includes a matrix that lays out a clear and comprehensive summary of the existing post-employment restrictions (discussed in Section II) that apply to DoD personnel, as well as a discussion of the applicability of the restrictions to specific categories of positions. By including this information, DoD sought to help the reader understand the types and numbers of DoD employees impacted by the vast array of post-employment laws and regulations. Given the complexity and varying interpretations possible in applying the restrictions, the Academy Panel believes that the DoD Panel significantly enhanced understanding of the report with its detailed description of the restrictions, while also presenting a useful discussion of the applicability of these restrictions.

The Panel believes, however, that DoD's report would have been further enhanced by a more complete description of the entire universe of employees affected by the post-employment restrictions. It is not clear from the DoD report that some of the restrictions have the potential to affect a significant portion of DoD's entire civilian and military population, totaling more than two million active duty military and civilian employees. Further, a short description defining roles and responsibilities for administering and enforcing the post-employment restrictions would have provided additional useful context for the report.

### **CHALLENGES DOD FACED IN CONDUCTING THE REVIEW**

The Academy Panel recognizes the challenges DoD faced in conducting its review and has taken those challenges into account in its assessment. Congress asked DoD to determine whether the policies relating to post-employment restrictions on former DoD employees adequately protect the public interest, without unreasonably limiting future employment options for those employees. While the topic of post-employment restrictions may be considered a narrow subset of the subject of "ethics," the scope of the issues should not be understated. The mandate directed DoD to review post-employment restrictions in the context of seven specific "matters." The first of the seven "matters" required DoD to determine the extent to which current post-employment restrictions "appropriately protect the public interest by preventing personal conflicts of interest and preventing former DoD officials from exercising undue or inappropriate influence on DoD." This broad issue focused on the restrictions in the aggregate, while the remaining six issues required DoD to examine specific issues in greater depth.

In addition, the Panel noted that the decentralized approach to managing the ethics program created a challenge for conducting the review of post-employment restrictions.<sup>28</sup> As noted in Section II, DoD maintains overall responsibility for the program, but responsibility for ensuring compliance with the restrictions has been delegated to Component Heads, with no definitive requirements for consistency and uniformity across the Components. This situation exacerbated the challenges DoD faced in gathering and analyzing sufficient information to assess the overall adequacy of the restrictions.

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<sup>28</sup> The Academy Panel understands that DoD's decentralized approach for managing the ethics program conforms to government-wide criteria set forth by OGE in 5 C.F.R. 2638.203.

The Academy Panel also observed that DoD's review was impacted by several limitations on the research and analysis that DoD was able to conduct to conclusively address the impact of the restrictions. First, the Academy Panel noted that post-employment restrictions evolved incrementally, and were not created as a comprehensive, integrated regulatory framework. They exist as a rather loosely-connected amalgamation of laws, regulations, and policies housed in different locations, thus requiring great care on the part of ethics officials to ensure that the totality of the restrictions is considered in advising and guiding DoD employees. This situation impacted DoD's ability to develop a single research framework or use a consistent methodology to analyze the effects of each restriction on both the public interest, as well as recruitment and retention of DoD personnel. Further, the cause-effect relationships of individual restrictions are difficult to determine conclusively, which made it harder for DoD to assess the impact of the post-employment restrictions on DoD's ability to recruit talent, given the inherent difficulty of measuring a deterrence effect on unknown individuals who face individual career choices.

The Academy Panel also recognized that DoD had a relatively limited body of research to draw upon in conducting its review. Relatively few reports have been issued by GAO, the DoD OIG, and Congressional committees addressing the singular topic of post-employment restrictions. Attachment B to the DoD report identified several GAO reports issued between 1986 and 2008 on this topic, and an additional 2008 GAO report was identified in the body of the report.<sup>29</sup> DoD also mentioned GAO surveys of 51 IG Offices that provided some limited information on post-employment violations; however, in totality, these sources and a more recently-issued GAO report<sup>30</sup> provided a relatively limited amount of information to support DoD's review of the effectiveness of post-employment restrictions.

Finally, the Panel acknowledges that the DoD Panel on Contracting Integrity and supporting staff charged with conducting the review of post-employment restrictions accomplished this work as a collateral assignment while they continued to perform their regularly-assigned duties. This arrangement limited the amount of time and effort that could be invested in the research and analysis of the issues, and may have ultimately impacted the quality of the findings and recommendations.

The Academy Panel's assessment of the DoD report has been conducted with an appreciation of the overall complexity of the Congressional mandate and the challenges DoD faced in carrying it out. Where appropriate, the assessment that follows acknowledges that DoD may have been limited in what could have been done in this review. Notwithstanding these challenges, the Academy Panel's report provides an independent and objective assessment of the DoD review.

## **THE ACADEMY PANEL'S ASSESSMENT FRAMEWORK**

As discussed in Section I, the Academy Panel's assessment of the DoD review was conducted using an *Assessment Framework* adapted from the Program Evaluation Standards developed by

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<sup>29</sup> U.S. Government Accountability Office, *Defense Contracting: Post-Government Employment of Former DoD Officials Needs Greater Transparency*, GAO-08-485, May 2008.

<sup>30</sup> U.S. Government Accountability Office, *Securities and Exchange Commission: Existing Post-Employment Controls Could Be Further Strengthened*, July 2011.

the Joint Committee on Standards for Educational Evaluation (JCSEE)<sup>31</sup> and supplemented by guidance and standards<sup>32</sup> issued by GAO. The JCSEE program evaluation standards were designed to assess programs by applying five interrelated groups of evaluation criteria, four of which were adapted for this review.<sup>33</sup>

- **Utility standards:** Used to ensure that an evaluation will serve the information needs of intended users;
- **Feasibility standards:** Used to ensure that an evaluation will be realistic, prudent, diplomatic, and frugal;
- **Propriety standards:** Used to ensure that an evaluation will be conducted legally, ethically, and with due regard for the welfare of those involved in the evaluation, as well as those affected by its results; and
- **Accuracy standards:** Used to ensure that an evaluation will reveal and convey technically adequate information about the features that determine the worth or merit of the program being evaluated.

The Academy Panel adapted relevant aspects of the JCSEE Program Evaluation Standards pertaining to utility, feasibility, and accuracy, to create a review framework that assesses the DoD review against four sets of criteria: (1) design, (2) execution, (3) reporting, and (4) utility/feasibility. (See Appendix C for the complete Assessment Framework.) While the study mandate only required that the Academy assess the individual findings and recommendations resulting from the DoD review, this framework expands the assessment to include the utility and potential impact of the DoD review and its individual recommendations. The assessment framework provides both standards and indicators used to evaluate the DoD review and resulting report. The *standards* represent general “threshold” criteria that must be met for the DoD review to be considered adequate, while the *indicators* are designed to provide more specific conditions of how the standards are met. Table 3-1 provides a summary of the criteria used in the Academy Panel’s assessment framework.

**Table 3-1. Assessment Framework**

Review Area	Assessment Standards
<b>Design</b>	<ul style="list-style-type: none"> <li>• Researchable questions linked to issues addressed in the evaluation</li> <li>• Well-defined plans for data collection and analysis</li> <li>• Evaluation design that clearly identifies the limits of chosen data collection and analysis methods in addressing research questions</li> </ul>
<b>Execution</b>	<ul style="list-style-type: none"> <li>• Clearly-defined information sources</li> <li>• Appropriate data collection tools</li> <li>• Sufficient and appropriate evidence</li> </ul>

<sup>31</sup> The JCSEE was founded in 1975 as a coalition of major professional associations concerned with the quality of evaluation. The JCSEE is approved by the American National Standards Institute to develop standards to guide and improve the quality of educational programs. The standard names and statements are under copyright to the JCSEE, are approved by the American National Standards Institute, and have been endorsed by the American Evaluation Association and 14 other professional organizations.

<sup>32</sup> U.S. Government Accountability Office, *Government Auditing Standards*, 2011 Internet Version, August 2011.

<sup>33</sup> The fifth category – Evaluator Accountability – was not considered appropriate for this review.

Review Area	Assessment Standards
	<ul style="list-style-type: none"> <li>• Complete and technically sound data analysis</li> <li>• Justified conclusions</li> <li>• Valid findings supported by the evidence</li> <li>• Recommendations that are consistent with evidence, findings, and conclusions</li> </ul>
<b>Reporting</b>	<ul style="list-style-type: none"> <li>• Clear and complete description of the subject of the review and its context</li> <li>• Explicit and clear reasoning linking evidence, findings, and recommendations</li> </ul>
<b>Utility/Feasibility</b>	<ul style="list-style-type: none"> <li>• Useful information to serve the needs of intended users</li> <li>• Recommendations that can reasonably be implemented</li> </ul>

The standards in the framework allowed the Academy Panel to assess the DoD report in its entirety, as well as its individual findings and recommendations. Given the Panel’s mandate to “assess the findings and recommendations of DoD’s review,” the Panel’s primary focus was on the execution of the review. However, in order to provide Congress and other stakeholders adequate information on which to base policy decisions, the Academy Panel applied its framework to assess DoD’s research methodology as well as the overall quality and utility of the review.

## THE PANEL’S OVERALL ASSESSMENT OF THE DOD REVIEW

In general, the Panel believes that DoD’s report is responsive to the Congressional mandate and that DoD correctly concluded that the existing body of post-employment restrictions does not need to be expanded to protect the public interest. Notwithstanding this finding, given the methodological and analytical weaknesses in the DoD review, the Academy does not believe that DoD’s report is persuasive in its conclusion that existing post-employment restrictions are adequate to protect the public interest. The report provides good background information in the form of a complete and accurate description of the post-employment restrictions and, to some extent, the workforce to which these restrictions apply. However, the Panel’s analysis revealed some fundamental deficiencies in how DoD designed, executed, and reported the results of its review. As a major concern, the Panel believes that DoD failed to adequately call attention to the challenges created by the complexity of the restrictions or to suggest possible ways to overcome this complexity. In this regard, the Academy Panel believes that DoD missed an opportunity to recommend ways to move toward a simpler, more understandable set of guidelines that still adequately protect the public interest. This view was reinforced by participants in the industry focus group who echoed and expanded upon the Panel’s concern. The DoD report recommends potential expansions of the restrictions in some areas, but the Academy Panel is concerned that without first addressing the complexity of the existing restrictions, DoD did not have a clear basis for such recommendations.

As another related concern, the Academy Panel believes that the DoD report did not adequately address the potential impact of the restrictions on DoD’s access to talent — especially non-career, highly-qualified technical, engineering, and acquisition expertise. The Panel believes that

DoD's ability to attract and recruit key personnel may be impacted by the unduly restrictive and uncertain application of the restrictions, which is due, in large part, to their inherent complexity and lack of clarity. Yet, DoD's report did not discuss how the complexity of the restrictions could be reduced and their clarity improved. The Panel considers this to be a major shortcoming in the DoD report that has left Congress and other stakeholders with insufficient information on which to base future policy decisions regarding the restrictions.

Closely related to this issue is the impact of the restrictions on the career choices made by individuals who are already part of the DoD workforce. Focus group participants<sup>34</sup> cited cases where some individuals who rise to the GS-15 (or equivalent levels immediately below the Senior Executive Service) are choosing not to compete for executive positions because they fear they will be impacted later by the post-employment restrictions.<sup>35</sup> The Academy Panel believes that these unforeseen impacts of the restrictions are not adequately addressed by DoD.

In reviewing the DoD report against the criteria in the Assessment Framework, the Academy Panel identified weaknesses in each of the four assessment categories. A summary of the Panel's analysis in each category is provided below.

### **Design of the DoD Review**

**Design** standards were used to assess the adequacy of DoD's overall research design. These standards address the quality of the research questions; the clarity of the data collection and analysis plans; and the description of the research methodology, including any limitations affecting the design of the methodology.

#### **Design Standards**

- Researchable questions linked to issues addressed in the evaluation
- Well-defined plans for data collection and analysis
- Evaluation design that clearly identifies the limits of chosen data collection and analysis methods in addressing research questions

In assessing the design of DoD's review, the Academy Panel determined that the DoD report failed to identify specific, researchable questions to guide the review, which compromised DoD's ability to fully respond to the Congressional mandate. A brief description of the study methodology is presented in the DoD report,<sup>36</sup> but DoD did not further refine the issues in Section 833 of the FY 2010 NDAA to create more specific research questions that could facilitate the collection of solid data. DoD chose to use the seven "matters" in the mandate as

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<sup>34</sup> Academy focus group of industry experts held on October 6, 2011.

<sup>35</sup> The Academy Panel acknowledges that this may not be the only reason certain individuals choose not to compete for Senior Executive Service positions; other factors, such as pay compression, also have a bearing on their decisions.

<sup>36</sup> DoD Panel on Contracting Integrity, *Review of Post-Employment Restrictions Applicable to the DoD*, May 9, 2011, p.5.

research questions but, in some cases, it is not clear what research methodology was used to address each matter.

In addition, the Academy Panel noted that DoD did not identify the limits of data collection and analysis methods used and how they affected the outcome of the study. For example, DoD did not discuss the challenge of assessing the effect of the restrictions on recruitment and retention of talent, given that this requires examining the deterrence effect on unknown individuals. A discussion of this issue at the beginning of the report would have positioned DoD to describe its findings in a more realistic context. Further, DoD could have discussed how the scope of the review impacted the overall study design — as a way to indicate the overall complexity of the mandate.

Overall, the Academy Panel found the design of the DoD review to be inadequate to fully respond to the study requirements.

**Finding 3-1. The design of the DoD review was inadequate to fully respond to the study mandate.**

**Execution of the DoD Review**

**Execution** standards address how well DoD executed the review, including its approach to data collection; analysis of evidence; and development of findings, conclusions, and recommendations.

**Execution Standards**

- Clearly defined information sources
- Appropriate data collection tools
- Sufficient and appropriate evidence
- Complete and technically sound data analysis
- Valid findings supported by the evidence
- Justified conclusions
- Recommendations are consistent with evidence, findings, and conclusions

The Academy Panel found significant weaknesses in DoD’s execution of its review that, in combination, impacted the overall quality of its findings, conclusions, and recommendations.

In some cases, the DoD report failed to clearly identify the sources of evidence used to support the report’s findings. The report used general references to “the Panel’s research,” and “recommendations” made by outside sources, but it is not always clear how the Panel conducted its research or what sources it considered. Additionally, the Academy Panel is concerned that, in some cases, DoD relied on insufficient evidence to support its findings and conclusions. For example, the DoD report extracted data on post-employment restrictions from a broader survey that was used to establish a basis for creating a values-based ethics culture program in the Department. The survey was administered on line to 248,165 DoD personnel, with an overall response rate of 22.8%, or 54,596 responses. The survey did not include specific questions on

post-employment restrictions; however, the DoD study team extracted information on post-employment restrictions from the individual comments made by survey respondents. Only 117 comments were submitted on the topic of post-government employment, which represents 2% of the total number of responses and only .0049% of the 248,165 employees surveyed.<sup>37</sup> With such limited data on the topic of post-employment restrictions, the Panel is concerned that DoD relied on insufficient and inappropriate data. Further, in cases where better evidence is presented, DoD did not always conduct adequate analysis of the evidence to support the findings, and several recommendations are inconsistent with the findings.

In summary, DoD's execution of the review was flawed. DoD relied on weak or incomplete data to support its findings and recommendations and conducted incomplete analysis of available data. This led to weaknesses in the findings as well as some recommendations that were inconsistent with the findings.

### **Academy Panel's Assessment of DoD's Review of Individual Questions**

As previously noted, DoD converted the seven "matters" in the Congressional mandate to Questions A-G and developed its findings and recommendations to respond to each question. The Academy Panel examined in detail the individual findings and recommendations presented by DoD, and in the sections that follow, presents its assessment of DoD's findings and recommendations for each question, followed by its own findings and recommendations resulting from the assessment.

#### **Question A: Do the current post-employment restrictions appropriately protect the public interest by preventing personal conflicts of interest and preventing former Department of Defense officials from exercising undue or inappropriate influence on the Department of Defense?**

This first question reflects the core Congressional concern about the post-employment restrictions — whether they adequately protect the public interest by preventing conflicts of interest and avoiding the potential for undue or inappropriate influence.

#### DoD Review of Question A

DoD found that the current post-employment restrictions, housed in multiple layers of statutory and regulatory requirements, appropriately protect the public interest and prevent former officials from exercising undue or inappropriate influence. In examining this broad question, DoD considered records of three prosecuted cases over a period of seven years pertaining to conflicts of interest; a 1998 thesis written by an Air Force Officer<sup>38</sup> citing four GAO reports; and the Academy's prior research of the findings and recommendations issued by the Revolving Door

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<sup>37</sup> DoD Panel on Contracting Integrity, *Review of Post-Employment Restrictions Applicable to the DoD*, May 9, 2011, Attachment D, Comments on Post-Employment Restrictions from Ethics Survey, p.53.

<sup>38</sup> Lheureux, Richard (CPT USAF), *An Analysis of Conflict of Interest Law and the Effect those Laws Have on the Post-Service Employment of Air Force Contracting Officers and Engineering Managers*, Thesis, December 20, 1988.

Working Group.<sup>39</sup> Primary data considered by DoD included data gathered from focus groups, as well as interviews with human resources staff at the Defense Advanced Research Project Agency (DARPA)<sup>40</sup> and staff of the Defense Acquisition University.

To address its finding on Question A, DoD recommended that the DoD OIG determine how the Hotline Database can be improved to ensure consistency in identifying substantiated violations of post-employment restrictions so that these cases can be more easily searched and identified. DoD's recommendation for Question A evolved from a discussion in the report of the DoD Hotline and the availability of relevant data on statutes involved in cases stored in the Hotline database. DoD noted that the DoD OIG's database documents complaints that are received under several broad allegation categories, but these categories do not identify the statutory basis for each alleged violation.

