

# Military Retired Pay Forfeiture -

**How to Avoid Forfeiture When Working for Foreign Governments or Businesses.** The Emoluments Clause is a Constitutional restriction that prohibits a 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. U.S. Const. art. I, § 9, cl. 8. This provision may affect foreign employment of retired uniformed service personnel (RUSP), both officer and enlisted. As interpreted, the Emoluments Clause prohibits receipt of consulting fees, gifts, travel expenses, honoraria, or salary by current civilian Federal employees. It also applies to members of the uniformed services including active-duty, reserve, and retired personnel unless Congressional consent is first obtained. The focus of this article is on the RUSP.

It is important to keep in mind that there are several branches of service that have RUSP. While most are part of the military, there are some that are not. The services that have RUSP are the Air Force, Army, Navy, Marine Corps, Coast Guard, NOAA, and the U.S. Public Health Service. RUSP must get prior approval if they wish to work for a foreign government, or an entity controlled by one, to avoid losing their retirement. For example Qatar Airways is owned by the government of Qatar and working as a pilot or a mechanic, even in CONUS, for the airline needs PRIOR approval to avoid losing one’s military retirement which is technically “Reduced compensation for reduced service.” The physical location of where one will be working is irrelevant. Most foreign airlines are government owned or controlled.

**When and From Whom Is Consent Required** -- For the most part Congress has delegated its consent authority. Prior to the passage of the below laws, the only way to get “consent” was to get your Congressman to introduce a “Private Bill” to Congress to enact into law. One can still try to do that but it is extremely difficult which is why Congress came up with the following three laws.

- A person subject to the Emoluments Clause must obtain advance approval from the relevant Service Secretary AND the Secretary of State before accepting consulting fees, gifts, travel expenses, honoraria or salary from a foreign government. [37 U.S. Code § 908](#). The physical location you are working from is irrelevant.
- The Foreign Gifts and Decorations Act, [5 U.S. Code § 7342](#), outlines consent to a narrow class of foreign gifts such as certain free meals offered by a foreign government to U.S. government officials and military personnel.
- The 1993 law “Military service of retired members with newly democratic nations: consent of Congress” was passed so retired uniformed personnel could help the former Warsaw Pact countries and the new countries that were created when the Soviet Union dissolved in 1991. [10 U.S. Code § 1060](#). This law also requires approval by both the retiree’s Service Secretary and Secretary of State.

**Note:** The vast majority of both [37 U.S. Code § 908](#) and [10 U.S. Code § 1060](#) approval applications are from retired military personnel and thus the Department of Defense (DOD) is the recognized expert in this area. An excellent white paper on this subject that explains this matter in great detail was written by Jeffrey Green, Senior Attorney, Standards of Conduct Office (SOCO), Office of General Counsel, U.S. Department of Defense (DoD), Washington, D.C.

[Application of Emoluments Clause to DoD Civilian Employees and Military Personnel](http://ogc.osd.mil/defense_ethics/resource_library/emoluments_clause_applications.pdf?j) [[http://ogc.osd.mil/defense\\_ethics/resource\\_library/emoluments\\_clause\\_applications.pdf?j](http://ogc.osd.mil/defense_ethics/resource_library/emoluments_clause_applications.pdf?j)]  
(March 2013).

**How to Obtain Approval** -- To obtain advance approval from your Service, contact the relevant office below – current as of December 27, 2017. One should re-verify this information prior to submitting an application package. One should apply at least 70 business days before the proposed job start because the approval process may take that long – it must go through both one’s own branch of service AND the Department of State. Apply early so you do not miss out on the job opportunity or end up losing some of your retired pay if you start working prior to getting approval.

RUSP can obtain assistance in putting their paperwork together and mailing data on where to send by visiting any of the Services’ legal assistance offices. For the location of the one nearest to you refer to <http://legalassistance.law.af.mil/content/locator.php>.

