



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
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WASHINGTON, DC 20310-0104

SAGC-EF

10 June 2021

MEMORANDUM FOR Ethics Officials using the After Government Employment Advice Repository (AGEAR) System

SUBJECT: Updated Business Rules for Using the AGEAR System

1. References:

a. National Defense Authorization Act (NDAA) for Fiscal Year 2008, Pub. L. 110-181, Section 847.

b. Memorandum, Deputy Secretary of Defense, 19 September 2011, Subject: Mandatory DoD-Wide Use of After Government Employment Advice Repository (AGEAR) and Designation of Secretary of the Army as DoD Executive Agent for Operation of AGEAR.

c. Code of Federal Regulations (CFR), Title 48, Chapter 2, Subpart 203.171; Department of Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 203.171.

d. Memorandum, SAGC-EF, subject: Updated Rules for Using the AGEAR System, 29 July 2015.

2. Purpose. As the Department of Defense (DoD) Executive Agent for AGEAR (reference 1b), the Army Office of General Counsel (OGC) provides these updated "Business Rules" to assist Ethics Officials (EOs) in properly processing AGEAR requests. This memorandum rescinds reference 1d.

3. Background.

a. NDAA 2008, Section 847 requires a "covered DoD official"¹ who, within two years after leaving DoD government service, expects to receive compensation from a

¹ Section 847 defines a "covered DoD official" as an official or former official of the DoD that:

(1) Participated personally and substantially in an acquisition as defined in section 4(16) of the Office of Federal Procurement Policy Act with a value in excess of \$10,000,000 and serves or served--

(A) In an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

(B) In a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

(C) In a general or flag officer position compensated at a rate of pay for grade 0-7 or above under section 201 of title 37, United States Code; or

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DoD contractor, to, before accepting such compensation, request a written opinion regarding the applicability of post-government employment (PGE) restrictions to activities that the official or former official may undertake on behalf of a contractor. Further, the DoD Standards of Conduct Office issued the memorandum, *Interpretation of "Covered Department of Defense Officials" Under Section 847*, on April 16, 2014 that clarified that a "covered DoD official" must have participated in the kinds of matters that trigger the application of Section 847 within the two-year period prior to his or her departure from DoD. EOs are required to issue a written opinion to the requester not later than 30 days after receiving a complete request.

b. The statute and implementing regulation (DFARS Subpart 203.171, reference 1c) also prohibit DoD contractors from knowingly providing compensation to a "covered DoD official" within two years after the official leaves DoD service unless the contractor first determines that the official has received, or has requested at least 30 days before receiving compensation from the contractor, a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to activities the official expects to undertake on behalf of the contractor.

c. Reading Section 847 and DFARS 203.171 (reference 1c) together indicates a request must meet the following criteria: 1) the requestor must be a "covered DoD official" as defined by references 1a and c; and 2) the requestor must have an actual offer of employment or compensation from a defense contractor to perform specific duties for that contractor within the two-year period after leaving DoD service.

4. Business Rules.

a. DoD Designated Agency Ethics Official (DAEO) organizations must:

1) Designate an AGEAR Manager responsible for monitoring for incoming AGEAR requests and assigning them to the appropriate EO;

2) Provide an AGEAR "inbox" email address, which may be the AGEAR Manager's email address or an ethics group email address, to the U.S. Army Communications-Electronics Command (CECOM) Financial Disclosure Management (FDM) Program Manager.

b. AGEAR notifies the DoD DAEO organizations of incoming requests through emails sent to each organization's AGEAR email inbox, as well as by posting the request at the "Ethics Officials" portion of its site (see instructions at the enclosed Figure 1, "AGEAR Key Features – Ethics Officials").

(2) Serves or served as a program manager, deputy program manager, procuring contracting 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 in excess of \$10,000,000.