#### Academy Panel's Assessment – Question A

Given the broad scope of the question, the Academy Panel believes that DoD's review of this issue was incomplete and too narrowly focused on the number of criminal convictions as evidence that current post-employment restrictions adequately protect the public interest. DoD's analysis did not consider other indicators, such as substantiated cases of reported violations of the restrictions that may not lead to prosecutions. Nor did DoD discuss civil actions pursued under the Procurement Integrity Act. Further, the Academy Panel noted that DoD's description of the evidence it considered lacks the appropriate level of specificity needed to support the analysis. For example, the DoD Panel cites GAO reports, but does not fully explain the limitations of GAO's research as described in its reports. For example, in the 2008 report, GAO identified nine individuals who could have worked on the same contracts for which they had oversight responsibilities or decision-making authorities while at DoD, but GAO noted that the information obtained from contactors was not designed to identify violations of the restrictions.

As further indication of DoD's failure to thoroughly analyze available evidence, DoD acknowledged the Revolving Door Working Group's concerns regarding "behind-the-scenes assistance" and its potentially corrupting influence on the conduct of senior officials while in office. However, DoD dismissed these concerns without clearly explaining how current restrictions and related policies adequately protect against this type of potential corruption. Given that the Working Group cited the ability of senior officials to provide "behind-the-scenes assistance" as the "most serious risk," the Academy Panel is especially concerned that DoD did not clearly identify how the existing restrictions adequately protect against corruption while performing behind-the-scenes assistance.

Overall, the Academy Panel believes that DoD's research, analysis, and findings are inadequate to fully address Question A.

In reviewing DoD's recommendation related to Question A, the Academy Panel learned from the DoD OIG's office that it may not be feasible to implement this recommendation. Given the

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<sup>39</sup> Revolving Door Working Group, *A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government –And What to Do About it*. Washington, D.C.: Revolving Door Working Group, 2005.

<sup>40</sup> DARPA is an independent DoD agency responsible for the development of new technology for the military. DARPA undertakes projects that are finite in duration but are designed to create lasting revolutionary change.



nature and scope of information captured by the DoD Hotline, the DoD OIG did not confirm that the database could be improved to allow for sorting of data to identify post-employment restrictions.

Based on its assessment of DoD's review of Question A, the Academy Panel developed two findings:

- **Finding 3-2. The DoD Panel failed to describe sufficient evidence and conduct adequate analysis to support its finding that the post-employment restrictions appropriately protect the public interest by preventing personal conflicts of interest and preventing former DoD officials from exercising undue or inappropriate influence on DoD.**
- **Finding 3-3. DoD's recommendation to modify the OIG database should be further examined to determine whether it is feasible to implement.**

**Question B: Do the current post-employment restrictions appropriately require disclosure by personnel accepting employment with DoD contractors involving matters related to their official duties?**

#### DoD Review of Question B

DoD analyzed this question from the perspectives of both current and former personnel. Based on its review of disclosure requirements in applicable law and regulation, DoD found that current post-employment restrictions appropriately require disclosure by personnel accepting employment with DoD contractors involving matters related to their official duties. In light of this finding, DoD chose to make no recommendation for Question B.

In reviewing this question, the DoD Panel examined disclosure requirements in 18 U.S.C. §208, disclosure requirements in section 2103 of the Procurement Integrity Act, as well as Section 2-206 of the DoD Joint Ethics Regulations (DoD 5500.7-R). In addition, DoD considered a then-proposed change<sup>41</sup> to the Defense Federal Acquisition Regulation Supplement (DFARS) that would require companies submitting proposals to DoD to represent in their proposals that all former DoD personnel who may work on the potential contract are able to do so without violating the provisions of 18 U.S.C. §207.

With respect to current DoD employees, DoD noted that all DoD personnel are subject to the criminal conflict of interest prohibition of 18 U.S.C. §208. DoD also described how the Procurement Integrity Act defines disclosure requirements for employees involved in competitive procurements over the simplified acquisition threshold of \$150,000. Additional disclosure requirements in the Joint Ethics Regulation apply to individuals (other than Special

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<sup>41</sup> Effective on November 18, 2011, the DFARS amendment adds a new representation requirement for contractors to complete and provide as part of each proposal a representation to ensure that the contractor's employees who are former DoD officials are in compliance with the post-employment restrictions established by 18 U.S.C. 207, 41 U.S.C. 2101-2107, and 5 CFR 2641.

Government Employees) who file a public or confidential financial disclosure report. In analyzing Question B, DoD described the disclosure requirements of Confidential Financial Disclosure Reports (OGE 450),<sup>42</sup> as well as the requirements for filing the Standard Form (SF) or OGE 278. However, DoD found that the potential does exist for some employees who are non-filers to “fall through the cracks,” since they are not directly covered by a DoD-wide requirement to receive annual ethics training. Despite this finding, however, DoD concluded that the public interest is appropriately protected by the multiple disclosure requirements that are already in place.

With respect to former DoD personnel, the DoD report noted that the disclosure requirements cited for current DoD employees (i.e., U.S.C. §208) do not apply. However, DoD noted that the restrictions in 18 U.S.C. §207 as well as Section 847 of the FY 2008 NDAA (which requires that former officials seek ethics advice from a DoD ethics officer in order to accept compensation from a defense contractor) adequately address former DoD personnel.

The Academy Panel does not disagree with the DoD finding that existing disclosure requirements are adequate; however, the Panel believes that DoD could have strengthened its finding by providing a complete explanation of how the multiple disclosure requirements effectively eliminate the potential impact of the gap in disclosure created by the timing of the two financial disclosure filing requirements for current personnel.

In assessing the adequacy of disclosure requirements, DoD discussed the new regulatory requirement affecting private firms submitting proposals for new contracts. This change, now codified at 76 FR 71826, places the responsibility on contractors to ensure that their employees are in compliance with post-employment restrictions. While this change is relevant to the discussion of former employees, the Academy Panel does not believe that this change alone will ensure that disclosure requirements are effectively implemented. Additionally, participants in the industry focus group hosted by the Academy expressed the view that such a change would be harmful to small businesses. They pointed out that many defense contracts are awarded to small businesses that do not have the kind of sophisticated vetting system for new employees that will be needed to implement this requirement.

Despite gaps in the disclosure requirements, DoD chose to make no recommendation to address Question B. However, DoD does not provide a rationale for its decision to propose no new process to close the gaps in disclosure requirements. The Academy Panel believes that acknowledging the gaps without a corresponding recommendation requires further explanation.

Based on its assessment of DoD’s review of Question B, the Academy Panel identified the following two findings:

- **Finding 3-4. The DoD finding that disclosure requirements are adequate was not supported by sufficient evidence and analysis.**
- **Finding 3-5. The DoD Panel’s decision to make no recommendation to close the gaps in disclosure requires further explanation.**

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<sup>42</sup> The OGE Form 450 is a government-wide financial disclosure applicable to individuals in certain covered positions.

**Question C: Do the current post-employment restrictions use appropriate thresholds, in terms of salary or duties, for establishment of such restrictions?**

This question explores whether the salary levels and duties used as thresholds in the post-employment restrictions are appropriate. While the legislative mandate uses the term “duties,” DoD appropriately broadened the meaning of the term to include level of authority and responsibility.

The DoD report described the various thresholds relating to salary and duties found in 18 U.S.C. §207(c), the Procurement Integrity Act, and Section 847 of the FY 2008 NDAA. Section 207(c) of 18 U.S.C. includes salary-based restrictions tied to base pay of senior level officials. This section establishes a one-year restriction (“cooling-off” period) for senior personnel using a salary threshold of (1) Level II of the Executive Schedule as required by Chapter 53, Subchapter II, of Title 5 U.S.C. and (2) a rate of basic pay that is equal to or greater than 86.5% of the rate of basic pay for Level II of the Executive Schedule. As pointed out in the DoD report, this restriction also covers all General and Flag Officers. Executive Order 13490 (the Obama Ethics Pledge) establishes a two-year “cooling-off” period for all political appointees, regardless of whether or not the position requires Senate confirmation, if they are covered by the requirements in Section 18 U.S.C. §207 when they leave the government.

DoD Review of Question C

The DoD Panel found that, while imperfect, current thresholds in post-employment restrictions are appropriate in terms of salary or duties. To address Question C, DoD considered primary data gathered from focus group and interviews, as well as discussions with senior ethics attorneys of the DoD military services. In addition, DoD considered secondary data drawn from the survey of Defense Science Board and DoD Panel on Contracting Integrity, and a 2006 report issued by the Office of Government Ethics.<sup>43</sup>

The DoD Panel presented three recommendations to address its finding for Question C. The first two recommendations propose that the DoD General Counsel consider changes in the coverage of the one-year “cooling-off” restrictions found in 18 U.S.C. §207(c). Specifically, in order to limit the potential of senior DoD officials to exercise undue influence on subordinate organizations below their parent organization, the Panel recommended that the DoD General Counsel examine whether (1) the one-year “cooling-off” period should be expanded to apply to subordinate commands of Joint Commands and (2) whether three- and four-star officers and SES Tier III<sup>44</sup> officials should be barred from appearing before separate DoD Components during

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<sup>43</sup> U.S. Office of Government Ethics: *Report to the President and Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employees*, January 2006, pp. 20-23.

<sup>44</sup> DoD groups its SES positions into three tiers that delineate the relative importance of positions based on their impact on mission, level of complexity, span of control, inherent authority, and scope and breadth of responsibility in joint national security matters. Tier III positions are equivalent to three-star officers and have significant impact on mission outcomes and joint national security matters.

their one-year “cooling-off” periods. Additionally, the Panel recommended a potential statutory change to add an additional exception to 18 U.S.C. §207(j) for former personnel who possess “unique knowledge or perspectives in fields such as national security or other fields involving specialized knowledge.”

#### Academy Panel’s Assessment – Question C

The Academy Panel found that the DoD report fails to provide adequate evidence and analysis to support the finding that the post-employment restrictions establish appropriate thresholds in terms of salary and duties of positions affected by the restrictions. The analysis is deficient in several respects. First, while the Academy’s prior research suggested a more targeted approach to the restrictions, DoD rejected this research without providing a clear analysis supporting its decision. The DoD report states that tailoring the restrictions would only make the rules even more difficult to interpret and implement. The Academy Panel agrees that introducing more specificity may increase the actual *volume* of information relevant to the post-employment restrictions, but the Panel believes that the benefits of increased *specificity* with respect to targeted individuals would provide greater clarity that would more than offset the concerns regarding the added volume of rules.

As a second issue, the DoD finding relied on a 2006 OGE report as a basis for concluding that the thresholds related to salary levels and duties are appropriate. However, DoD did not clearly present the findings outlined in the OGE report or the reasons for adopting OGE’s logic in formulating its own findings and recommendations. DoD noted that OGE discussed several options for setting the pay and authority thresholds and the trade-offs they would entail. While OGE laid out a number of different options with a comprehensive and authoritative analysis of each, DoD did not discuss the OGE analysis; nor did it present any new analysis of its own to support its finding that the thresholds are appropriate.

In addressing Question C, DoD introduced a discussion of potentially expanding the one-year “cooling-off” period applicable to (1) certain senior officials who leave the government after serving in a Joint Command and (2) three- and four-star officers and certain SES officials who would appear before separate DoD components. DoD raised the issue that the duties of these officials have the potential to influence individuals and programs below their parent organization and that they should be restricted from engaging in certain activities at subordinate organizations, as well as the parent organization. The Academy Panel believes the DoD raised a legitimate concern regarding the unique hierarchical culture of the military environment; however, DoD did not provide a clear rationale explaining why these senior officials may be in a position to exercise undue influence. Additional context and examples, such as the discussion included in the analysis of Question D, would have strengthened DoD’s conclusions relating to the need to expand the coverage and applicability of the existing restrictions.

Given the lack of evidence supporting its finding, the Academy Panel concluded that the supporting rationale for recommendations C-1 and C-2 is not adequate. Further, while the DoD recommendations require action by the DoD General Counsel, the report provides no explanation of the process or criteria that would be used in considering these changes.<sup>45</sup> Recommendation C-

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<sup>45</sup> DoD subsequently informed the Panel that 5 C.F.R. 2641.302 sets forth the criteria that must be used to recommend a separate component determination to OGE.

3 is reasonable, but lacks sufficient supporting rationale as currently presented, and cannot be implemented by DoD alone, as the addition of an exception to an existing provision of law would require a statutory change.

Consistent with the Academy Panel's recommendations throughout this review, DoD should refrain from adding new restrictions or extending any of the existing post-employment restrictions until after DoD has completed an effort to harmonize interpretations of current restrictions across the Department. The current complexity and ambiguous application of existing legal restrictions and rules would only be compounded by adding or expanding requirements at this time.

The Academy Panel's review of Question C resulted in the following two findings:

- **Finding 3-6. DoD did not provide adequate evidence or analysis to support its finding that the existing salary and duty thresholds are adequate.**
- **Finding 3-7. The DoD recommendations for Question C are not supported by adequate information and analysis.**

**Question D: Are the rules sufficiently straightforward and have they been explained to DoD personnel so that they are able to avoid violations of post-employment restrictions and conflicts of interest?**

This question examines whether the rules are clear enough to be adequately explained to DoD personnel in a manner that will enable them to comply with the post-employment restrictions and avoid conflicts of interest. While the issue is defined in terms of clarity (of individual restrictions), it is directly linked to the broader issue of the overall complexity of the rules (considered in the aggregate).

#### DoD Review of Question D

In reviewing this question, the DoD Panel considered data collected from its interviews with DoD military Components' ethics attorneys, as well as data from additional interviews and focus groups. In addition, the DoD Panel reviewed relevant sections of the Federal Acquisition Regulations, as well as select results from the broader ethics survey. To frame the analysis, DoD divided Question D into the following two subordinate questions:

- Are the rules straightforward and understandable?
- Are current and former DoD personnel receiving adequate training on the rules so that they are able to avoid potential violations?

The DoD Panel found that the current post-employment restrictions are not always straightforward, but with proper training and enforcement, they provide adequate protection. With this finding, DoD essentially reinforced its finding for Question A, i.e., the rules are adequate to protect the public interest.

DoD presented five separate recommendations to support its finding for Question D, largely aimed at improving the overall consistency of advice and guidance provided by ethics officials across the Department. The specific recommendations supporting Finding D are as follows:

- Establish a standard format and review protocol for post-government employment ethics opinion letters;
- Maintain all post-government employment ethics opinion letters in a central repository;
- Establish Values-Based ethics training to be taught by the individual's own organizational leaders or supervisors;
- Enlist Public Affairs to help educate DoD personnel and the public about how the ethics rules protect the national interest; and
- DoD personnel, including senior officials, Executive Officers, and Chiefs of Staff, must also be trained about the ethical considerations of meeting with former senior officials and be given clear guidelines about how to handle meeting requests.

#### Academy Panel's Assessment – Question D

Although the Academy Panel agrees with the DoD finding that the rules are not always straightforward, the Panel does not believe that DoD presented a clear and thorough analysis of this issue. The DoD analysis responds to the question of whether the restrictions are sufficiently straightforward by discussing how certain concepts and terms such as “particular matter involving specific parties,” and “personal and substantial participation” do not lend themselves to consistent interpretations and can lead to inconsistent advice. The DoD report also discussed the lack of understanding of ethics rules in general, especially on the part of acquisition personnel who responded to an ethics survey. However, in its discussion of the lack of clarity created by certain ambiguous terms, DoD inserted a discussion of the overall complexity of the restrictions born from their piecemeal development. While the Panel is pleased that DoD addressed the issue of complexity, it is concerned that DoD does not clearly distinguish between the challenges that result from the complexity of the restrictions (in the aggregate) and the lack of clarity (that characterizes the individual restrictions). Further, while DoD briefly discusses the overall complexity of the restrictions, the analysis does not adequately describe the implications of this complexity or why no action can be taken to reduce it.

With respect to the second aspect of Question D dealing with the adequacy of training, the Academy Panel does not believe that DoD's finding is supported by clear and convincing analysis. The DoD analysis focused narrowly on the requirement for annual training on post-employment restrictions as part of annual ethics training and the employees who are covered by that training. However, the DoD analysis did not address the quality or effectiveness of the training. In order to be responsive to the Congressional concern on whether the rules have been sufficiently explained to employees, the Academy Panel believes that DoD should have made some effort to review the training itself – including key measures of training effectiveness, as well as the content, scope, timeliness, and delivery of the training.

In reviewing the DoD Panel's recommendation for Question D, the Academy Panel was pleased to see that DoD identified a few potential approaches to reduce inconsistencies in the guidance provided on the restrictions. Recommendations D-1 and D-2 proposing standardizing formats and review protocols for ethics opinion letters; and maintaining post-government employment

opinion letters in a central repository should be helpful in this regard. However, the Academy Panel found weaknesses in the other three recommendations. Recommendation D-3, while also potentially useful, does not directly address the issue of lack of clarity created by ambiguous language in the post-employment restrictions. Recommendation D-4 is not supported by adequate context and analysis, and it is not clear why and how Public Affairs offices could be engaged to help educate DoD personnel on post-employment restrictions.<sup>46</sup> The DoD report indicates that lack of understanding of the ethics rules in general “presents a public relations challenge,” but this statement is not supported by examples or specific perceptions that could be addressed by a public affairs office. Finally, Recommendation D-5 focuses on training senior officials about ethical concerns with respect to meeting with former senior officials. While this recommendation seems to support the DoD finding, it does not address the issue concerning the adequacy of current training on post-employment restrictions. It raises a broader issue of the potential for senior officials to exercise undue influence (also discussed under Question C), but it is not clear why training of DoD personnel is the best approach for addressing this concern.

Based on its review of DoD’s finding and recommendations for Question D, the Academy Panel developed the following two findings:

- **Finding 3-8. DoD introduced the issue of the overall complexity of the restrictions, but failed to establish how additional training and enforcement will help reduce this complexity.**
- **Finding 3-9. DoD’s recommendations for Finding D support the finding, but they do not adequately address the core issue of lack of clarity created by ambiguity in the post-employment restrictions.**

**Question E: Do the current post-employment restrictions appropriately apply to all personnel performing duties in acquisition-related activities, such as personnel involved in:**

- The establishment of requirements;
- Testing and evaluation; and
- The development of doctrine.