- **Air Force retirees** can send their package to AFPC/DPFFF, 550 C Street West, Joint Base San Antonio-Randolph, Texas 78150-4739; Telephone: COM 210-565-2311/2461 or DSN 665-2461 or 1-800-525-0102 and ask for DPFFF. Packages and questions can also be faxed to 210-565-2322 or DSN 665-2322, or emailed to [afpc.retiree@us.af.mil](mailto:afpc.retiree@us.af.mil). To protect personal privacy, applicants are asked not to include Social Security numbers or any other personally identifiable information in emails. *See also* Air Force Instruction (AFI 36-2913) REQUEST FOR APPROVAL OF FOREIGN GOVERNMENT EMPLOYMENT OF AIR FORCE MEMBERS [http://static.e-publishing.af.mil/production/1/af\\_a1/publication/afi36-2913/afi36-2913.pdf](http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2913/afi36-2913.pdf) and AFTERBURNER - *News for USAF Retired Personnel*, Spring - Summer 2017 Issue, "Retirees seeking employment with foreign government need approval" by Tammy Cournoyer, Air Force Retiree Services, <http://www.retirees.af.mil/Portals/53/documents/AFTERBURNER-CURRENT/COLOR%20AFTERBURNER%20-%20SPRING-SUMMER%202017-FINAL.pdf?ver=2017-04-17-110700-73>.
- **Army retirees** can send their package to U.S. Army Human Resources Command, ATTN: AHRC-PRD, 1600 Spearhead Division Avenue, Department 420, Fort Knox, KY 40122-5402; Telephone: 502-613-8957/8980/83. For more info on how to submit an "Army Foreign Government Employment Request" *see*: <https://www.hrc.army.mil/content/Foreign%20Government%20Employment>
- **Navy retirees** can send their package to Chief of Navy Personnel, Office of Legal Counsel (N00L), Naval Support Facility Arlington, 701 South Courthouse Road, Room 4T035, Arlington, VA 22204 (703) 604-0443. It is recommended you call them and get a POC and an email address of the POC so you can submit your package electronically. *See also* Navy Retired Activities Newsletter *Shift Colors*, Fall-Winter 2017 Issue, Pages 3 and 5. <http://www.public.navy.mil/bupers-npc/reference/publications/shiftcolors/Documents/Shift%20Colors%20Fall-Winter%202017a.pdf>
- **Marine Corps retirees** can send their package to Judge Advocate Division (JCA), Headquarters, U.S. Marine Corps, 3000 Marine Corps Pentagon (Room 4D558), Washington, DC 20350-3000; Telephone: 703-614-2510, DSN 224-; Fax: (703) 693-3262; DSN 223-; BB: (571) 465-6536; Email: [michael.d.graham@usmc.mil](mailto:michael.d.graham@usmc.mil).

- **Coast Guard retirees** can send their package to USCG Commandant (CG-13), U.S. Coast Guard (Attn: Retiree Services Program) 2703 Martin Luther King Jr. Ave. SE Washington, DC 20593-7907; 202-475-5471/5451, cell 410-627-3039; [Robert.c.hinds@uscg.mil](mailto:Robert.c.hinds@uscg.mil). *See also* <http://www.uscg.mil/retiree> and [http://cgretirenw.org/cgretireweb\\_020.htm](http://cgretirenw.org/cgretireweb_020.htm).
- **National Oceanic and Atmospheric Administration (NOAA)** retirees can send their package to U.S. Department of Commerce, Ethics Law and Programs Division, Office of General Counsel, 14th Street & Constitution Avenue, NW Washington, DC 20230 Office: (202) 482-5207. Current POC is David Brodian, Attorney-Advisor, Ethics Law and Programs Division, Mobile: (202) 322-2792.
- **U.S. Public Health Service (USPHS)** retirees can send their packages to Director, Division of Commissioned Corps Personnel & Readiness (DCCPR), ATTN: Chief (currently CDR Tracy Farrill, USPHS), Officer Support Services, U.S. Public Health Service (USPHS), 1101 Wootton Pkwy, Plaza Level, Rockville, MD, 20852; Phone: 240-276-8233. Current POC is CAPT Tracy Farrill, PharmD, DPh, BCPS, Email: [tracy.farrill@hhs.gov](mailto:tracy.farrill@hhs.gov). *See* USPHS Personal Manual INSTRUCTION 1, CC26.9, "Civil Employment by a Foreign Government of Retired Regular and Reserve Corps Officers and Inactive Reserve Corps Officers" [https://dcp.psc.gov/ccmis/ccis/documents/CCPM26\\_9\\_1.pdf](https://dcp.psc.gov/ccmis/ccis/documents/CCPM26_9_1.pdf).
- **U.S. Department of State** Approval Contact is Director, Bureau of Politico-Military Affairs, ATTN: Peggy E. Pope, U.S. Department of State, Bureau of Political-Military Affairs, Office of International Security Operations, 2201 C Street, NW, Washington, DC 20520; (202) 647-5551, [PopePE@state.gov](mailto:PopePE@state.gov).

**What To Include In Request For Approval** -- You should check with the appropriate point of contact mentioned above for what your service requires. As a general rule the following information must be provided in an application to work for a foreign government or entity:

- 1) Name of the company and foreign country.
- 2) Title of position with brief description of duties.
- 3) Statement that you will or will not receive compensation for duties performed, with explanation if applicable.
- 4) Statement that you are unaware of any reason why such employment would be inadvisable or reflect unfavorably on the United States.
- 5) Statement if foreign citizenship is required or planned.
- 6) Extent of foreign government control and a statement you will not be required to execute an oath of allegiance to the foreign government concerned.
- 7) Statement that you understand withholding of retired pay equal to the amount received from the foreign government may occur if you accept employment prior to receiving the required approval.

Other considerations --

- Employment compensation and gifts from foreign educational, medical, or commercial institutions that are owned, operated, or controlled by a foreign government generally qualify as prohibited emoluments because these entities are viewed as an extension of the foreign government.

- Retired Uniformed Service Personnel (RUSP) 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--even if the foreign government is not one of the retiree's personal clients. The Office of the Legal Counsel (OLC) 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 advance approval. Specifically, it has ruled that the government may 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 period of the violation may be collected, not the full amount of pay received from the foreign government. Collection is usually done by deducting what is owed from one's retirement which often has the effect of stopping one's receipt of retirement for many months.

[Source: Commander Wayne L. Johnson, JAGC, Navy (Retired), Alexandria, VA | [wayneljohnson@hotmail.com](mailto:wayneljohnson@hotmail.com) | December 2017 ++]