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c. Each DAEO organization's AGEAR Manager must:

1) Check AGEAR or the DAEO's AGEAR email inbox for incoming requests at least twice a week. *Army OGC is not responsible for forwarding requests assigned to non-Army AGEAR Managers.*

2) "Accept" and "assign" each request to the appropriate EO for action within 5 business days of receipt. Only officials designated in FDM as "450 Certifiers," "SLCs," "DAEOs," or as "ECs" to these positions, may review and process requests in AGEAR. Alternatively, the AGEAR Manager may also forward the request to another DAEO for processing if the original assignment was incorrect.

d. EOs assigned an AGEAR request must initially "accept" the request and then take one of the following actions within 5 business days of assignment (see Figure 1):

1) "Forward" – Use this tab to transfer the request to the appropriate EO or DAEO for processing, if required.

2) "Reject" – EOs must click the "Reject" tab for requests that do not meet Section 847 criteria and are not capable of being perfected through use of the "Request More Info" function. EOs should not use AGEAR to retain routine non-Section 847 PGE requests and opinions, including letters addressing the inapplicability of Section 847 to the requestor. EOs should only retain and process complete requests that establish eligibility for a Section 847 opinion in AGEAR. If, once a request is accepted and forwarded to the EO, additional information is obtained indicating that the requestor does not meet the criteria for a Section 847 opinion, the EO should print or save the DD 2945 form data, reject the request from AGEAR, and process the request as a routine request for PGE advice outside of AGEAR. *Army OGC will not screen incoming requests to determine whether the request meets Section 847 criteria before forwarding the request for review and processing.* Procedures for rejecting a request follow:

A. To reject a request, the EO must log into AGEAR and click on the "View" button next to the requestor's name. After the request is opened, click on the "Request Detail" tab at the top of the request. Then, click on the "Reject" button. When rejecting a request, AGEAR requires the EO to provide an explanation for the rejection. It is not necessary to upload supporting documentation. As a best practice, the EO should download and save the completed request questionnaire elsewhere before clicking the "Reject" button so that it can be used in issuing a routine PGE opinion outside of AGEAR.

B. After clicking the "Reject" button, a dialogue box will appear. Insert a written explanation (e.g., "Requestor is not a covered official" or "Requestor does not have an offer of employment or compensation from a specific DoD

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contractor”), then click on the “Save” button. A pop-up window will appear asking if the EO wants to notify the requestor of the rejection. If the EO is rejecting the request because the requestor does not meet the Section 847 criteria and will prepare a PGE opinion outside of AGEAR, the EO should select “cancel” as notifying the requestor will likely only cause confusion. Once the “Save” button has been clicked, the status of the request will change to “Rejected.” The “Reject” button is always available to the EO regardless of the status of the request. No further action in AGEAR is necessary. The EO should inform the requestor of the rejection, and discuss other available options for routine PGE advice. Note that this action can be reversed by going back into the request and clicking the “Accept” button.

3) “Request More Info”- Use this tab if the EO needs additional information to process the request. After clicking the “Request More Info” button in AGEAR, the EO enters a comment in the dialogue box providing a general explanation of the information needed. This will create an audit trail to document that the EO has not yet received a complete request with sufficient information to permit issuance of the Section 847 PGE opinion to the requestor, thereby demonstrating to any reviewing authority that the EO is not responsible for any delay. The EO should also use this tab to document any follow-up requests made to the requestor. At a minimum, the EO must follow-up with the requestor 10 business days after the EO’s initial request for information and document the subsequent requests in AGEAR. If the requestor does not respond to the EO’s request after 10 business days, the EO should send a follow-up requesting a response within 5 business days and inform the requestor that if a response is not received that the request will be closed. If the requestor fails to respond after 5 business days, the EO should reject the request.

4) “Start 30-Day Clock” - Promptly upon receipt of a complete request, including any necessary additional information requested, the EO *must* click the “Start 30-Day Clock” tab and complete the required data fields. EOs may not delay this action to avoid triggering the statutory 30-day clock. The EO has 30 days from receipt of a complete request to prepare and issue the opinion. After clicking the “Start 30-Day Clock” tab, AGEAR will display instructions and required data fields. IAW the instructions, the EO will click the check box below the date field and enter the date when all necessary information from the requestor was received. As part of this process, the EO should use the “Attachments” tab to upload any documents necessary to render the request complete.

e. “Prepare Opinion” - After clicking the “Start 30 Day Clock” tab, the EO can use the “Prepare Opinion” button to begin preparing the opinion. The EO may either use their own format or download the AGEAR provided opinion template. Once the opinion letter has been completed, the EO must immediately follow the procedures below to close the request in AGEAR by uploading the opinion and transmitting it to the requestor.