This question required DoD to examine the adequacy of the post-employment restrictions applicable to one specific component of the workforce – employees performing acquisition-related duties. As discussed in Section I, the Academy Panel learned from its own research that the acquisition personnel engaged in requirements development, who later secure employment

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<sup>46</sup> DoD later provided clarifying information on this issue. DoD Public Affairs Organizations help distribute public service information DoD-wide. These can be in the form of “infomercials” on Armed Forces Radio and Television or items of topical information – in our case – ethics information – to newspapers and publications at various military organizations and installations. This recommendation seeks to “enlist” the assistance of PAO community both internally to help keep ethical awareness and externally – outside of DoD to help clarify in the public’s mind what actual post-employment restrictions exist and how they are implemented. The message would be prepared by an ethics official for the Office of Public Affairs to distribute.

for Defense contractors, are at the core of Congressional concerns regarding post-employment restrictions.

#### DoD Review of Question E

In its review of Question E, DoD considered evidence gathered from interviews and focus groups, comments of senior contracting and legal personnel from one combat command, and comments of senior leaders at one of the FFRDCs.

The DoD Panel prefaced its analysis of this question with a statement that it was not aware of any specific restrictions that expressly apply to acquisition personnel who establish requirements, perform testing and evaluation, or develop doctrine. DoD correctly noted, however, that these individuals are covered by most of the current post-employment restrictions based on their involvement in a “particular matter.” Within the context of this clarification, the DoD Panel found that the post-employment restrictions adequately apply to DoD personnel who are performing acquisition-related activities; however, the DoD Panel noted that there is some concern that these individuals may not be fully aware of how the restrictions apply to their work.

Based on this finding, the DoD Panel presented two recommendations. First, DoD recommended that a crosswalk be developed to show the relationship between CAPs (discussed earlier in Section II) and the ethics requirements to ensure appropriate coverage. Second, DoD recommended that individuals who develop and provide requirements receive ethics training so they understand how their actions will shape their post-employment options.

#### Academy Panel’s Assessment – Question E

In reviewing the DoD analysis of Question E, the Academy Panel was concerned about the brevity and lack of depth in this section, especially in light of the Academy Panel’s research that revealed the significance of acquisition-related work to this study. The Panel learned that perceptions of impropriety on the part of senior officers engaged in developing requirements who leave DoD to work for Defense contractors were a major Congressional concern that led to the study mandate. Additionally, a 2008 GAO report<sup>47</sup> highlighted the importance and relevance of acquisition officials to the DoD review of post-employment restrictions. In its 2008 report, GAO found that 52 contractors (where DoD officials were most concentrated following their government service) employed nearly five times as many former acquisition officials (2,021 individuals) as former senior officials (414 individuals). The GAO report states that in their former DoD positions, these 2,021 acquisition officials served in key procurement-related positions such as Program Manager, Deputy Program Manager, or Contracting Officer. Table 3-2 shows the number and percentage of former DoD acquisition officials and senior officials employed by the 52 major contractors.

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<sup>47</sup> GAO 08-485, dated May 2008, p.11.



**Table 3-2.<sup>48</sup> Characteristics of 52 Contractors' Post-Government Employment, by Former DoD Position (Acquisition or Senior-Level Officials)**

Former DoD position	Number employed by contractors in 2006	Percentage of total employed by contractors in 2006
<b>Acquisition officials</b>		
Civilian officials (equivalent to GS-12 to GS-15 positions)	854	35.1%
Military officers (officer ranks 0-3 to 0-6)*	1,167	47.9%
<b>SUBTOTAL</b>	<b>2,021</b>	<b>83.0%</b>
<b>Senior officials</b>		
Senior civilians (SES, including consultants and advisors)	237	9.7%
Senior military officers*	177	7.3%
<b>SUBTOTAL</b>	<b>414</b>	<b>17.0%</b>
<b>TOTAL</b>	<b>2,435</b>	<b>100.0%</b>

Given this data, the Academy Panel is concerned about the adequacy of DoD's analysis relative to the DoD acquisition workforce. To begin with, the Academy Panel believes that DoD attempted to answer this question without first clarifying the nature and scope of positions involved in the acquisition-related activities defined in the Congressional mandate. This is an area where the report would have benefitted from more background information on the various acquisition functions and the number, grade levels, and ranks of employees performing the work. Without first establishing the true scope of acquisition positions covered by the restrictions, the Panel does not believe that DoD could accurately determine whether the restrictions are adequate for this group of employees. While DoD discussed its own designation of CAPs, the DoD report noted that there is not a direct correlation between the CAPs and the acquisition functions identified in the Congressional mandate.

While the DoD recommendations for Question E are supported by the finding, the Academy Panel is concerned that the recommendations are not adequate to address Congressional concerns related to acquisition positions. Focusing on CAPs may be useful to DoD, but it does not directly address the concerns raised about the three specific acquisition-related functions in the Congressional mandate. Rather than creating a crosswalk of CAPs, the Panel believes that DoD should develop clear and specific definitions of the three functions cited in the study mandate, identify the positions performing those functions, and determine whether the restrictions appropriately apply to those positions. Given the key Congressional concern with respect to positions engaged in acquisition functions in general, and especially in developing requirements, DoD needs to develop more accurate information relating to its acquisition workforce. Although additional training (Recommendation E-2) for individuals who develop requirements may be

<sup>48</sup> GAO-08-485, p. 12.

helpful, DoD needs to identify those individuals using a consistent and well-understood set of criteria.

The Panel's review of DoD's findings and recommendations for Question E resulted in the following two findings:

- **Finding 3-10. The DoD analysis did not include adequate context and background information on acquisition positions, which undermined DoD's ability to develop valid findings relative to this segment of the workforce.**
- **Finding 3-11. DoD's recommendations for Question E are consistent with the overall finding, but their value is weakened by the quality of the analysis.**

**Question F: Do the current rules ensure that DoD has access to world-class talent, especially with respect to highly-qualified technical, engineering, and acquisition expertise?**

This question essentially asked DoD to determine whether the post-employment restrictions affect DoD's ability to attract and recruit the most talented individuals to perform critical technical, engineering, and acquisition functions.

#### DoD Review of Question F

To address Question F, DoD relied on the results of an informal survey (questionnaire); data collected from interviews and focus groups; and a 1992 report issued by the Committee on Science, Engineering, and Public Policy (COSEPUP) prior to the expansion of post-employment restrictions in recent years.

In response to Question F, DoD found that current post-employment restrictions have some impact on the ease of accessing non-career, highly-qualified, technical, engineering, and acquisition expertise. Based on this finding, DoD presented one recommendation – that the Department explore whether the current exceptions in 18 U.S.C. §207(j) appropriately accommodate FFRDC employees who seek to represent back to the government.

#### Academy Panel's Assessment – Question F

In its analysis of the impact of the restrictions on DoD's ability to access highly-qualified technical, engineering, and acquisition expertise, the DoD Panel began by identifying the following three related groups of personnel: (1) PAS<sup>49</sup> and non-career SES members, (2) scientific and technical experts, and (3) all other classes of employees. However, the analysis that follows is not clearly structured around these three categories, making some aspects of the discussion difficult to follow. The Academy Panel believes that DoD could have presented a more logical organization of this section by clearly identifying the categories of DoD personnel considered in its analysis and then sequentially discussing the impact of the restrictions on each group. The analysis focuses on PAS employees and employees participating in

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<sup>49</sup> Presidential Appointees confirmed by the Senate.

Intergovernmental Personnel Act (IPA)<sup>50</sup> assignments; however, given the wording in the Congressional mandate, the Academy Panel believes that DoD should have provided a more in-depth analysis of the impact of the restrictions on access to acquisition talent, as well. Further, regarding the potential impact of the restrictions on recruitment of top scientific, technical, and related management talent for PAS positions, the Academy Panel notes that DoD relied almost entirely on the 1992 COSEPUP study, without augmenting it with its own more current research.

The Academy Panel is also concerned that DoD focuses exclusively on FFRDCs in its analysis of the impact of the restrictions on DoD's access to highly-qualified scientific talent. While FFRDCs play a vital role in DoD's scientific and technical missions, DoD does not explain why its analysis is limited to this type of organization. Some additional explanation of why DoD focused on FFRDCs to the exclusion of other DoD organizations that employ highly-qualified scientific, technical, and engineering talent (such as laboratories) would have strengthened this portion of the analysis. In addition, the Academy Panel noted that DoD's analysis of Question G (assessed below) includes a discussion of the impact of the restrictions on access to talent at DARPA, where highly-qualified scientific, technical, and engineering talent is critical. However, despite reported recruitment problems at DARPA, DoD does not discuss DARPA in its analysis of Section F.

Regarding the DoD recommendation for Question F, the Academy Panel is concerned that the recommendation targets only the FFRDCs by suggesting that an existing exception in 18 U.S.C. §207(j) may be used to facilitate the movement of FFRDC employees who seek to represent back to the government. With this one narrowly-focused recommendation, DoD excludes two key groups—senior political appointees and acquisition personnel.

Based on its assessment of DoD's review of Question F, the Academy Panel found the following:

- **Finding 3-12. DoD's finding that post-employment restrictions have some impact on access to talent did not take into account the full scope of organizations and positions that may be affected by the restrictions.**
- **Finding 3-13. DoD's recommendation for Question F is supported by the evidence and analysis, but its usefulness is limited by the narrow scope of organizations and positions targeted by the recommendation.**

**Question G: Do the current rules adequately ensure that service in the Department of Defense remains an attractive career option?**

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<sup>50</sup> IPA assignments are authorized by U.S.C. sections 3371 through 3375. Under this law, assignments are permitted to or from state and local governments, institutions of higher education, Indian tribal governments and other eligible organizations to facilitate cooperation between the Federal Government and the non-Federal entity through the temporary assignment of skilled personnel.

The intent of this question is to examine the overall impact of the post-employment restrictions on individual decisions to make DoD a long-term career choice. This question differs from Question F in that it requires a more comprehensive analysis of the impact of the restrictions on retention, as well as recruitment of talent.

#### DoD Review of Question G

To respond to this question, DoD relied on data from interviews and focus groups as well as additional research of other unnamed sources. Based on a single instance of recruiting difficulties at DARPA, DoD found that post-employment restrictions have some impact on individual decisions regarding whether to make DoD a career option.

#### Academy Panel's Assessment - Question G

The Academy Panel found the DoD analysis of this issue to be incomplete. First, DoD does not clearly define all of the sources of information it used to reach its conclusion. DoD mentions the DoD Panel's "extensive view of the impacts" of the restrictions, but does not clearly describe the evidence that was considered in this section of the analysis. Further, the limited analysis that was done is inadequate, as DoD did not examine the impact of restrictions on career decisions made by individuals at different points in their lives. DoD generalizes that career decisions are typically made early in one's life to support a conclusion that the restrictions do not have a bearing on long-term career decisions. The Academy Panel believes that this logic led to a flawed conclusion because there is adequate evidence that individuals affected by the restrictions make career choices at the mid-point in their careers. DoD alludes to this situation in its own discussion of Question E where it notes that the rules might hinder certain employees' decisions to return to the government in the middle of their careers.<sup>51</sup> However, this scenario is omitted from the analysis of Question G.

Additionally, the Academy Panel believes that DoD inappropriately used evidence of recruiting challenges at DARPA to support its finding on Question G. DARPA generally does not hire long-term career employees, and is therefore not an appropriate source of evidence to assess the impact of the restrictions on career choices. The Panel believes that the discussion relating to DARPA would have been more appropriately addressed under Question F, where DoD considered the impacts of the restrictions on access to highly-qualified scientific and technical talent.

DoD presented no recommendation on this question, despite the finding that post-employment restrictions are having some impact on career choices. The rationale for not presenting a recommendation on this issue is not clear, and the potential impact of the restrictions on DoD's ability to retain talent over the long-term is worthy of a recommendation.

The Panel presents the following two findings based on its review of DoD's analysis of Question G:

- **Finding 3-14. DoD did not conduct adequate research and analysis to address the issue of the impact of the restrictions on career choices; this resulted in a flawed finding.**

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<sup>51</sup> DoD report, p. 37.

- **Finding 3-15. DoD’s decision to offer no recommendation on the issue of DoD as an attractive career option requires explanation.**

## **Reporting the Results of the DoD Review**

*Reporting* standards were applied to assess the overall quality of the DoD report, including how well DoD described the context for the review with complete and accurate background information; and linked its evidence, findings, and recommendations to develop a complete report.

### **Reporting Standards**

- Clear and complete description of the subject of the review and its context
- Explicit and clear reasoning linking evidence, findings, and recommendations

The Panel believes that DoD’s report provides good context for its review, but in examining the report in its entirety, the Panel identified significant weaknesses. At the beginning of the report, DoD lays out a clear and complete description of the post-employment restrictions, including the statutes, government-wide regulations, and DoD regulations. Given the scope, complexity, and varying interpretations of these restrictions, the Panel appreciates the efforts of the DoD Panel in describing the existing restrictions. In addition, the DoD report provides a useful discussion of how the restrictions apply to the different categories of DoD personnel. However, the Panel believes that the DoD report falls short in describing the entire universe of DoD personnel affected by the restrictions. DoD focused on certain key categories (e.g., senior officials) of employees, but certain restrictions (e.g., the lifetime ban) have the potential to affect the entire DoD workforce – civilian and military. However, this is not clearly explained in DoD’s description of the impact of the restrictions.

In summary, the Panel believes that DoD should have more clearly defined the universe of employees to whom the restrictions generally apply in order to provide an appropriate foundation on which to base its research, findings, and recommendations. Without first clearly defining the scope of the workforce that is covered by the restrictions, the Academy Panel believes that DoD will be challenged to define and implement strategies and practices to effectively implement the restrictions in a way that protects the public interest.

**Finding 3-16. DoD should have more clearly defined the complete universe of employees to whom the restrictions apply.**

## Utility and Feasibility of the DoD Report

*Utility/Feasibility* standards address (1) the extent to which the DoD report will provide useful information that serves the needs of stakeholders and (2) whether the recommendations can reasonably be implemented.

### Utility/Feasibility Standards

- The report will provide useful information to serve the needs of intended users
- Recommendations can reasonably be implemented

Although the Academy Panel identified weaknesses in the design, execution, and reporting of the results of the DoD review, the Panel believes that the DoD report provides useful information on the scope, coverage, and adequacy of the post-employment restrictions. As previously noted, the Panel is concerned that **DoD may not have clearly described the implications of the lack of clarity and overall complexity of the restrictions**, which will undermine the usefulness of the report in defining potential actions for Congress and DoD leadership. Additionally, the Panel believes that DoD failed to consider the feasibility of implementing the one recommendation that addressed the overall adequacy of the post-employment restrictions and whether the DoD OIG would be positioned to follow through with actions to implement it.

**Finding 3-17. DoD did not fully examine the feasibility of implementing its recommendation calling for action by the DoD OIG.**

## SUMMARY OF ACADEMY PANEL'S FINDINGS

In applying its assessment framework, the Academy found that the design of the DoD review was deficient and the execution technically flawed. DoD relied on weak or incomplete data to support its findings and recommendations and conducted incomplete analysis of available data. This led to inadequately justified findings, as well as some recommendations that are inconsistent with the findings. The DoD report provides good background information on the post-employment restrictions to facilitate understanding of the restrictions and their applicability to the DoD workforce. However, DoD's failure to clearly define the universe of positions to which the restrictions apply weakened the validity of DoD's findings and recommendations.

Table 3-3 summarizes the Academy Panel's assessment of DoD's findings and recommendations.

