20 November 2014

**INFORMATION PAPER**

**SUBJECT**: Ethics Letter - General Officer Nominations for O-9 and O-10 Positions

1. **Purpose**. To provide information concerning the ethics letter accompanying three and four star nomination packages to the Senate Armed Services Committee (SASC).

2. **Background**. As part of the O-9/O-10 nomination package, the Army’s Designated Agency Ethics Official (DAEO) or Deputy DAEO (DDAEO) must certify, by letter to the Chairman of the Senate Armed Services Committee, that the nominee’s assets and affiliations create no actual or apparent conflicts of interest under applicable laws and regulations with regard to the duties of the position to which the officer has been nominated. In addition to the ethics laws and regulations applicable to other military officers, the SASC has established several restrictions on military officers nominated to, or holding, positions of importance and responsibility as defined by 10 U.S.C. § 601 (grades O-9/O-10). The SASC policies and requirements will be considered by the DAEO or DDAEO when certifying that a nominee’s assets and affiliations do not create an actual or apparent conflict of interest with the position to which the officer has been nominated.

3. **SASC Policy on Financial Interests In Defense Contractors**.

a. Financial Interests in Defense Contractors.

1) Military officers who are seeking confirmation, or who have been confirmed, to hold positions of importance and responsibility under 10 U.S.C. § 601 (grades O-9 and O-10) are prohibited from holding financial interests in any of the ten largest defense contractors. A list of the ten largest defense contractors can be found on the DoD Standards of Conduct website, under the “Ethics Resources” tab, at http://www.dod.mil/dodgc/defense\_ethics/.

2) Additionally, military officers in the grades of O-9/O-10 who occupy “Senior Acquisition Positions” are prohibited from holding interests in any defense contractor.

a) The following Army positions have been designated as “Senior Acquisition Positions”:

Commanding General, U.S. Army Materiel Command;

Deputy Commanding General, U.S. Army Materiel Command;

Inspector General;

Chief of Engineers;

Chief Information Officer;

Military Deputy to the ASA for Acquisition, Logistics & Technology; and

b) The following DoD positions which are, or have been, held by Department of Army personnel have been designated as “Senior Acquisition Positions”:

Principal Deputy Director, Cost Assessment & Program Evaluation;

Director, Defense Logistics Agency; and

Director, Joint Improvised Explosive Device Defeat Organization.

Vice Chief, National Guard Bureau.

c) The list of defense contractors is long, diverse, and subject to change. It may include companies not typically thought of as defense-related, such as Apple, Disney, and Kraft Foods. The list, known as “$25K defense contractors,” is available on the DoD Standards of Conduct website, under the “Ethics Resources” tab, at http://www.dod.mil/dodgc/defense\_ethics/.

3) Continuing Requirement. The SASC policy concerning financial interests in defense contractors continues to apply throughout the officer’s service in the position for which nominated. Therefore, an incumbent may not, subsequent to confirmation, acquire an interest in contravention to SASC policy.

b. “De Minimis Rule” for Defense Contractor Assets.

1) Financial interests valued at less than $15,000 are exempt as “de minimis,” provided they are: (a) publicly-traded securities, long-term Federal Government securities, or municipal securities; and (b) the aggregate market value of the holdings of the employee, spouse, and minor children in the securities does not exceed $15,000.

2) Any interest in these companies that exceeds the $15,000 “de minimis” exemption must be divested within 90 days of confirmation. If capital gains may be realized, the officer may coordinate with the Office of General Counsel to seek a certificate of divestiture (CD) from the Office of Government Ethics (OGE) to mitigate tax consequences. However, to be eligible for this favorable tax treatment, an officer must retain the holdings until after the CD is issued by OGE.

3) Likewise, when the value of a security that was initially exempt from divesture as “de minimis” increases in value above $15,000, the officer must divest the portion that exceeds $15,000. (This may be accomplished through a standing order with the broker to sell when the value exceeds $15,000.)

c. Willingness to Divest. Nominees must affirmatively agree to divest any potentially conflicting asset. Therefore, nominees should include the following statement when answering Question 4, Part C – Potential Conflicts of Interest, on the SASC questionnaire:

Although I do not believe the above discloses any conflicts, were any to arise, I would take whatever steps were deemed necessary to resolve them -- including recusing myself from the matter, divesting of the potentially conflicting asset, or seeking a waiver of the conflict pursuant to the applicable statutory provisions.

4. **SASC Policy on Serving on Boards of Directors**.

a. The SASC is concerned about military officers in grades O-9 and O-10 using the status of their office for personal gain or the gain of entities that invite them to serve on their boards of directors. Consequently, as a prerequisite to confirmation, military officers nominated for appointment to the grade of O-9 and O-10, including members of the Reserve components, generally must resign from the board of directors of companies or other entities that do business with DoD or focus their business principally on military personnel. The SASC policy applies to both compensated and uncompensated service, and covers both for-profit and non-profit entities, including charitable organizations.

b. Entities that “do business” with DoD are listed on the “$25K defense contractor” list available on the DoD Standards of Conduct website, under the “Ethics Resources” tab, at http://www.dod.mil/dodgc/defense\_ethics/. In addition to traditional defense contractors, this list includes a number of other entities such as colleges, universities, think tanks, and non-profits that receive grants or contracts from the Department of Defense.

c. Companies and other entities that “focus their business principally on military personnel” include, but are not limited to, life, health, auto, and property insurance companies whose clientele are predominantly military members and their families; financial planning consulting firms whose clients are predominately military members and their families; and military-focused credit unions or banks.

d. Continuing Requirement. The SASC policy prohibiting military officers in grades O-9 and O-10 from serving on boards of directors of companies or other entities that do business with DoD or focus their business principally on military personnel continues to apply throughout the officer’s service in the position for which nominated.

5. **Other Matters.**

a. Gifts. Nominees who identify a gift on the OGE Form 278 (Schedule B, Section II) as “personal,” should explain the basis for the personal relationship and the circumstances of the gift.

b. Foreign Awards and Decorations. Nominees should ensure compliance with the Foreign Gifts and Decorations Act and AR 600-8-22, “Military Awards.”

c. Inspector General Investigations. Because prior disclosures do not carry over to the next nomination, nominees should fully explain any past or pending IG investigation, to include any changes to previously reported information.

d. Timely Information. Nominees must provide their most recent OGE Form 278 and an update which covers the period from the end of the OGE Form 278 reporting period to present. For example, when a nominee provides a copy of the OGE Form 278 for CY 2012, the nominee must also provide an update memorandum which covers

1 January 2013 through the date of the SASC questionnaire.

e. Cautionary Advice. To facilitate the nomination process, nominees who possess financial holdings that may, or potentially may, present a conflict of interest may be advised to execute a disqualification or other appropriate action. The DDAEO will coordinate directly with the nominee or the nominee’s servicing legal advisor to expedite any actions deemed necessary to address potential SASC concerns.

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