

SUMMARY OF EMOLUMENTS CLAUSE RESTRICTIONS

A key restriction on the foreign employment of retired U.S. military personnel is found in article I, section 9, clause 8, of the United States Constitution. This provision, **the Emoluments Clause**, prohibits any person “holding any office of profit or trust” in the Federal Government from accepting any gift, emolument, office, or title of any kind from any king, prince, or foreign state without the consent of Congress.

As interpreted in Comptroller General opinions and by the Department of Justice Office of Legal Counsel, the Emoluments Clause prohibits receipt of consulting fees, gifts, travel expenses, honoraria, or salary by all retired military personnel, officer and enlisted, Regular and Reserve, from a foreign government **unless Congressional consent is first obtained**. Consent is provided by Congress in 37 U.S.C. § 908, which requires advance approval from the relevant Service Secretary and the Secretary of State before accepting employment, consulting fees, gifts, travel expenses, honoraria or salary from a foreign government.

Employment compensation from foreign educational or commercial institutions that are owned, operated, or controlled by a foreign government generally qualifies as an emolument because such entities are viewed as an extension of the foreign government.

Retired military personnel should also be aware that the Emoluments Clause may apply to monies they receive through their employment with a domestic partnership or a limited liability company, such as a law firm or consulting business. This is so even if the foreign government is not one of the retiree’s clients. The Office of the Legal Counsel has concluded that accepting a share of partnership profits that is derived from the partnership’s representation of a foreign government is considered an emolument, even if the retiree did not provide direct services to the foreign government client.

The Comptroller General has determined that the Government may pursue debt collection when an employee accepts an emolument from a foreign government without the required consent. Specifically, it has ruled that the DoD can suspend retirement pay up to the amount of the foreign salary (or other emoluments) received, if the foreign salary is less than one’s retirement pay. By contrast, when the compensation earned during the period of unauthorized employment with a foreign state exceeds the amount of retired pay accrued during the same period, only the retired pay received during the violation may be collected, not the full amount of pay received from the foreign government.

To obtain advance approval from your Service, contact the relevant office below:

Air Force:

AFPC/DPSOR
550 C Street West
Joint Base San Antonio-Randolph, Texas 78150-4739
Telephone: COM 210-565-2461 or DSN 665-2461

Army:

U.S. Army Human Resources Command
ATTN: AHRC-PDR
1600 Spearhead Division Avenue
Department 420
Fort Knox, KY 40122-5402
Telephone: 502-613-8980

Navy:

Navy Personnel Command, Office of Legal Counsel (Pers-OOL)
Naval Support Facility Arlington
701 South Courthouse Road, Room 4T035
Arlington, VA 22204
(703) 604-0443

Marines:

Judge Advocate Division (JAR)
Headquarters, U.S. Marine Corps
3000 Marine Corps Pentagon
Washington, DC 20350-3000
Telephone: 703-614-2510