**Table 3-3. Summary of Academy Panel’s Assessment of DoD Findings and Recommendations**

DoD Findings and Recommendations	Academy Panel Assessment
<b>Question A: Do the current post-employment restrictions appropriately protect the public interest by preventing personal conflicts of interest and preventing former DoD officials from exercising undue or inappropriate influence on the DoD?</b>	
<p><b>Finding:</b> Current post-employment restrictions appropriately protect the public interest and prevent former officials from exercising undue or inappropriate influence.</p> <p><b>Recommendation:</b> The DoD OIG determine how the Hotline database can be improved to ensure consistency in identifying substantiated violations involving the Procurement Integrity Act and the conflict of interest criminal statutes (18 U.S.C. §§203-209, including the post-government employment statute 18 U.S.C. §207), so that these cases can be more easily searched and identified by the statute involved.</p>	<ul style="list-style-type: none"> <li>• The DoD Panel failed to describe sufficient evidence and conduct adequate analysis to support its finding that post-employment restrictions appropriately protect the public interest by preventing personal conflicts of interest and preventing former DoD officials from exercising undue or inappropriate influence.</li> <li>• DoD’s recommendation to modify the OIG database should be further examined to determine whether it is feasible to implement.</li> </ul>
<b>Question B: Do the current post-employment restrictions appropriately require disclosure of personnel accepting employment with DoD contractors involving matters related to their official duties?</b>	
<p><b>Finding:</b> The current post-employment restrictions appropriately require disclosure of personnel accepting employment with contractors of DoD involving matters related to their official duties.</p> <p><b>Recommendation:</b> None.</p>	<ul style="list-style-type: none"> <li>• The DoD finding that disclosure requirements are adequate was not supported by sufficient evidence and analysis.</li> <li>• The DoD Panel’s decision to make no recommendation to close the gaps in disclosure requires further explanation.</li> </ul>
<b>Question C: Do the current post-employment restrictions use appropriate thresholds, in terms of salary or duties, for establishment of such restrictions?</b>	
<p><b>Finding:</b> Although not perfect, current thresholds are appropriate in terms of salary or duties for the establishment of post-employment restrictions.</p>	<ul style="list-style-type: none"> <li>• DoD did not provide adequate evidence or analysis to support its finding that the existing salary and duty thresholds are adequate.</li> <li>• The DoD recommendations for Question C are not supported by adequate information and analysis.</li> </ul>

DoD Findings and Recommendations	Academy Panel Assessment
<p><b>Recommendation(s):</b></p> <ul style="list-style-type: none"> <li>• C-1. The Panel recommends that the DoD General Counsel examine whether the one-year cooling-off period of 18 U.S.C. §207(c) should be expanded to apply to subordinate commands of Joint Commands.</li> <li>• C-2. The Panel recommends that the DoD General Counsel examine whether three- and four-star officers and members of the Senior Executive Service holding Tier III positions should not be able to take advantage of appearing before the DoD separate components during their respective one-year cooling-off period.</li> <li>• C-3. In accordance with OGE recommendations, add an additional exception to 18 U.S.C. §207(j) for former personnel who possess “unique knowledge or perspectives in fields such as national security or other fields involving specialized knowledge.”</li> </ul>	
<p><b>Question D: Are the rules sufficiently straightforward and have they been explained to personnel of the Department of Defense so that such personnel are able to avoid potential violations of post-employment restrictions and conflicts of interest in interactions with former personnel of the Department?</b></p>	
<p><b>Finding: Current post-employment rules are not always straightforward, but – with proper training and enforcement – they provide adequate protection.</b></p> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• D-1. Establish a standard format and review protocol for post-government employment ethics opinion letters.</li> <li>• D-2. Maintain all post-government employment ethics opinion letters in a central repository.</li> <li>• D-3. DoD should establish Values-Based Ethics training to be taught by the individual’s own organizational leaders</li> </ul>	<ul style="list-style-type: none"> <li>• DoD introduces the issue of the overall complexity of the restrictions, but fails to establish how additional training and enforcement will help reduce this complexity.</li> <li>• DoD’s recommendations supporting Finding D are consistent with the finding, but they do not adequately address the core issue of lack of clarity and ambiguity in the post-employment restrictions.</li> </ul>



DoD Findings and Recommendations	Academy Panel Assessment
<p>or supervisors.</p> <ul style="list-style-type: none"> <li>• D-4. Enlist Public Affairs to help educate DoD personnel and the public about how the ethics rules protect the national interest.</li> <li>• D-5. DoD personnel, including senior officials, Executive Officers, and Chiefs of Staff, must also be trained about the ethical considerations of meeting with former senior officials and be given clear guidelines about how to handle meeting requests.</li> </ul>	
<p><b>Question E: Do the current post-employment restrictions appropriately apply to all personnel performing duties in acquisition-related activities, such as personnel involved in:</b></p> <ul style="list-style-type: none"> <li>• The establishment of requirements;</li> <li>• Testing and evaluation; and</li> <li>• The development of doctrine.</li> </ul>	
<p><b>Finding:</b> Post-employment restrictions adequately apply to DoD personnel who are performing acquisition-related activities; however, there is some concern that these personnel may not be fully aware of how these restrictions apply to themselves.</p> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• E-1. A crosswalk is needed between the Critical Acquisition Positions (CAPs) and the ethics requirements to ensure appropriate coverage.</li> <li>• E-2. Ensure that individuals who develop and provide requirements receive ethics training so they understand how their actions will shape their post-employment options.</li> </ul>	<ul style="list-style-type: none"> <li>• The DoD analysis does not include adequate context and background information on acquisition positions, which undermined DoD's ability to reach supportable conclusions and valid findings regarding this critical component of the workforce.</li> <li>• DoD's recommendations for Question E are consistent with the overall finding but their value is weakened by the quality of the analysis.</li> </ul>

DoD Findings and Recommendations	Academy Panel Assessment
<b>Question F: Do the current rules ensure that DoD has access to world-class talent, especially with respect to highly-qualified technical, engineering, and acquisition expertise?</b>	
<p><b>Finding:</b> Current post-employment rules have some impact on the ease of accessing non-career, highly qualified technical, engineering, and acquisition expertise.</p> <p><b>Recommendation:</b> That DoD explore whether the current exceptions to 18 U.S.C. §207(j) may appropriately accommodate FFRDC employees who seek to represent back to the government.</p>	<ul style="list-style-type: none"> <li>• DoD’s finding that restrictions have some impact on access to talent does not take into account the full scope of organizations and positions that may be affected by the restrictions.</li> <li>• DoD’s recommendation for Question F is supported by the evidence and analysis but its usefulness is limited by the narrow scope of organizations and positions targeted by the recommendation.</li> </ul>
<b>Question G: Do the current rules adequately ensure that service in the Department of Defense remains an attractive career option?</b>	
<p><b>Finding:</b> Post-employment restrictions have some impact on individual decisions to make service in DoD an attractive career option.</p> <p><b>Recommendation:</b> None.</p>	<ul style="list-style-type: none"> <li>• DoD did not conduct adequate research and analysis to address the issue of the impact of the restrictions on career choices; this resulted in a flawed conclusion.</li> <li>• DoD’s rationale for offering no recommendation requires explanation.</li> </ul>

## CONCLUSION

In applying its assessment framework to the DoD report, the Academy Panel identified weaknesses in all categories of the assessment criteria – design, execution, reporting, and utility/feasibility. In this regard, the Academy Panel concludes that the DoD report is technically inadequate in three important respects. *First*, it did not clearly define the entire universe of employees who can potentially be impacted by the post-employment restrictions. This leaves Congress and other stakeholders at a disadvantage in assessing the overall impact of the restrictions and their implications with respect to recruitment and retention of highly qualified talent in key mission areas. *Second*, DoD did not adequately emphasize the complexity and ambiguity that have resulted from the piecemeal development of the restrictions over time. The Panel understands that this situation results from the need for new or clarifying restrictions, but DoD did not offer any recommendations to effectively address the underlying cause of this situation. *Third*, the Academy Panel does not believe that DoD’s findings and recommendations adequately responded to Congressional concerns about the public’s perceptions regarding the potential for undue influence that can result from inadequate understanding or enforcement of post-employment restrictions and how those perceptions can be changed.

In summary, given the methodological and analytical weaknesses in the DoD review, the Academy does not believe that DoD’s report is persuasive in its conclusion that existing post-employment restrictions are adequate to protect the public interest; nor does DoD adequately address the impact of the restrictions on the Department’s ability to attract, recruit, and retain talent. With respect to the latter deficiency, the Panel is concerned that DoD faces the challenge of balancing the requirements of post-employment restrictions against those of other competing and conflicting legislation, such as the Weapons Systems Acquisition Reform Act (WSARA) of 2009, which had as one of its key goals reversing the erosion of quality among the DoD acquisition workforce.

Notwithstanding the technical deficiencies in DoD’s report, however, the Academy Panel believes that DoD accurately determined that no additional restrictions are needed to protect the public interest. Rather, the Academy Panel believes that DoD should focus on actions needed to address the challenges created by the complexity and lack of clarity in the existing restrictions.

## RECOMMENDATIONS

Based on the findings presented above, the Academy Panel makes the following recommendations:

- **The DoD Panel on Contracting Integrity should review its recommendations and collaborate and consult, as appropriate, with the DoD OIG, Office of General Counsel (OGC), and OGE to (1) assess the feasibility of implementing those recommendations and (2) develop an integrated implementation strategy. This strategy would require the following steps:**

- Collaborate with DoD's OIG and the OGE to jointly evaluate the feasibility of implementing the recommendations, prioritize those that can reasonably be implemented, determine needed resources, and develop timelines for implementation;
  - Assess in detail the impact and implications of expanding the one-year cooling off period to subordinate organizations of Joint Commands to ensure there are no unintended consequences;
  - Collaborate with OGE to ensure that the provisions of 18 U.S.C. §207(j) can be implemented to provide an exception for former personnel who possess unique knowledge in specialized fields and to accommodate FFRDC employees who seek to represent back to the government; and
  - Collaborate with DoD Components to develop a timeline for implementing the recommendations and provide necessary support for follow through.
- Given the complexity and lack of clarity in the extensive framework of post-employment restrictions, DoD should develop a more comprehensive and focused strategy to enhance transparency, improve DoD-wide harmonization, and achieve consistent interpretation of the restrictions. The strategy should include the following actions:
    - Develop a comprehensive document that distills and codifies the full body of laws, regulations, and policies into one set of clear, understandable guidance that DoD employees have access to on a daily basis;
    - Using this document, develop a set of "bright line" principles (similar to the ethics principles in Appendix G) embedded in the restrictions and engage Public Affairs Offices to communicate them widely and frequently to potentially affected employees; and
    - Conduct an informal workforce survey to (1) assess the level of understanding of the restrictions and the principles they support, (2) identify needed process improvements in administration of the restrictions, and (3) identify target areas for a follow-up assessment.
  - Given the importance of the acquisition workforce to the topic of post-employment restrictions, the Panel recommends that DoD conduct a separate study to identify the full scope of its acquisition workforce and clearly distinguish the subset of military and civilian positions engaged in developing requirements. One goal of this study should be to clearly align DoD's own Critical Acquisition Positions with the acquisition functions cited in the study mandate.
  - The Under Secretary of Defense for Personnel and Readiness, in coordination with the DoD Office of General Counsel, should take the following actions to clarify the nature and scope of the DoD workforce affected by the restrictions:

- Work with the Components to accurately and completely identify the entire population of DoD employees to which the various post-employment restrictions apply;
  - Work with the DoD Components to identify the full scope of DoD organizations that employ personnel who perform duties in the scientific, engineering, and technical occupational areas that may be affected by the post-employment restrictions; and
  - Work with the Components and manpower/human resources policy staffs to develop (1) mechanisms to identify trends and patterns in violations of post-employment restrictions, (2) indicators of the adequacy of post-employment restrictions, and (3) more reliable data that can be used in a follow-up review.
- DoD's DAEOs should work with the Under Secretary for Personnel and Readiness and the Components to conduct a more systematic and ongoing analysis of the impact of the post-employment restrictions on DoD's ability to attract, recruit, and retain military and civilian talent. To implement this recommendation, DoD could take the following steps:
    - Examine ways to track and assess the impact of the restrictions on recruitment and retention of civilian talent in critical occupations;
    - Examine exit interviews of employees departing from all organizations that rely on technical, engineering, and scientific talent to determine whether the restrictions have any impact on their decisions to accept or leave employment with DoD or to serve in positions that are not subject to post-employment restrictions;
    - Conduct a workforce survey to determine the extent to which post-employment restrictions affect their decisions to seek promotions to SES positions;
    - Gather information from new hires to determine at what point in recruitment and hiring processes they were informed of post-employment restrictions and their potential effects on career decisions of said hires; and
    - Review the agency approach for tracking and assessing recruitment and retention of military personnel subject to post-employment restrictions.
  - In light of the deficiencies in the current review, DoD should conduct a follow-up review of post-employment restrictions and their administration across DoD Components in two to three years using a more methodologically and analytically sound approach that relies on better empirical evidence. The results of that review should be analyzed and reported to Congress with any necessary recommendations for process improvement, an implementation plan, and a timeline for addressing any new findings. The follow-up review should focus on (1) addressing changes in public perceptions regarding the effectiveness of restrictions in preventing personal

**conflicts of interest and (2) assessing the impact of the restrictions on DoD's ability to attract and retain talent.**

- **Beyond the actions taken by DoD, the Panel recommends that Congress – in particular, the House and Senate Armed Services Committees – conduct an analysis to assess the impact of the post-employment restrictions on other conflicting and competing priorities affecting the acquisition workforce, including those outlined in the WSARA (Public Law 111-23, enacted on May 22, 2009), which had the overarching goal of reversing the erosion of quality in the DoD acquisition workforce.**

## SECTION IV.

### EFFECTIVE PRACTICES REVIEW

In addition to the assessment of DoD's review of post-employment restrictions mandated by Congress, DoD requested that the Academy conduct a review of effective practices related to post-employment restrictions. The purpose of this review is to assist DoD by identifying effective practices that might help address challenges related to post-employment restrictions identified in the DoD report and by the Academy Panel, and to inform key recommendations and implementation actions.

#### CRITICAL SUCCESS FACTORS AND RELATED EFFECTIVE PRACTICES

The Academy Panel's review focused primarily on practices related to training, advice, and resources supporting ethics officials in the performance of these duties. This focus reflected the reported challenges related to the complexity and lack of clarity of the post-employment restrictions identified in the Academy's research supporting its assessment of the DoD report and the prior data collection conducted by the Academy to inform the DoD review.<sup>52</sup> These challenges include the limited understanding or misunderstanding of the restrictions and inconsistent advice on the application of the restrictions. Recognizing that the effective management of post-employment restrictions depends on the effective management of the broader ethics program, we also looked at areas of practice, such as leadership, that are critical to effective ethics program management more generally.

To identify relevant effective practices, the Academy Panel employed a mix of methods including expert interviews with government and industry experts and a review of expert studies and on-line resources. A recent study by the OGE, *A Vision for Ethics Program Management*, reviews ethics program practices across fifteen Cabinet agencies. This study provides a general framework for organizing the discussion of the Academy Panel and study team's research as well as pertinent OGE research.

The OGE report identifies four factors as being critical to the success of agency ethics programs:

1. **Leadership**—agency leadership and supervisors support and are involved in the ethics program

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<sup>52</sup> The DoD contracted with the Academy to provide research support for the DoD Panel's review. The Academy's role in this project was limited to helping collect data needed by the DoD Panel to accomplish its review. Toward this end, the Academy conducted interviews and focus groups with internal and external stakeholders. The Academy did not advise on the methodology of the DoD Panel review and was not involved in the formulation of the DoD Panel's findings or recommendations to the Secretary of Defense. The Academy's final report was submitted to DoD on November 15, 2010.

2. **Awareness**—employees are aware of the ethics program and its role, as well as their personal ethical responsibilities
3. **Resources**—agency and ethics community resources are leveraged
4. **Oversight**—internal controls and oversight of the ethics program are established

The OGE report also identifies categories of concrete actions, or “practices,” that agencies are taking to address critical success factors and reviews the most common and most innovative actions that agencies are taking in these categories. The agency practices reviewed and examples of these practices by individual Cabinet agencies featured in the report are presented in a summary table in Appendix F.

As already noted, the Academy Panel’s research focused on practices related to training and advice and resources supporting ethics officials in the performance of these duties. This focus coincides roughly with two of the OGE report’s four critical success factors – Awareness and Resources. The Academy Panel relied primarily on OGE research on practices in the areas of Leadership and Oversight. Therefore, it does not develop findings and recommendations in these two areas, with the exception of oversight practices regarding ethics opinion letters.

The OGE framework was developed for a review focused broadly on general ethics program management. The Academy Panel has focused its discussion on those categories of concrete actions it deems most important from a general management perspective and most relevant to the particular challenges posed by the administration of post-employment restrictions. Also, the Panel has added categories and modified existing categories to accommodate its research focus and results.

## LEADERSHIP

The OGE report describes leadership as follows:

It is critical that agency leadership at all levels show support for and involvement in the ethics program. Ethics programs and activities do not operate in a vacuum. Employees face competing demands for their time and attention. Cues from agency leaders as to which responsibilities take precedence exert strong influence on employee’s decisions. Even well designed ethics initiatives, therefore, will have a limited impact if employees view the initiatives as peripheral or as a hindrance to an agency’s mission.<sup>53</sup>

The Academy Panel believes that it is critical for leaders and supervisors to regularly and visibly communicate support not just for compliance with ethics program requirements, but for ethical conduct more generally. Visible leadership commitment at all levels is necessary to ensure that employees take compliance and ethical responsibilities seriously. Moreover, support for compliance and ethics must be a top priority of leadership. Ethical breaches pose a serious risk to

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<sup>53</sup>U.S. Office of Government Ethics. *A Vision for Ethics Program Management: Benchmarking Success*, p. 6.



the reputation and the ability of an organization to carry out its mission, which depends ultimately on the public's trust.

The OGE report identifies five categories of practices by agencies in this area: (1) visible support; (2) access; (3) involvement in managing the ethics program; (4) budgetary support; and (5) awards and ratings linked to compliance with ethics requirements.

The Academy Panel focuses on two areas of practice: visible support and involvement in managing the ethics program. The OGE report identifies several examples of agency practices by which leadership can display support for compliance with ethics program requirements and for ethics. These examples include: delivering messages in person to employees in training sessions, appearing in training videos, sending e-mails and issuing written statements discussing the importance of ethics, and discussing ethics in speeches. The report features the Department of Interior as an exemplar in this area of practice (see Appendix F).

Since the Druyun case,<sup>54</sup> DoD leadership has sought to communicate the importance of ethical values and conduct and to express support for ethics program activities through written statements and speeches. Most recently, the Deputy Secretary of Defense has issued two memoranda, one addressing the importance of ethics issues for DoD personnel generally and the other addressing acquisition organizations more specifically. The Office of the Undersecretary of Acquisition, Technology, and Logistics (AT&L) has been most active in this area, issuing a number of memoranda to the acquisition workforce and industry partners regarding efforts to ensure the integrity of acquisition decision-making. AT&L also maintains a website communicating these efforts and providing ethics resources to the acquisition workforce.<sup>55</sup> A subcommittee of the Panel on Contracting Integrity, a standing panel within AT&L established following the Druyun scandal, is pursuing an initiative on values-based training. This initiative is focused on ways that organizational leaders and supervisors can communicate ethical values as a complement to the traditional focus of ethics programs on training and compliance with ethics rules.

With regard to involvement in the management of ethics programs, the OGE report identifies practices focused on ensuring compliance with ethics requirements. These include: leaders and supervisors helping to follow up with delinquent financial disclosure filers, making sure that employees comply with training requirements, and directing employees to seek ethics advice as ethics issues arise.

It is important to note, however, that effective involvement in the management of the ethics program is more than just a paperwork exercise. DoD requires supervisors to review financial disclosure forms, the purpose being to help ensure that they are aware of conflicts of interest and

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<sup>54</sup> U.S. v. Druyun – USDC for Eastern District of Virginia, Criminal No. 04-150-A (2004); Air Force Chief of Acquisition was sentenced to 9 months in jail for violating 18 U.S.C. §208 because she was negotiating the tanker lease on behalf of the Air Force with Boeing, and negotiating for employment with Boeing at the same time.