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f. Upload Opinion & Close Request - To ensure the statutory 30-day clock is stopped in AGEAR and to demonstrate to reviewers that the opinion was issued timely, EOs must take action to upload the opinion and close the request in AGEAR.

- 1) Upload Opinion – To upload the opinion, the EO must:
 - Click the “Attachments” tab at the top of the request in AGEAR.
 - Click the “Add Attachment” button.
 - Select “Opinion” for attachment “type.” Only by selecting the “Opinion” button will AGEAR allow the EO to close the request in AGEAR.
 - Click “Choose File” and select the PGE opinion document. Note this should be a signed .pdf opinion document.
 - Click “Upload.” The opinion will appear in the Attachment List.

2) Send Opinion and Close – Once the opinion is uploaded, the EO must click on the “Send Opinion and Close” button. This will transmit the opinion to the requestor and close the request in AGEAR simultaneously. After the opinion has been sent, the status of the request will change to “Closed” in AGEAR.

g. Purging AGEAR records after five years.

1) Section 847 mandates that AGEAR requests, opinions, and supporting materials “shall be retained for not less than five years beginning on the date on which the written opinion was provided.” Given the Privacy Act and records management objective to retain materials retrievable by an individual’s name or other personal identifier for no longer than the minimum period required, the AGEAR Program Management Office (Army OGC) will regularly purge AGEAR records more than five years old.

2) Only the AGEAR Program Management Office can delete AGEAR records. Each legal office using AGEAR *must* notify Army OGC if it wants any of its AGEAR records retained for more than five years. This would include records subject to ongoing investigation, personnel action, prosecution, civil litigation, or similar matters that would warrant a record’s retention. If Army OGC does not receive a request to retain the records, it will purge the AGEAR record after five years.

3) Therefore, legal offices must promptly communicate requests to retain AGEAR records approaching their five-year expiration to their AGEAR Manager, who in turn will notify the AGEAR Program Management Office. The requesting office should ensure it receives confirmation of receipt of the request from the AGEAR Program Management Office.

5. Additional Information.

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a. “EO AGEAR FAQs” are available to assist EOs in determining whether a request falls within Section 847 and is required to be processed and retained in AGEAR. Click the “EO AGEAR FAQs” link at the bottom of the Login screen (<https://www.fdm.army.mil>) to access the FAQs.

b. When viewing a request under the “Request Detail” tab in AGEAR, links along the right side of the screen allow EOs to skip directly to specific sections of the questionnaire. For example, if the EO needs to locate the requestor’s responses concerning whether they have participated in acquisitions/contracts in excess of \$10 million, the EO can click on the “DoD Procurement Information” link to go directly to that information.

c. Corrective Action Requests (CARs) - Section 847 opinions must not be issued outside of AGEAR. However, in the rare event that an opinion was prepared outside of AGEAR (e.g., the EO belatedly discovers the requestor is a covered official), the opinion must be uploaded into AGEAR. In such instances, the EO must submit a CAR to the DAEO AGEAR Manager. The CAR will include a memorandum explaining why the opinion was not originally processed in AGEAR, the DD 2945, the PGE opinion letter, documentation of transmittal to the requestor, and any other relevant documents through the appropriate ethics chain of command to the DAEO AGEAR Manager. Only the DAEO AGEAR Manager has the ability to upload these opinions to AGEAR pursuant to separately issued instructions.

d. Requests submitted to the incorrect agency. If the requestor has selected the wrong agency, the AGEAR Manager for the agency incorrectly selected must accept the request and use the “forward” option to send the request to the correct agency’s AGEAR Manager. The AGEAR Manager must also use the “send an email” function to notify the correct agency’s AGEAR Manager via direct email as well.

6. Contact. Please contact Army OGC at (703) 695-4296 or usarmy.pentagon.hqda-ogc.mbx.agear-manager@mail.mil with questions regarding the above guidance.

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Attachment
Figure 1