<sup>55</sup> The website is found here: [http://www.acq.osd.mil/dpap/cpic/cp/ethics.html#ethics\\_is\\_a\\_critical\\_part](http://www.acq.osd.mil/dpap/cpic/cp/ethics.html#ethics_is_a_critical_part). The referenced memoranda by the Deputy Secretary and Undersecretary of Acquisition, Technology and Logistics are posted on this web page.

make sound decisions about the assignment of personnel in particular matters.<sup>56</sup> The OGE report points to the importance of supervisor training in this area, featuring practices at the Department of Justice as a particularly good example.

The OGE report does not address accountability mechanisms that would help ensure that leadership and supervisors are consistently engaged in ethics program management (e.g., helping to ensure compliance with ethics requirements). While the report does address the accountability of employees in the fifth category of practices – linking awards and ratings to compliance with ethics requirements – it does not address accountability mechanisms applied to leadership and supervisors.

In the case of DoD, ultimate responsibility for the ethics program below the DoD headquarters level rests with the Component heads, who are responsible for personally establishing and maintaining the DoD Component's ethics program and for ensuring compliance with post-employment restrictions.<sup>57</sup> However, no accountability mechanisms are specified.

## **AWARENESS**

The OGE report describes awareness as follows:

Employees should be aware of the ethics program and its role and their personal ethical responsibilities. Building awareness can raise the visibility of the ethics program, foster an ethical culture, and minimize risk to the agency and its employees.<sup>58</sup>

The OGE description of awareness captures the traditional role of agency ethics programs. The risks to be minimized in this traditional understanding of the ethics program are those to the individual, the agency, and the public interest. The Academy Panel would expand OGE's description of awareness to address expressed Congressional concern that post-employment restrictions and related policies ensure DoD's access to non-career talent and the attractiveness of DoD careers.

The Academy Panel's expanded description would include the aim of raising the awareness of post-employment restrictions among groups within and outside the agency who might consider certain types of covered positions if not for a misunderstanding of actual restrictions. This focus would address the risk to DoD's access to talent.

OGE identifies three categories of practices that contribute to awareness: (1) distribution of ethics-related information, (2) marketing the ethics program, and (3) training. The Academy Panel focuses its discussion on two of these categories: training and the distribution of ethics-

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<sup>56</sup> Subsection 7-206 of the Joint Ethics Regulation requires initial review by the filer's supervisor.

<sup>57</sup> DoD Joint Ethics Regulation, DoD 5500-07.R.

<sup>58</sup> U.S. Office of Government Ethics. *A Vision for Ethics Program Management: Benchmarking Success*, p. 10.

related information. The Academy Panel treats OGE's second category, "marketing the ethics program," as a subset of the other two categories of practices. Both training and ethics-related distribution practices generally include conveying information about the ethics program, its importance, the resources available, and contact information.

Generally speaking, training is the most direct and immediate way not only to convey ethics-related information but also to engage individuals and ensure that they understand the content and importance of the information being provided. However, training practices include a continuum of delivery approaches ranging from the high intensity of one-on-one, in-person training to simply providing written materials to review.

The distribution of ethics-related information is an important complement to training. Training is often general in scope. Distribution means, such as e-mail, provide an inexpensive and timely way to convey information on more focused topics, such as post-employment restrictions and related policies. These means also offer an inexpensive way to communicate ethics-related information to employees who do not receive regular ethics training.

**Finding 4-1. DoD is a leader among federal agencies in its efforts to promote awareness among its employees about post-employment restrictions.**

DoD requirements for the initial ethics training of new employees and for annual ethics training of employees correspond to government-wide regulations established by OGE, which are presented in Table 4-1 below. In addition to OGE requirements, DoD requires that Components include training on relevant Federal and DoD disqualification and employment restrictions in annual ethics briefings.<sup>59</sup> On their face, these requirements do not suggest a particular emphasis on post-employment restrictions. But, as a matter of common practice, post-employment restrictions are a prominent part of annual ethics training across DoD. DoD provides template presentations for annual training that have been adopted with little modification by many Components. While post-employment restrictions may only constitute a small number of the total number of DoD's presentation slides, the topic is one of three Components of the annual training presentations following the DoD template.<sup>60</sup>

In addition to annual training requirements, DoD requires employees who file public disclosure reports (see Table 4-1) to certify each year that they are aware of the restrictions that three statutes place on them during Federal service when negotiating employment, and after departing Federal service.<sup>61</sup> They must also certify that they have not knowingly violated these statutes.

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<sup>59</sup> Subsection 11-301 of the Joint Ethics Regulation.

<sup>60</sup> Typically the three Components include an overview of ethics rules, which includes a review of OGE's 14 Principles of Ethical Conduct; post-employment rules; and the focus topic that changes from year to year. The focus topic generally constitutes the bulk of the slides. The 2011 Annual Training presentation posted on the Navy ethics website is an example of the DoD template adapted by a component organization. Find Navy ethics website here: <http://www.ethics.navy.mil/>

<sup>61</sup> Subsection 8-400 of the Joint Ethics Regulation, now requires DoD employees who file the Public Financial Disclosure Report (OGE Form 278) to certify annually that they are aware of the disqualification and employment restrictions of 18 U.S.C. 207 and 208, and 41 U.S.C. 2103-2107

This certification requirement clearly indicates that DoD recognizes the seriousness of promoting awareness *and* accountability of employees regarding post-employment and related restrictions. However, it should be noted that this requirement only covers a small part of all DoD employees to which post-employment restrictions potentially apply.

**Table 4-1. Basic OGE Ethics Training Requirements Applicable to Federal Agencies**

Type of Ethics Training	Recipients	Method, Timing, and Amount	Content of Training
Initial Ethics Orientation	All Employees	Written materials for employee to review  Within 90 days of beginning work with an agency  One hour of duty time	<ul style="list-style-type: none"> <li>• The Standards and any agency supplemental standards to keep or review; <i>or</i> Summaries of the Standards, any agency supplemental standards, and the Principles to keep.</li> <li>• Contact information for ethics officials.</li> </ul>
Annual Ethics Training  [Note: Initial annual training for public filers substitutes for initial ethics orientation.]	<i>Public Filers</i> -- All DoD political appointees, General and Flag Officers appointed at O-7 and above, and members of the Senior Executive Service	<i>Verbal</i> * training  Every year  One hour of duty time	<ul style="list-style-type: none"> <li>• The Principles;</li> <li>• The Standards;</li> <li>• Any agency supplemental standards;</li> <li>• The Federal conflict of interest statutes; and</li> <li>• Contact information for ethics officials.</li> </ul>
	<i>Confidential Filers</i> **	<i>Verbal</i> training  At least once <i>every three years</i>  One hour of duty time	Same as for public filers

\* Presented by a qualified instructor; *or* prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape.

\*\* Under 5 CFR 2634.904, employees are defined as confidential filers if the agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding: contracting or procurement; administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits; regulating or auditing any non-Federal entity; or other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity.

DoD also goes beyond OGE regulations in requiring that all DoD Components provide guidance on relevant Federal and DoD post-employment restrictions, as part of out-processing procedures, to DoD employees who are leaving Federal service.<sup>62</sup> While this practice is not unique to DoD, it is considered a leading practice. The particular form this guidance should take is not specified and there is considerable variance in practice. Guidance is generally provided through what are referred to as “exit briefings.” These briefings are generally provided in person and offer some opportunity for obtaining informal advice. In all cases, employees are urged to seek counsel and to obtain a written opinion as required by law.<sup>63</sup> The importance of exit briefings lies in alerting departing employees to post-employment restrictions before they make employment decisions. It is when they are nearing departure that they will be most focused on the issue. Exit briefings can be especially important for employees not covered by annual training requirements, who only receive the initial ethics orientation when they join the agency.

As noted in the Academy Panel’s initial discussion of Awareness practices, the distribution of ethics-related information is an important complement to training. The OGE report highlights the use of e-mails and newsletters by agencies to highlight particular ethics topics. A recent GAO report notes SEC’s use of e-mails to alert employees to post-employment issues.<sup>64</sup> DoD and Component ethics programs make use of electronic newsletters and e-mails to convey ethics information, including information related to post-employment restrictions. Also, the DoD Standards of Conduct Office maintains a dedicated ethics page with links to accessible employee guides to post-employment restrictions.<sup>65</sup>

**Finding 4-2. There are opportunities to increase awareness of post-employment restrictions among DoD personnel involved in establishing requirements.**

Members of the Defense Science Board and senior members of the DoD Panel on Contracting Integrity participating in the DoD review expressed reservations about whether DoD personnel involved in establishing requirements are sufficiently aware of post-employment restrictions. Because some of these personnel may not be covered by annual training requirements they may not be sufficiently aware of post-employment restrictions that could apply to them. DoD concluded that this group should receive ethics training to ensure that they understand how their actions will shape their post-government employment options.

The Academy Panel’s review identified a training practice at Air Force headquarters that might adapted to the task of improving awareness of post-employment restrictions among DoD personnel involved in establishing requirements. The Air Force ethics office conducts a weekly Post-Employment Training briefing at headquarters. The briefing is targeted at employees who may be engaged in activities to which post-employment restrictions apply, but who are not

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<sup>62</sup> Subsection 9-402 of the Joint Ethics Regulation.

<sup>63</sup> Section 847 of the National Defense Authorization Act

<sup>64</sup> U.S. Government Accountability Office. *Securities and Exchange Commission: Existing Post-Employment Controls Could Be Further Strengthened*, GAO-11-654. July 2011, p. 13.

<sup>65</sup> U.S. Office of Government Ethics. *A Vision for Ethics Program Management: Benchmarking Success*, p. 12.

covered by annual training requirements. Employees are identified by the human resources department through a screening process and invited to attend the sessions.

Given the current lack of systematic information on personnel involved in establishing requirements and the particular concern about their awareness of post-employment restrictions, a voluntary training program focused on post-employment restrictions makes sense.

**Finding 4-3. There are opportunities for DoD to broaden its access to talent by improving awareness of post-employment restrictions among groups of potential candidates within and outside the agency.**

The Academy Panel's research has found a strong perception among defense community stakeholders that post-employment restrictions are unduly restrictive and uncertain in their application. For instance, a common concern is that technically trained people who choose to serve in DoD may not be able to work in their field after leaving DoD. Such perceptions, accurate or not, may be leading highly-qualified persons not to pursue certain types of positions at DoD.

## RESOURCES

The OGE report describes resources as follows:

It is critical that ethics programs leverage resources inside an agency and within the ethics community. Planning how to strategically take advantage of existing resources can eliminate duplicative efforts, maximize efficiency, and facilitate information sharing. To leverage internal agency resources, the ethics program should strive to forge formal relationships with human resources officials, information technology personnel, and the Office of the Inspector General. Additionally, duties and responsibilities of regional and component ethics officials should be designed to maximize efficiency. To leverage external resources, ethics officials should tap into the executive branch ethics community, which is filled with knowledge, expertise and resources. By using these resources, ethics officials can find solutions related to training, tracking systems, and model practices without expending their agency's finite resources.<sup>66</sup>

The OGE report identifies five categories of practices contributing to the general goal of leveraging resources in support of an effective ethics program. These categories are: (1) participating in ethics-related events; (2) collaboration with the ethics community; (3) relationships within the agency; (4) searchable advice and counsel databases; and (5) electronic filing systems.

The Academy Panel considers practices in two categories: leveraging external ethics community resources and leveraging internal agency ethics community resources. The former encompasses the first two OGE categories, as well as industry-based ethics community resources. The latter

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<sup>66</sup> U.S. Office of Government Ethics. *A Vision for Ethics Program Management: Benchmarking Success*, p. 12.

encompasses searchable advice and counsel databases and two other important internal agency ethics community resources not captured in the OGE categories of practice: Department-wide guidance documents, such as protocols for researching post-employment opinion letters, and Department-wide mechanisms for enabling collaboration and information sharing among ethics officials.

**Finding 4-4. DoD is a leader in leveraging external government ethics community resources, but there is an opportunity for DoD to leverage more fully the unique industry-based ethics community resources available through the Defense Industry Initiative and the International Forum on Business Ethical Conduct.**

All fifteen Cabinet agencies, including DoD, leverage external government ethics community resources by participating in ethics-related events such as the OGE National Government Ethics Conference and Interagency Ethics Council meetings and by collaborating with other agencies on ethics-related issues. With regard to the latter, the OGE report featured DoD's collaboration with the Environmental Protection Agency and Federal Emergency Management Agency to develop training on the use of social media.<sup>67</sup>

DoD is unique among federal agencies in having industry-based ethics organizations devoted to promoting ethical conduct and improving compliance with ethics requirements in the defense industry. These include the Defense Industry Initiative (DII) and the International Forum on Business Ethical Conduct (IFBEC). DII is a long-standing association of U.S. defense and security companies established in the wake of a defense procurement scandal that led to the Packard Commission review in 1985. DII provides training to ethics officials at defense industry companies, who in turn provide training to company employees - many of whom come from DoD. Consequently, DII is in a position to learn a lot about weaknesses in the training and advice received by departing DoD employees and can provide useful feedback that DoD could use to improve its ethics program over time. Also, DII hosts a range of forums for sharing effective practices in industry that could inform DoD thinking on new approaches. For instance, industry is very active in experimenting with different ways to deliver training most effectively.

While DoD ethics officials have good individual working relationships with counterparts at DII, collaboration between DoD and DII at the institutional level has been limited. There is an opportunity to develop more systematic interaction that would provide DoD with a more robust flow of information on the post-employment challenges and effective advice and training practices.

IFBEC is a recently established international association of aerospace and defense industry companies. Collaboration with IFBEC and its all-inclusive international aerospace and defense industry participants offers an opportunity for DOD to engage a broader range of companies on issues of ethical conduct and compliance. The organization has the capacity to implement universal standards and avoids conflicts of interest given the all-inclusive nature of its composition. Also, collaboration with IFBEC provides a promising opportunity to expand the

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<sup>67</sup> U.S. Office of Government Ethics. *A Vision for Ethics Program Management: Benchmarking Success*, p. 13.

adoption of desired principles of conduct here and abroad to the benefit of DoD and U.S. defense companies.

**Finding 4-5. DoD has put in place a variety of resources that can help improve the quality and consistency of training and advice provided to employees. However, additional attention should be given to the development of the DoD’s central database of ethics opinion letters.**

As discussed in the Awareness section, the DoD has developed templates for annual training presentations to help ensure quality and consistency across DoD. These templates are generally well regarded and have been widely adopted across DoD Components.

The OGE report identifies searchable advice and counsel databases as helpful in maintaining consistency and minimizing time spent on researching recurrent issues. On January 1, 2012, DoD launched the After Government Employment Advice Repository, a centralized database of opinion letters mandated in Section 847 of the FY 2008 NDAA. This database is a potentially useful resource for agency ethics officials, but only if opinion letters are catalogued in ways that enable it to be readily searched as needed. It is not clear that the database was designed to meet defined user needs.

Searchable advice and counsel databases can be a useful resource for agency ethics officials. However, other agency ethics community resources are equally important – if not more so – to help ensure that advice is accurate, consistent and developed efficiently. These resources include templates and protocols for preparing advice and mechanisms for ethics officials across the agency to discuss ethics issues and share effective practices. With regard to the former, DoD has developed a model opinion letter and a standard questionnaire for ethics officials to use in gathering information from departing and former DoD officials for writing post-employment opinion letters. These documents are available on the DoD Standards of Conduct website.<sup>68</sup>

A variety of means are available to ethics officials across DoD to discuss ethics issues and share effective practices. These include a monthly meeting of senior ethics officials, list serves, newsletters, and training.

## OVERSIGHT

The OGE report describes oversight as follows:

Ethics program oversight and internal controls can lead to continuity in program administration, consistency in carrying out ethics functions, accountability in the performance of duties, and increased compliance.<sup>69</sup>

<sup>68</sup> [http://www.dod.gov/dodgc/defense\\_ethics/](http://www.dod.gov/dodgc/defense_ethics/)

<sup>69</sup> U.S. Office of Government Ethics. *A Vision for Ethics Program Management: Benchmarking Success*, p. 14.



OGE identifies five categories of practices supporting effective oversight: (1) financial disclosure and training tracking systems; (2) standard operating procedures; (3) program reviews; (4) peer reviews; and (5) customer feedback.

The Academy Panel focuses on two categories most pertinent to addressing challenges related to post-employment restrictions-related at DoD: program reviews and peer reviews. Internal program reviews are an important tool to help ensure consistency in carrying out ethics functions (e.g., training and advice), accountability, and compliance. Internal program reviews are especially important to help ensure consistency in a large, decentralized organization like DoD. As noted earlier, DoD Components have considerable discretion in implementing ethics requirements.

The OGE report finds that seven of the Cabinet agencies have internal review programs, but it does not identify specific practices reported across these agencies. Instead, it provides three examples of agency internal review programs and highlights various elements of these programs, including on-site reviews of each agency component on a four year cycle, an agency-specific program review guide, and provision of guidelines to Components to prepare for review. The reviews themselves include financial disclosure reports, training procedures, and advice and counsel.

Program review at DoD compares favorably with examples from other agencies featured in the OGE report. DoD maintains a system of regular, on-site program reviews of component ethics programs.<sup>70</sup> DoD has its own program review guide and provides guidance on-line to Components to prepare for both DoD and OGE reviews. The DoD program review and audit guide outlines a comprehensive, detailed review of component ethics programs.<sup>71</sup> The reviews encompass financial disclosure reports, including a review of all financial disclosure reports, procedures for identifying individuals required to file, and electronic filing practices; written opinions and counseling, including a review of a sample for accuracy and completeness and documentation of ethic advice rendered; training, including tracking systems for identifying personnel to receive training and ensure they receive the required training; and a review of annual training content.

However, the Academy Panel believes that the standard of comparison indicated in featured agency examples is too limited. Program reviews should look beyond process and activities-based measures to focus on program effectiveness and include mechanisms for obtaining customer feedback. Component-level reviews should be methodologically aligned, repeatable, and integrated as part of an effort to improve effectiveness across the agency.

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<sup>70</sup> The Joint Ethics Regulation (JER) requires each Designated Agency Ethics Official (DAEO) to manage and oversee local implementation of the ethics program and JER. One way in which the DoD General Counsel, who is also the Department of Defense DAEO, carries out this oversight responsibility is through periodic on-site ethics program reviews and assistance visits of Deputy DAEOs who come under the cognizance of the DoD General Counsel.

<sup>71</sup> *Ethics Program Assistance Visit and Program Review Guide*, January 2007 posted on the Ethics Counselor's Deskbook here: [http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/index.html](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/index.html)

An effective system of program review for post-employment restrictions depends on complete, accurate, and readily available data on personnel subject to the restrictions. The apparent lack of such an information base found during the Academy Panel's assessment hinders the capacity for systematic program review focused on program effectiveness and improvement.

**Finding 4-6. DoD's informal system of peer review for advice and counsel is not sufficient to address the broad-based stakeholder concerns about the quality and consistency of opinion letters regarding the applicability of post-employment restrictions.**

Oversight of advice and counsel at DoD is handled through an informal system of peer review at the Component level. Peer review practice is left to the discretion of Component ethics officials. However, guidance on practices to ensure uniformity of advice is provided to ethics officials in training and includes: (1) coordinating advice up and down chain of command; (2) coordinating with ethics counselors at other organizations where multiple organizations are involved (in the case of external events); and (3) being alert to "forum shopping" by employees seeking advice.<sup>72</sup>

Academy research supporting its assessment of the DoD report and prior data collection conducted by the Academy to inform the DoD review found significant concern across stakeholder groups with the quality and consistency of written opinions letters. While there is no clear evidence of widespread inconsistency across ethics opinion letters, broad-based stakeholder concern and the implications of inconsistent opinion letters both for the effective protection of the public interest and DoD's access to talent-indicate that additional action by DoD is warranted.

The OGE report features two agency examples of formal peer review systems for advice and counsel—the Departments of Commerce and Housing and Urban Development. The example from Commerce is most comprehensive:<sup>73</sup>

- At least two ethics officials review all written advice rendered by staff attorneys.
- The advice is reviewed by the Division Chief and the Assistant General Counsel.
- Sometimes advice on less complicated/significant issues is reviewed after the advice is rendered to ensure responses are provided as quickly as possible.
- Follow-up emails are sent as soon as possible if a substantive error is identified or clarification is needed – although the ethics office notes such corrections are relatively rare.

The formal peer review process in place at Commerce offers greater transparency and accountability than is provided by the DoD's informal approach. Also, the Department-level review provides more assurance of quality and consistency across the agency. Together these

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<sup>72</sup> This effective practice guidance is drawn from "Running an Effective Ethics Program 8th Ethics Counselor's Course," posted in the Ethics Counselor Deskbook found here:

[http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/2010\\_Deskbook/index.html](http://www.dod.mil/dodgc/defense_ethics/resource_library/2010_Deskbook/index.html).

<sup>73</sup> U.S. Office of Government Ethics. *A Vision for Ethics Program Management: Benchmarking Success*, p. 16.

features would communicate commitment to addressing the issue and a plausible path to improving effectiveness.

## **CONCLUSION**

Overall, the Academy Panel finds that that DoD is a leader among federal agencies in its efforts to promote awareness among its employees about post-employment restrictions. However, effective program administration has been hindered by weaknesses in the oversight of opinion letters regarding the applicability of post-employment restrictions. More generally, effective program administration is hindered by the lack of complete, accurate, and readily available data on personnel potentially affected by post-employment restrictions.

## **RECOMMENDATIONS**

Based on the findings presented in this section, the Academy Panel makes the following recommendations to help improve the administration of post-employment restrictions:

- **DoD should provide voluntary training on post-employment restrictions targeted at DoD personnel involved in establishing requirements who do not receive annual training.**
- **DoD should undertake targeted outreach supporting recruitment for positions important to DoD's mission where there is significant concern that misunderstanding of post-employment restrictions may be deterring potential highly qualified candidates.**
- **DoD should consider ways to collaborate more systematically with the Defense Industry Initiative and the International Forum on Business Ethical Conduct to (1) obtain regular feedback on the effectiveness of DoD ethics training and advice; and (2) stay abreast of innovations that might inform improvements in practice. DoD should leverage the Forum's efforts to harmonize standards across the defense industry.**
- **The DoD should make it a priority to ensure that the ethics opinion database is organized to enable ethics officials to readily conduct searches as needed to support the goal of synchronizing ethics opinion letters across DoD.**
- **DoD should establish a formal system at the Department level for the review of written opinion letters regarding the applicability of post-employment restrictions. The goal of this review system should be to synchronize opinion letters across DoD.**

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## **SECTION V.**

### **THE PANEL’S ADVICE FOR MOVING FORWARD**

With over 1.4 million active duty military and 718,000 civilian personnel, DoD is the nation's largest employer. The Department’s mission is to provide the military forces needed to deter war and to protect the security of our country. Every year, substantial numbers of DoD employees performing complex duties in a variety of occupations leave federal service to secure employment with private firms and other organizations. Such a move makes many DoD employees subject to post-employment restrictions. Similarly, many private sector employees seek employment with DoD, bringing with them critical knowledge and expertise that often is not available among DoD’s own workforce. While DoD’s ability to attract and retain talent from outside of the agency is critical to mission success, the increasingly shared labor market of defense-related scientific, engineering, and technical personnel and the interchange of talent between DoD and the private sector has led to perceptions of improprieties and concerns that the “revolving door” is leading to abuses of public trust. This is so despite the existence of a large and complex scheme of post-employment restrictions governing certain activities of former federal employees.

While DoD’s General Counsel is charged with overall administration and enforcement of post-employment restrictions, the DoD Components are responsible for ensuring compliance with the extensive body of laws, regulations, and policies governing post-government employment. Component Heads are responsible for appointing a DAEO to oversee and supervise the Component’s ethics programs for both civilian and military employees. The decentralization of responsibilities for administering and enforcing compliance with a vast array of post-employment restrictions has created challenges for DoD in its efforts to ensure consistency and harmonization of advice and guidance across the agency.

#### **KEY CONGRESSIONAL CONCERNS**

In response to concerns about potential conflicts of interest and the potential for former DoD officials to exert undue influence on DoD activities, Congress directed DoD to review the post-employment restrictions. The purpose of this review was to determine if the restrictions adequately protect the public interest without unreasonably limiting future employment options for former DoD personnel. As a result of its review, DoD found that the current post-employment restrictions do adequately protect the public interest and prevent former officials from exercising undue influence. For this reason, DoD did not recommend any new restrictions. Instead, DoD recommended that some existing restrictions be expanded to cover subordinate DoD commands, and that certain exceptions to the restrictions be expanded to provide DoD greater access to certain highly-specialized talent.

In addition to mandating the DoD review, Congress directed the Academy to conduct an independent assessment of the DoD review and develop its own findings and recommendations.

To complement the review, DoD also asked the Academy to conduct the necessary research to identify effective practices to help address challenges identified by the review and to inform key recommendations and implementation actions. The Academy Panel focused primarily on practices related to (1) training and advice and (2) resources and processes supporting ethics officials in the performance of their duties.

## **WHAT THE ACADEMY PANEL FOUND**

In assessing the DoD review, the Academy Panel sought to understand more clearly the underlying concerns driving the Congressional mandate. Based on its own research, the Academy Panel learned that the study mandate was born from perceptions of impropriety that surface when Army officers involved in developing contract requirements leave the agency to work for certain Defense contractors. Although the Academy Panel did not assess the true magnitude of these perceptions, it did note that there was no documented evidence of widespread violations of post-employment restrictions.

In assessing DoD's review, the Academy Panel identified weaknesses in the design, execution, reporting, feasibility, and utility of the review. Given the weaknesses in the DoD analysis, the Academy Panel does not believe that DoD presented a persuasive conclusion that the existing restrictions—in their current format—are adequate to protect the public interest. Notwithstanding the deficiencies in the review, the Academy Panel believes that DoD appropriately concluded that no **additional** restrictions are needed. However, the Academy Panel identified specific concerns with respect to the overall utility of the DoD report.

**The Panel is concerned that the DoD review failed to provide the agency with a clear path forward to address the challenges created by the complexity and ambiguity in the existing restrictions, which are often the underlying cause of confusion, erroneous perceptions, and misunderstandings regarding conflicts of interest and the abuse of the public trust.**

In its review of effective practices, the Academy Panel found that DoD has taken important steps to establish programs and allocate resources to increase awareness among its employees about post-employment restrictions. However, effective program administration has been hindered by weaknesses in program oversight. While DoD has established a system of regular, on-site program reviews of Component ethics programs, such reviews—even in combination with the existing informal system of peer reviewing advice and counsel—are not adequate to ensure that all affected DoD employees receive consistent and high-quality advice regarding the applicability of post-employment restrictions. More fundamentally, DoD's efforts to enhance program oversight depend on its ability to completely and accurately identify military and civilian personnel that are potentially affected by the restrictions. Overall, the Panel believes that DoD's management, administration, and enforcement of post-employment restrictions can benefit from improved oversight.

## THE WAY FORWARD FOR ENFORCING POST-EMPLOYMENT RESTRICTIONS

Of the many management programs for which federal leaders are responsible, building a strong ethics program to foster high standards of conduct and to strengthen and protect the public trust in government ranks among the most important. Aside from the mission itself, few programs can have a more lasting effect on an agency's public image or that of its individual employees. Of no small significance are the laws, regulations, and policies that place restrictions on federal employees' activities once they leave government service and accept employment with non-federal organizations.

As a result of its assessment of DoD's review and its independent review of effective practices, the Academy Panel developed recommendations to help DoD improve the management of post-employment restrictions. From a broader perspective, however, the Academy Panel believes that DoD needs to become more strategic and proactive in its approach to administering and enforcing these restrictions. The Academy Panel understands that the Congressional mandate for the DoD review was largely based on public perceptions of the potential for unethical conduct and the exercise of undue influence on the part of former DoD officials. Nonetheless, the Academy Panel believes that the complexity inherent in the many post-employment restrictions – and the lack of understanding born from this complexity – have contributed to these perceptions of wrong-doing, and have the potential to ultimately undermine DoD's efforts to attract and retain world-class talent.

**Based on its review, the Academy Panel believes that DoD needs to modify its approach to administering post-employment restrictions. However, the Academy Panel recognizes that DoD cannot succeed unilaterally in this endeavor. DoD needs Congress' support to build a program that effectively protects the public interest while also ensuring that the agency can attract, recruit, and retain the talent needed to perform its mission.**

The Academy Panel offers advice to both Congress and DoD to help DoD modify its program for administering post-employment restrictions.

### **The Academy Panel's Advice to DoD**

Going forward, the Academy Panel believes that DoD should examine its current approach for administering the post-employment restrictions and should implement a more comprehensive, proactive system to help overcome the inherent complexity and lack of clarity created by the piecemeal evolution of the restrictions. As guiding principles, DoD should focus on actions that will improve transparency, accountability, and harmonization of the restrictions across the Department and its Components. An effective approach would require DoD and the Components to accomplish the following:

- Clearly identify the entire universe of DoD employees to which the various restrictions apply;
- To increase transparency and clarity, upon entry into their positions, ensure that all identified employees receive information and guidance regarding what restrictions apply to them and how;

- Require documented statements<sup>74</sup> from these employees (1) affirming that they have been informed of the resources available to them to ensure their understanding of how the post-employment restrictions impact them (such as training, websites, individual counseling, written opinions, etc.), and (2) agreeing that they will abide by these restrictions;
- Clearly communicate enforcement actions that will be taken if restrictions are violated;
- Proactively identify employees in defined high-risk groups who are nearing departure from DoD to ensure that they receive appropriate and timely advice on post-employment restrictions;
- Proactively reach out to likely candidates for certain types of high-risk positions to communicate and improve understanding of applicable restrictions; and
- Develop accountability measures (e.g. periodic reporting and performance criteria) for DoD leaders to ensure that they properly manage this process, such as developing specific performance management criteria and establishing periodic reporting requirements.

This new approach should be supported by increased communication by the Under Secretary of Personnel and Readiness and oversight by the Office of the General Counsel.

### **Potential Congressional Action for Consideration**

To facilitate DoD's transition to its new approach for administering post-employment restrictions and provide a foundation for success, Congress should review and assess the current restrictions with the objective of ensuring alignment and internal consistency among the laws that affect DoD's ability to attract, recruit, and retain to talent. In this regard, the Academy Panel urges the House and Senate Armed Services Committees to examine the post-employment restrictions in light of other legislative requirements that have a bearing on this issue, including the Weapons Systems Acquisition Reform Act of 2009, which included provisions to foster excellent performance among the Defense acquisition workforce.<sup>75</sup> The Academy Panel strongly believes that no new post-employment restrictions should be added to the existing regime until there has been a concerted effort to address the challenges DoD faces every day with the existing complex body of restrictions, and those restrictions have been analyzed in the context of related laws.

### **CONCLUSION**

DoD's review of post-employment restrictions has demonstrated the challenges a large, multifaceted, geographically-dispersed Department faces when trying to consistently interpret, apply, and enforce the complex array of post-employment restrictions that have evolved over time. Despite these challenges, DoD has established an ethics program with some features that can serve as a model for other agencies, and has taken steps to improve the quality of advice provided to its employees. Yet, like other federal agencies, DoD is still plagued by public

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<sup>74</sup> As noted in Section II, DoD already requires public financial disclosure filers to sign similar statements on an annual basis.

<sup>75</sup> The acquisition workforce includes some DoD military officers and senior officials who have major acquisition roles.



perceptions of impropriety when certain employees leave to seek employment with private-sector organizations. While many of these perceptions lack factual validity, confusion surrounding the purpose and intent of these restrictions is largely a function of their overall complexity.

Given DoD's mission to protect our national security, the ability to attract, recruit, and retain world-class talent at all times is critical to our nation's well-being. Private industry continues to be a critical source of talent – through contractual arrangements and other mechanisms – in helping DoD achieve its mission. Therefore, both DoD and private-sector organizations can benefit when former DoD employees work for private-sector organizations. Implementing the Academy Panel's recommendations can help DoD overcome the challenges resulting from the complexity and lack of clarity surrounding the post-employment restrictions and allow the agency to continue to recruit and retain the high-quality workforce it needs to carry out its mission. While the Academy Panel has identified some actions that are clearly within DoD's purview and authority, DoD will need the support of Congress to adequately address the complexity created by the incremental evolution of the extensive body of post-employment restrictions.

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## **APPENDICES**

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## APPENDIX A

### PANEL AND STAFF BIOS

#### PANEL

**Sean O’Keefe,\* *Panel Chair*** – Chairman and Chief Executive Officer, EADS North America. Former Vice President, General Electric Company; Chancellor, Louisiana State University; Administrator, National Aeronautics and Space Administration; Deputy Director, U.S. Office of Management and Budget; Professor, Maxwell School of Citizenship and Public Affairs, Syracuse University; Professor of Business Administration, Pennsylvania State University; Secretary of the Navy; Comptroller and Chief Financial Officer, U.S. Department of Defense; Staff Director, Senate Defense Appropriations Subcommittee, U.S. Senate.

**A. James Barnes\*** – Professor, School of Public and Environmental Affairs, and Professor, Maurer School of Law, Indiana University. Former Dean, School of Public and Environmental Affairs, Indiana University. Former positions with U.S. Environmental Protection Agency: Deputy Administrator; General Counsel; Special Assistant to Administrator, Chief of Staff. Former General Counsel, U.S. Department of Agriculture; Partner, Beveridge & Diamond; Campaign Manager, Governor William G. Milliken (Michigan); Assistant to Deputy Attorney General and Special Assistant, Trial Attorney, U.S. Department of Justice.

**James D. Carroll, Ph.D.\*** – Professor of Public Policy, Florida International University and Adjunct Professor, Georgetown University. Former Senior Staff Member and Director, Advanced Study Program, The Brookings Institution; Professor, and Chairman, Department of Public Administration, Maxwell School of Citizenship and Public Affairs, Syracuse University; Director, Government Research Division, Congressional Research Service, Library of Congress; Consultant and Advisor, World Bank.

**Janice Lachance, Esq.\*** – Chief Executive Officer, Special Libraries Association. Former Management Consultant, Analytica; Director, Deputy Director, Chief of Staff, Director of Communications and Policy, U.S. Office of Personnel Management; Director of Communications, Congressional and Political Affairs, American Federation of Government Employees, AFL-CIO; Communications Director, U.S. Representative Tom Daschle; Administrative Assistant, U.S. Representative Katie Hall; Staff Director and Counsel, Subcommittee on Antitrust and Restraint of Trade, House Committee on Small Business, U.S. House of Representatives; Legislative Assistant, U.S. Representative Jim Mattox.

**Judith A. Youngman, Ph.D.\*** – Professor of Political Science, U.S. Coast Guard Academy. Former Associate Professor of Social Sciences, U.S. Military Academy; Assistant Professor of Government, Gallaudet University; Vice President, Public Affairs, Rhone Poulenc Rorer (now Sanofi-Aventis); Executive Director, Public Issues Management, Merck & Co., Inc.; Director, International Affairs, Pfizer Inc.

*\* Academy Fellow*

## STAFF

**Joseph P. Mitchell, Ph.D., *Director of Project Development*** – Joe Mitchell is responsible for managing the Academy’s project development process to ensure that all studies are designed appropriately from a methodological, budgetary, and personnel standpoint; providing highly skilled technical advice and expertise on proposals, concept papers, and project deliverables; identifying opportunities for the Academy to improve the functioning of government at all levels and advancing the organization’s strategic agenda; and assessing internal competency/skill needs and developing strategies to address these issues. Dr. Mitchell also serves as a trusted advisor to the Academy President and CEO, Fellows, and clients. Dr. Mitchell received a Ph.D. in Public Administration from the Virginia Polytechnic Institute and State University, a Master of Public Administration from the University of North Carolina at Charlotte, and a Bachelor of Arts from the University of North Carolina at Wilmington.

**Jonathan Tucker, Ph.D., *Project Director*** – Jon Tucker has been a member of the Academy staff since 2004. Dr. Tucker has expertise in policy analysis, program evaluation, organizational design and management assessment, strategic planning, and information technology and has worked as Senior Analyst on a wide range of projects with nine different federal agencies. He led the Academy’s assessment of HUD’s information technology mission support function and directed the Academy research project supporting the DoD Panel’s review of post-employment restrictions. He received a Ph.D. in Public Policy from George Mason University, a Master of Science in Science and Technology from Rensselaer Polytechnic Institute and a Bachelor of Arts in Public Policy from the University of South Florida.

**Darlene Haywood, *Senior Advisor*** – Darlene Haywood is a senior advisor who has contributed her human resources subject-matter expertise on studies for the Federal Aviation Administration, U.S. Forest Service, Federal Emergency Management Agency, U.S. Government Accountability Office, Management Systems International (related to the Iraq Civil Service Curriculum), and the Department of Housing and Urban Development. Most recently, Ms. Haywood served as Deputy Project Director, and later Project Director for a two-phase review of the Defense Civilian Intelligence Personnel System (DCIPS). As Deputy Project Director, she led the overall technical execution of Phase 1 of the review to assess the overall design, implementation, and impact of DCIPS. In Phase 2 of the review, she exercised full responsibility for leading the study focused on providing technical advice and policy options to the Department of Defense as it worked to reshape the design of DCIPS. Ms. Haywood is a former HR Consultant at the U.S. Department of Homeland Security and a federal retiree with over 32 years of federal HR experience. Ms. Haywood obtained a Bachelor of Arts degree with highest honors (*summa cum laude*) in English from Stephen F. Austin State University in Nacogdoches, Texas, and a certificate in Strategic Human Capital Management from Harvard Business School in the spring of 2003. She is the recipient of numerous performance awards during her federal and non-federal career.

**Faith Gibson, *Research Associate*** – Faith Gibson has been with the Academy since June 2011. Prior to joining the Academy staff, Faith worked in the public education and non-profit sectors. She has research experience and interests in the areas of policy formation and implementation,

civic engagement and participation, program evaluation and education policy. Ms. Gibson received her Master of Public Administration degree from the College of Business and Public Administration at Old Dominion University in Norfolk, Virginia, and a Bachelor of Arts degree in Communications/Public Relations from Georgia State University in Atlanta, Georgia. Currently, Ms. Gibson is working on her Ph.D. in Public Administration and Policy at Virginia Polytechnic Institute and State University's Center for Public Administration and Policy at the National Capital Region Campus in Alexandria, Virginia.

**Andrew Price, *Research Associate*** – Andrew Price worked with the Academy as a project development intern during the summer of 2011 and officially joined the Academy staff, as a Research Associate, in August 2011. Before his time with the Academy, Andrew worked in the non-profit sector on issues relating to voting and democracy and social justice policy. His academic background and research interests are in the areas of U.S. national security, intelligence, and defense policy. In 2010, Andrew received his Bachelor of Arts degree in Political Science from Wake Forest University in Winston-Salem, North Carolina. He is currently working towards a Master of Public Policy degree at the Maryland School of Public Policy (UMD – College Park), where he is specializing in International Security and Economic Policy.

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## **APPENDIX B**

### **INDIVIDUALS CONTACTED**

#### **INTERVIEW CONTACTS**

Scott Amey, Chief Counsel, Project on Government Oversight

Rashmi Bartlett, Associate Director, Program Review Division, United States Office of Government Ethics

Richard Beutel, Senior Counsel, House Committee on Oversight and Government Reform, United States House of Representatives

Douglas L. Chapman, Management Analyst, Program Review Division, United States Office of Government Ethics

David S. C. Chu, Ph.D., President and CEO, Institute for Defense Analyses (IDA)

Nicole Clowers, Director, Financial Markets and Community Investment, United States Government Accountability Office

Kerri A. Cox, Associate General Counsel, Office of General Counsel & Legal Policy, United States Office of Government Ethics

Troy Cribb, Senior Counsel, Senate Committee on Homeland Security and Government Affairs, United States Senate

Margaret Daum, Staff Director, Subcommittee on Contracting Oversight, United States Senate

Alice Eldridge, Chair of the International Forum on Business Ethical Conduct

Shelley Finlayson, Associate Director, Legislative Affairs, Office of General Counsel & Legal Policy, United States Office of Government Ethics

William (Bill) Goehring, Deputy Assistant Inspector General, Office of Communications and Congressional Liaison, United States Department of Defense

Jeffrey Green, Senior Attorney, Standards of Conduct Office, Office of the General Counsel, United States Department of Defense

Andrew Hunter, Special Assistant, Under Secretary of Defense for Acquisition, Technology, and Logistics, United States Department of Defense

David LaCroix, Assistant General Counsel (Ethics), Office of the General Counsel, Department of the Navy, United States Department of Defense

Peter Levine, Chief Counsel, Armed Service Committee, United States Senate

Tarek Mahmassani, Analyst in Charge for GAO SEC Report, United States Government Accountability Office

Mary Clare Mielechowski, Hotline Investigator, Office of Inspector General, United States Department of Defense

Patricia Papas, Associate General Counsel, Office of Inspector General, United States Department of Defense

Andy Pauline, Assistant Director for Engagement on GAO SEC Report, United State Government Accountability Office

Nicholas P. Retson (Chip), Senior Counsel, Defense Acquisition Regulations System, United States Department of Defense

Henry Shelley, General Counsel, Office of Inspector General, United States Department of Defense

Michelle Simms, Acting Director, Air Force Ethics Office, (formerly, Associate General Counsel, Fiscal, Ethics and Administrative Law), Department of the Air Force, United States Department of Defense

Mark Stephenson, Legislative Director, House Committee on Oversight and Government Reform, United States House of Representatives

Sandra B. Stockel, Associate Deputy General Counsel (Ethics & Fiscal), Office of the General Counsel, Department of the Army, United States

Angela Styles, Executive Director, Defense Industry Initiative

Brian Yonish, Office of Inspector General, United States Department of Defense

Trish Zemple, Associate Director, Office of Government Ethics

## **DEFENSE CONTRACTOR COMMUNITY FOCUS GROUP CONTACTS**

Whit Cobb, Vice President and Deputy General Counsel at BAE Systems

Lou Crenshaw, Principal, Defense and Intelligence Sector, Grant Thornton

David Drabkin, Director of Acquisition Policy, Northrop Grumman

Steve Epstein, Chief Counsel for Ethics and Compliance, Boeing

Sol Glasner, Vice President, General Counsel, and Corporate Secretary, Mitre

Ruth Greenstein, Vice President, Finance and Administration, General Counsel, Institute for Defense Analyses (IDA)

Diann McCoy, Practice Management Executive, ASI Government

Dave Swindle, Executive Vice President, Federal Services, URS

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## APPENDIX C

### FRAMEWORK FOR ASSESSING THE DOD REVIEW OF POST-EMPLOYMENT RESTRICTIONS

Key Research Question	Standard
<b>Design of the Review (Utility)</b> <i>Utility</i> standards are intended to increase the extent to which program stakeholders find the evaluation processes and products valuable in meeting their needs.	
Was the appropriate methodology used to address questions posed by the study mandate?	<ol style="list-style-type: none"> <li><b>1. Overall design of the review:</b> The overall design of the DoD review is methodologically sound.</li> <li><b>2. Research questions:</b> The research questions guiding the review were appropriate and relevant to the objectives of the review.</li> <li><b>3. Data collection methodology:</b> The methodological framework includes credible and well-defined data-collection methods that will provide sufficient and appropriate data to adequately respond to stakeholders' questions and concerns.</li> <li><b>4. Plan for analyzing data:</b> The report describes a well-defined plan for analyzing, synthesizing, and interpreting data.</li> </ol> <p><i>Indicators:</i></p> <ul style="list-style-type: none"> <li>• The limitations and constraints on the evaluation methodology (e.g., the complexity and incremental evolution of the PERs) are discussed and taken into account in the DoD review.</li> <li>• The evaluation design clearly articulates the overall purpose of the review.</li> <li>• There is evidence that the full range of stakeholders (those involved in administering PERs, those affected by PERs, and the primary recipients of the evaluation) was identified and engaged in conducting the review.</li> <li>• The research questions can be linked back to the purpose and objectives of the review.</li> <li>• The evaluation methodology is grounded in an appropriate scientific research approach.</li> <li>• The plan for data analysis is clearly described and supportive of the research goals.</li> </ul>

Key Research Question	Standard
<p align="center"><b>Execution of the Review (Accuracy)</b></p> <p><i>Accuracy</i> standards are intended to increase the dependability and truthfulness of evaluation representations, propositions, and findings, especially those that support interpretations and judgments about quality.</p>	
<p>Are the report's findings supported by the evidence?</p> <p>Do the report's recommendations follow from the findings?</p> <p>Are there additional recommendations that should have been made based on the evidence?</p>	<p><b>5. Program description:</b> The PER policies are clearly described and documented to facilitate an accurate review of their adequacy and impact on recruitment and retention.</p> <p><b>6. Defensible information sources:</b> The sources of information used in the review are described in enough detail to facilitate assessment of the data's adequacy.</p> <p><b>7. Appropriate data collection tools:</b> The tools for collecting the information are clearly defined and appropriate for the review.</p> <p><b>8. Sufficient and appropriate evidence:</b> The evidence used to develop findings and conclusions was appropriate and sufficient.</p> <p><b>9. Thorough analysis of quantitative information:</b> Quantitative information is appropriately and systematically analyzed so that the research questions are fully answered.</p> <p><b>10. Thorough analysis of qualitative information:</b> Qualitative information is appropriately and systematically analyzed so that research questions are effectively answered.</p> <p><b>11. Justified conclusions:</b> The report's conclusions follow logically from the research results and are explained thoroughly.</p> <p><b>12. Valid findings:</b> The DoD report's findings are supported by the evidence described in the report.</p> <p><b>13. Supported recommendations:</b> The recommendations resulting from the report are fully supported by and consistent with the evidence, findings, and conclusions.</p> <p><i>Indicators:</i></p> <ul style="list-style-type: none"> <li>• The evidence described was adequate to address the objectives of the review and support the findings and conclusions.</li> <li>• The evidence described is <i>relevant</i> and reflects a logical relationship with the issue being addressed.</li> <li>• The evidence described is <i>valid</i>, i.e., it provides a meaningful basis for assessing the PERs.</li> <li>• The evidence used to assess the PERs is <i>reliable</i>, i.e., it would consistently produce the same results.</li> </ul>

Key Research Question	Standard
	<ul style="list-style-type: none"> <li>• The report’s findings adequately reflect the four key elements of a valid finding<sup>76</sup>—criteria, condition, cause, and effect.</li> <li>• Limitations or uncertainties in evidence are identified and addressed appropriately in the report.</li> <li>• The specific needs addressed by the PERs and the context in which they are applied have been adequately described.</li> <li>• Stakeholders were engaged in defining and gathering data.</li> <li>• Multiple sources were used to gather evidence in order to enhance the credibility of the findings.</li> <li>• The report’s conclusions reflect logical inferences about the adequacy and impact of PER policies.</li> <li>• Alternative explanations for findings are considered and the rationale for adopting or not adopting explanations is provided.</li> <li>• The report’s recommendations flow logically from the findings and conclusions and are designed to correct or resolve issues identified in the findings.</li> </ul>
<b>Reporting Results (Accuracy)</b>	
Does the report convey findings and recommendations in a clear and straightforward manner?	<b>14. Impartial reporting:</b> The report does not reflect any distortion of the evidence or findings due to personal feelings or biases.
	<b>15. Complete and fair assessment:</b> The DoD review is complete and fair in its examination of the PERs so that problem areas can be identified and addressed.
	<b>16. Report clarity:</b> The DoD report provides sufficient context and clear information to ensure that the report’s findings and recommendations are easily understood.  <i>Indicators:</i>

<sup>76</sup> Government Accountability Office, *Government Auditing Standards*, August 2011. *Criteria* are the laws, regulations, and other program requirements that provide a context for evaluating evidence. *Condition* refers to a specific situation. *Cause* identifies the reason or explanation for the factors that are responsible for the difference between the condition and the criteria. The *effect* or potential effect identifies the outcomes or consequences of the condition.

Key Research Question	Standard
	<ul style="list-style-type: none"> <li>• The report provides a summary description of the stakeholders and how they were engaged.</li> <li>• The report lists both strengths and weaknesses of the evaluation to ensure a balanced presentation.</li> <li>• The report explains the focus of the review and its limitations from a methodological standpoint.</li> <li>• The report was written in a format and style that suits the intended audience of stakeholders.</li> </ul>
<b>Impact of Report (Feasibility)</b>	
Are the report's recommendations feasible to implement?	<p><b>17. Implementable recommendations:</b> The report's recommendations are reasonable to be implemented in the organizational and environmental context described taking into account the political sensitivities of intended users.</p> <p><i>Indicators:</i></p> <ul style="list-style-type: none"> <li>• The report takes in to consideration the different positions of various interest groups so that their cooperation will be obtained in implementation of the report's findings and recommendations.</li> <li>• The report clearly addresses potential implementation challenges and provides guidance for overcoming them.</li> <li>• The report's recommendations are presented in a way that encourages follow-through by stakeholders to increase the likelihood of the evaluation being used.</li> <li>• Where appropriate, the report addresses the resource implications of implementing recommendations.</li> </ul>



## APPENDIX D

### CONGRESSIONAL MANDATE FOR THE STUDY

123 STAT. 2416

PUBLIC LAW 111-84-OCT. 28, 2009

#### **SEC. 833. REVIEW OF POST-EMPLOYMENT RESTRICTIONS APPLICABLE TO THE DEPARTMENT OF DEFENSE.**

(a) **REVIEW REQUIRED.** – The Panel on Contracting Integrity, established pursuant to section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), shall review policies relating to post-employment restrictions on former Department of Defense personnel to determine whether such policies adequately protect the public interest, without unreasonably limiting future employment options for former Department of Defense personnel.

(b) **MATTERS CONSIDERED.** – In performing the review required by subsection (a), the Panel shall consider the extent to which current post-employment restrictions –

(1) appropriately protect the public interest by preventing personal conflicts of interests and preventing former Department of Defense officials from exercising undue or inappropriate influence on the Department of Defense;

(2) appropriately require disclosure of personnel accepting employment with contractors of the Department of Defense involving matters related to their official duties;

(3) use appropriate thresholds, in terms of salary or duties, for the establishment of such restrictions;

(4) are sufficiently straightforward and have been explained to personnel of the Department of Defense so that such personnel are able to avoid potential violations of post-employment restrictions and conflicts of interest in interactions with former personnel of the Department;

(5) appropriately apply to all personnel performing duties in acquisition-related activities, such as personnel involved in –

(A) the establishment of requirements;

(B) testing and evaluation;

(C) the development of doctrine;

(6) ensure that the Department of Defense has access to world-class talent, especially with respect to highly qualified technical, engineering, and acquisition expertise; and

(7) ensure that service in the Department of Defense remains an attractive career option.

(c) **COMPLETION OF THE REVIEW.** – The Panel shall complete the review required by subsection (a) not later than one year after the date of the enactment of this Act.

(d) REPORT TO COMMITTEES ON ARMED SERVICES. – Not later than 30 days after the completion of the review, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the findings of the review and the recommendations of the Panel to the Secretary

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of Defense, including recommended legislative or regulatory changes, resulting from the review.

(e) NATIONAL ACADEMY OF PUBLIC ADMINISTRATION ASSESSMENT. – Deadlines.

(1) Not later than 30 days after the completion of the review, the Secretary of Defense shall enter into an arrangement with the National Academy of Public Administration to assess the findings and recommendations of the review.

(2) Not later than 210 days after the completion of the review, the National Academy of Public Administration shall provide its assessment of the review to the Secretary, along with such additional recommendations as the National Academy may have.

(3) Not later than 30 days after receiving the assessment, the Secretary shall provide the assessment, along with such comments as the Secretary considers appropriate, to the Committees on Armed Services of the Senate and the House of Representatives.

## APPENDIX E

### SUMMARY OF DOD FINDINGS AND RECOMMENDATIONS

[taken from Section VI - DoD Panel on Contracting Integrity Review of Post-Employment Report]

**FINDING: A. Current post-employment restrictions appropriately protect the public interest and prevent former officials from exercising undue or inappropriate influence.**

Recommendation A. The DoD OIG determine how the Hotline database can be improved to ensure consistency in identifying substantiated violations involving the Procurement Integrity Act and the conflict of interest criminal statutes (18 U.S.C. §§ 203-209 including the post-government employment statute 18 U.S.C. §207), so that these cases can be more easily searched and identified by the statute violated.

**FINDING: B. The current post-employment restrictions appropriately require disclosure of personnel accepting employment with contractors of the Department of Defense involving matters related to their official duties.**

Recommendation B. None.

**FINDING: C. Although not perfect, current post-employment restrictions thresholds are appropriate, in terms of salary or duties, for the establishment of such restrictions.**

Recommendation C-1. The Panel recommends that the DoD General Counsel examine whether the one-year cooling-off period of 18 U.S.C. §207(c) should be expanded to apply to subordinate commands of Joint Commands.

Recommendation C-2. The Panel recommends that the DoD General Counsel examine whether three and four star officers and members of the Senior Executive Service holding Tier III positions should not be able to take advantage of appearing before the DoD separate components during their respective one-year cooling off.

Recommendation C-3. In accordance with OGE recommendations, add an additional exception to 18 U.S.C. §207(j) for former personnel who possess “unique knowledge or perspectives in fields such as national security or other fields involving specialized knowledge.”

**FINDING: D. Current post-employment rules are not always straightforward, but – with proper training and enforcement – they provide adequate protection.**

Recommendation D-1. Establish a standard format and review protocol for post-government employment ethics opinion letters.

Recommendation D-2. Maintain all post-government employment ethics opinion letters in a central repository.

Recommendation D-3. DoD should establish Values-Based Ethics training to be taught by the individual's own organizational leaders or supervisors.<sup>77</sup>

Recommendation D-4. Enlist Public Affairs to help educate DoD personnel and the public about how the ethics rules protect the national interest.

Recommendation D-5. DoD personnel, including senior officials, Executive Officers, and Chiefs of Staff, must also be trained about the ethical guidelines about how to handle meeting requests.

**FINDING : E. Post-employment restrictions rules adequately apply to DoD personnel who are performing acquisition-related activities; however, there is some concern that these personnel may not be fully aware of how these restrictions apply to themselves.**

Recommendation E-1. A crosswalk is needed between the Critical Acquisition Positions (CAP) and the ethics requirements to ensure appropriate coverage.

Recommendation E-2. Ensure that individuals who develop and provide requirements receive ethics training so they understand how their actions will shape their post-employment options.

**FINDING : F. Current post-employment rules have some impact on the ease of accessing non-career, highly qualified technical, engineering, and acquisition expertise**

Recommendation F. That DoD explore whether the current exceptions to 207(j) may appropriately accommodate FFRDC employees who seek to represent back to the government

**FINDING : G. Post-employment restrictions have some impact on individual decisions to make service in the DoD an attractive career option**

Recommendation G. None.

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<sup>77</sup> The Panel notes that its own Subcommittee 10 is currently engaged in a study examining how best to present values based training.

## APPENDIX F

### SUMMARY OF OGE REVIEW OF EFFECTIVE ETHICS PROGRAM PRACTICES

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
<b>Leadership</b> — support of and involvement in the program by agency leaders	<b>Visible Support</b>	<ul style="list-style-type: none"> <li>• Delivering messages in person to employees at training sessions</li> <li>• Appearing in videos used at ethics training sessions</li> <li>• Sending e-mails to all employees discussing the importance of ethics</li> <li>• Issuing written statements on ethics</li> <li>• Discussing ethics in speeches</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Interior <ul style="list-style-type: none"> <li>○ Secretary Salazar issued a Secretarial Order requiring all employees to read, know, understand, and – if necessary – seek guidance on the department’s Ethic’s Guide</li> <li>○ Bureau Heads must employ a full-time Deputy Ethics Counselor at the GS-14 level or higher with an adequate support staff and require supervisors/manager to work with these Deputies and – in consultation with their Assistant Secretary – assess the ethics program annually for compliance with the Order.</li> <li>○ The DAEO is required to regularly advise the Secretary regarding the Departmental ethics program, provide input to Bureau Heads on ethics program management elements for performance standards for Deputy Ethics Counselors, and convene a working group of senior career/non-career employees for best practices suggestions.</li> <li>○ The Order was distributed via press release, the agency’s website and newsletter, and discussed in ethics training sessions.</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
	Access	<ul style="list-style-type: none"> <li>• Making presentations at senior staff meetings on a regular basis to brief leadership on emerging ethics issues or trends identified through ethics counseling</li> <li>• Reviewing the Secretary's upcoming schedule for ethics issues and briefing the Secretary's staff</li> <li>• Providing ethics training at senior staff meetings</li> <li>• Assisting leadership on their new entrant public financial disclosure reports</li> <li>• Working with the agency's Deputy Secretary or Chief of Staff</li> </ul>	No agency examples provided.
	Involve-ment in Managing the Ethics	<ul style="list-style-type: none"> <li>• Involvement of leadership, upon request, in the follow-up process for non-responsive public</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Justice <ul style="list-style-type: none"> <li>○ Justice Management Division provides a two-hour ethics training module 2-3 times a year as part of the New Supervisor's Training program.</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
	<b>Program</b>	<p>and confidential filers of financial disclosure reports by sending e-mails to and visiting filers in-person about their late reports</p> <ul style="list-style-type: none"> <li>• Involvement of supervisors in some way to help administer portions of their ethics program <ul style="list-style-type: none"> <li>○ Take an active role in reminding employees by e-mail and/or verbally to file financial disclosure reports in a timely way</li> <li>○ Collecting delinquent financial disclosure reports</li> <li>○ Personally</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Provides a review of the ethics statutes, Standards of Conduct, agency policies/procedures.</li> <li>○ Ethics office emphasizes importance of supervisors being familiar with and exemplifying the rules, as well as knowing when to refer employees for ethics info/consultation.</li> <li>• Department of Labor <ul style="list-style-type: none"> <li>○ Leadership is part of the process of collecting financial disclosure reports.</li> <li>○ Ethics office sends form 6 weeks in advance of the due date and department leaders are encouraged to send a positive message about the importance of filing – which has improved compliance rates to 100%.</li> <li>○ The ethics office attributes this success to the early advanced warning, multiple reminders, and strict adherence to the final deadline (except in the most extenuating circumstances).</li> <li>○ Delinquent filers receive reminders from increasingly senior ethics officials the longer they wait.</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
		<p>counseling employees who file reports late</p> <ul style="list-style-type: none"> <li>○ Ensuring that employees comply with annual training requirements by attending ethics training with their employees</li> <li>○ Directing employees to seek ethics guidance as individual concerns arise</li> </ul>	
	<b>Budgetary Support</b>	<ul style="list-style-type: none"> <li>• Leadership approval of funding for an increase in full-time ethics staff over the past few years</li> <li>• Funding specifically for a financial disclosure manager</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Defense <ul style="list-style-type: none"> <li>○ The ethics office developed a business case to obtain funding from agency leadership for a Financial Disclosure Program Manager.</li> <li>○ The business case included quantitative and cost-benefit analyses, emphasizing the impact of the large number of financial disclosure filers and the upcoming Presidential Transition on the agency's mission.</li> </ul> </li> </ul>



Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
			<ul style="list-style-type: none"> <li>○ The business case also emphasized the need for post-employment counseling for departing political personnel and to vet new political appointees due to the resulting turnover.</li> </ul>
	<b>Awards and Ratings Linked to Compliance with Ethics Requirements</b>	<ul style="list-style-type: none"> <li>● Vet award nominees for compliance with the ethics requirements prior to bestowing awards</li> <li>● For certain employees, such as financial disclosure filers, members of the SES, and military personnel, consider whether the employee is in compliance with ethics requirements as part of the decision to award a promotion or bonus</li> </ul>	<ul style="list-style-type: none"> <li>● Department of State <ul style="list-style-type: none"> <li>○ Compliance with requirements is considered when awarding promotions and bonuses to public financial disclosure filers.</li> <li>○ The ethics office provides a list of employees who have not complied with the financial disclosure requirement to HR, which makes the independent decision whether or not to withhold bonuses or promotions.</li> <li>○ Once the employee has complied with the disclosure requirement, then the bonus/promotion process is continued.</li> <li>○ This practice has been ongoing for 6 years; the ethics office believes there is correlation between this practice and filing compliance.</li> </ul> </li> <li>● Department of Veterans Affairs <ul style="list-style-type: none"> <li>○ The ethics office must confirm that SES employees are in compliance with annual financial disclosure reporting and ethics training requirements prior to nomination for a Presidential Rank award.</li> <li>○ Last year this practice has been extended to include consideration for SES bonus or salary increases as well.</li> <li>○ The ethics office now reminds public filers that not complying with financial disclosure and training requirements may affect</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
<p><b>Awareness</b> — employees are aware of the ethics program, its role, and their personal ethical responsibilities</p>	<p><b>Distribution of Ethics-Related Information</b></p>	<ul style="list-style-type: none"> <li>• Use of e-mail to distribute information to employees</li> <li>• Send periodic memoranda to employees on topics such as the gift rules during the holiday season</li> <li>• Publish an ethics newsletter or contribute to an agency newsletter</li> <li>• Dedicated ethics page on either the agency’s public website or intranet, including a wide range of information and resources such as memoranda from agency leadership, guidance on common issues, and links to financial disclosure forms and training modules</li> <li>• Use of internal satellite television network or “on-demand” training system</li> </ul>	<p>their ability to receive certain awards.</p> <ul style="list-style-type: none"> <li>• Department of Treasury <ul style="list-style-type: none"> <li>○ Ethics officials publish an ethics-specific newsletter quarterly for distribution to all employees through inter-office mail and electronically on the Treasury intranet ethics website.</li> <li>○ The newsletter includes highlights of ethics topics, advice, contact information, and a puzzle/trivia section.</li> <li>○ The newsletter has increased telephone/email inquiries on ethics issues and has increased employees’ familiarity with ethics staff.</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
		to deliver training to employees who are widely dispersed throughout the United States and abroad	
	<b>Marketing the Ethics Program</b>	<ul style="list-style-type: none"> <li>• Use ethics posters to increase employee awareness of their ethical responsibilities as well as the ethics office</li> <li>• Use of promotional products such as pens, post-it notes, lanyards, and fortune cookies to increase awareness of the ethics program</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Interior <ul style="list-style-type: none"> <li>○ The ethics office converted several OGE posters into “splash screens” that show up as the first image an employee sees upon logging onto an agency computer.</li> <li>○ The ethics office worked with the agency’s National Business Center and CIO to design and incorporate contact information on the posters and disseminate these splash screens.</li> </ul> </li> </ul>
	<b>Training</b>	<ul style="list-style-type: none"> <li>• Targeted training to employees upon request</li> <li>• Targeted training for various groups of employees, including procurement personnel, the Office of Inspector General, supervisors, candidates for the SES,</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Agriculture <ul style="list-style-type: none"> <li>○ The ethics office developed a curriculum consisting of four, in-person, one-hour courses for all political appointees (this does not replace the required annual ethics training).</li> <li>○ The first of the courses is a general ethics primer, and the remaining three focus on gifts, conflicts of interest and political activities.</li> <li>○ Additional electives, such as Agency Gifts and Appropriations and Post-Government employment are also available.</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
		<p>and Federal advisory committees</p> <ul style="list-style-type: none"> <li>Encourage employees beyond those required to receive training to attend training sessions</li> </ul>	<ul style="list-style-type: none"> <li>Department of Education <ul style="list-style-type: none"> <li>At the request of the Chief of Staff, the ethics office now delivers “Ethics Refreshers” to political appointees.</li> <li>“Ethics Refreshers” supplement (not replace) the annual ethics training by covering rules on gifts from outside sources, conflicts of interest, and the Hatch Act.</li> </ul> </li> </ul>
<b>Resources</b> —agency and ethics community resources are leveraged	<b>Participation in Ethics-Related Events</b>	<ul style="list-style-type: none"> <li>Leverage ethics community resources by participating in ethic-related events such as the OGE National Government Ethics Conference and Interagency Ethics Council meetings</li> </ul>	No agency examples provided.
	<b>Collaboration with the Ethics Community</b>	<ul style="list-style-type: none"> <li>Leverage external resources by collaborating with other agencies on ethics-related issues <ul style="list-style-type: none"> <li>Informal calls on an occasional basis</li> <li>Formal collaboration such</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Department of Defense <ul style="list-style-type: none"> <li>In collaboration with the EPA and FEMA within the Department of Homeland Security, DoD has developed training on ethics-related issues to consider when implementing a social media policy.</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
		as partnerships with other agencies on emerging ethics issues	
	<b>Relationships within the Agency</b>	<ul style="list-style-type: none"> <li>• Productive relationship with agency's Office of Inspector General</li> <li>• Good working relationship with agency's White House Liaison, IT department, print department, and public relations office</li> <li>• Good working relationship with Human Resources to facilitate obtaining information on who is required to file public and confidential financial disclosure reports and when employees enter or</li> </ul>	No agency examples provided.

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
		<p>terminate their official position</p>	
	<b>Searchable Advice and Counsel Databases</b>	<ul style="list-style-type: none"> <li>• Include commercial databases, systems created in-house and networked folders.</li> <li>• Helpful in maintaining consistency and minimizing the time spent researching recurring issues.</li> </ul>	No agency examples provided.
	<b>Electronic Filing Systems</b>	<ul style="list-style-type: none"> <li>• Only one agency uses an electronic filing system agency-wide; some agencies' components use electronic filing systems; and seven agencies are currently working towards creating an e-filing system.</li> </ul>	No agency examples provided.
<b>Oversight—internal</b>	<b>Financial Disclosure</b>	<ul style="list-style-type: none"> <li>• All 15 agencies use a tracking system for</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Energy <ul style="list-style-type: none"> <li>○ The ethics office uses an agency-wide tracking system for</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
controls and oversight of the ethics program are established	<b>and Training Tracking Systems</b>	financial disclosure filing and ethics training. <ul style="list-style-type: none"> <li>• These systems range from commercial products (Excel, Access, and Lotus Notes) to products created in-house.</li> </ul>	financial disclosure and training – allowing the ethics office to capture salary actions, new hires, and terminations. <ul style="list-style-type: none"> <li>○ The tracking system can send mass email reminders for attending annual ethics training, distribute receipts upon completion of financial disclosure filing, and automatically upload the names of individuals who have completed online training modules.</li> </ul>
	<b>Standard Operating Procedures</b>	<ul style="list-style-type: none"> <li>• Eleven agencies have standard operation procedures (SOPs) in areas of financial disclosure, training, and advice and counsel.</li> <li>• One agency identified SOPs as being helpful in maintaining operations during a sudden change in staff.</li> <li>• Several agencies expressed the need to update their SOPs.</li> </ul>	No agency examples provided.

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
	<b>Program Reviews</b>	<ul style="list-style-type: none"> <li>Several agencies conducted internal program reviews to maintain oversight of their ethics program.</li> </ul>	<ul style="list-style-type: none"> <li>Department of Health and Human Services               <ul style="list-style-type: none"> <li>The Program Review Section of the Ethics Division conducts internal ethics reviews of the ethics programs of component offices based on its own Program Review Guidelines.</li> <li>A copy of the guidelines is also maintained on the agency's ethics intranet site so component ethics officials can conduct their own assessment of their program's performance.</li> </ul> </li> <li>Department of Veterans Affairs               <ul style="list-style-type: none"> <li>The ethics office performs on-site reviews of the 22 Regional Counsel Offices administering ethics programs in the field.</li> <li>The review team consists of two ethics staff members and a staff attorney, who adds a valuable perspective to the review.</li> <li>The review process includes an on-site examination of training procedures, a review of advice and counsel, and employee interviews.</li> <li>An "out brief" report is produced by the ethics office within a week of the review and a formal report is produced 3 months later.</li> </ul> </li> <li>Department of Energy               <ul style="list-style-type: none"> <li>The ethics office performs on-site reviews of field offices to evaluate financial disclosure and counseling procedures as well as provide assistance in the areas of awareness, resources, and leadership.</li> <li>At the conclusion of the review, the ethics office drafts a</li> </ul> </li> </ul>



Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
			<p>report based on the findings.</p> <ul style="list-style-type: none"> <li>○ If necessary, the ethics office meets with the Manager at the field office to advocate for additional resources on behalf of the ethics program.</li> </ul>
	<b>Peer Reviews</b>	<ul style="list-style-type: none"> <li>• Formal and informal peer review of financial disclosure reports and advice and counsel</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Veteran’s Affairs <ul style="list-style-type: none"> <li>○ As a quality assurance practice, the review of the financial disclosure reports is assigned to a different reviewer each filing cycle.</li> </ul> </li> <li>• Department of Commerce <ul style="list-style-type: none"> <li>○ At least two ethics officials review all written advice rendered by staff attorneys.</li> <li>○ The advice is reviewed by the Division Chief and the Assistant General Counsel.</li> <li>○ Sometimes advice on less complicated/significant issues are reviewed after the advice is rendered to ensure responses are provided as quickly as possible.</li> <li>○ Follow-up emails are sent as soon as possible if a substantive error is identified or clarification is needed – although the ethics office notes such corrections are relatively rare.</li> </ul> </li> <li>• Department of Housing and Urban Development <ul style="list-style-type: none"> <li>○ At least two ethics officials review advice and counsel prior to rendering written advice to an employee to ensure consistency, thoroughness, and encourage ongoing dialogue.</li> <li>○ The ethics office maintains a 1-2 day response time for most</li> </ul> </li> </ul>

Critical Success Factors	Categories of Concrete Actions	Concrete Actions Being Taken by Agencies	Agency Examples Featured in Report
			written advice, and the peer review process has not negatively impacted their ability to timely respond to requests for advice and counsel.
	<b>Customer Feedback</b>	<ul style="list-style-type: none"> <li>• Solicit and receive feedback from employees though the use of surveys and evaluations</li> <li>• Use of feedback from training evaluations to make changes in training materials</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Agriculture               <ul style="list-style-type: none"> <li>○ The ethics office solicits customer feedback by including a link to a customer satisfaction survey at the bottom of every ethics staffs' sent emails.</li> <li>○ The survey covers promptness of initial response, knowledge/experience of advisor, thoroughness of advice/action, courteousness of advisor, professionalism of advisor, and overall quality of service.</li> <li>○ The Office of Ethics' Deputy Director receives all of the comments from the surveys and submits the responses to the Office of Ethics' Director and to the Deputy Director of the Office of Human Resource Management.</li> </ul> </li> </ul>

## APPENDIX G

### OGE'S 14 GENERAL PRINCIPLES OF ETHICAL CONDUCT [5 CFR §2635.101(B)]

The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conducts is proper.

Number	Principle
1	Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
2	Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3	Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4	An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5	Employees shall put forth honest effort in the performance of their duties.
6	Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7	Employees shall not use public office for private gain.
8	Employees shall not act impartially and not give preferential treatment to any private organization or individual.
9	Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10	Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11	Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12	Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that

	are imposed by law.
<b>13</b>	Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
<b>14</b>	Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

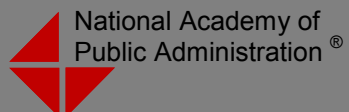
Source: U.S. Office of Government Ethics <[http://www.oge.gov/uploadedFiles/Education/Education\\_Resources\\_for\\_Ethics\\_Officials/Resources/14\\_general\\_principles\\_card.pdf](http://www.oge.gov/uploadedFiles/Education/Education_Resources_for_Ethics_Officials/Resources/14_general_principles_card.pdf)>.

The principles of ethical conduct were issued by George H.W. Bush, in Executive Order 12674, as amended by Executive Order 12731. The principles were subsequently issued in the *Standards of Ethical Conduct for Employees of the Executive Branch* at 5 CFR §2635.101(b). Each executive branch agency has a Designated Agency Ethics Officer responsible for oversight of the agency's ethics program.

## COVER IMAGES CREDITS

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