

Summary of Emoluments Clause Restrictions on Civil and Military Employment by a Foreign Government of U.S. Public Health Service (USPHS) Retired Regular and Reserve Corps Officers and Inactive Reserve Corps Officers

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, including military and U.S. Public Health Service (USPHS) officers.

As interpreted, the Emoluments Clause prohibits receipt from foreign governments of consulting fees, gifts, travel expenses, honoraria, or salary by current Federal employees, active-duty USPHS officers, and **retired USPHS personnel, regular and reserve, unless Congressional consent is first obtained.**

When and from whom is consent required?

Consent has been explained by Congress in several different statutes. The following list is illustrative but should not be taken as complete.

- A person subject to the Emoluments Clause must obtain advance approval from the relevant Service Secretary (delegated to the Assistant Secretary for Health (ASH) for USPHS officers) **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 (FGDA), [5 U.S. Code § 7342](#), outlines consent to the acceptance of a narrow class of foreign gifts offered by a foreign government to U.S. government officials and USPHS personnel including travel or expenses for travel taking place entirely outside the United States (such as transportation, food and lodging) . Guidance on the applicability of the FGDA should be obtained from HHS before acceptance of such gifts.
- 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 USPHS retirees to receive approval for such employment (or holding of such office or position) from both the ASH and Secretary of State.

How do I get approval?

Instructions for seeking advance approval are found at the following link:

Civil Employment by a Foreign Government of Retired Regular and Reserve Corps Officers and Inactive Reserve Corps [Officers Commissioned Corps Issuance System \(CCIS\) Book: 2, Chapter: 1, Section 1, Instruction: CCIS 211.05 \(Old CCPM: CC26.9.1\)](#)

Also at https://dcp.psc.gov/ccmis/ccis/documents/CCPM26_9_1.pdf

As of 2018, requests for approval are addressed to:

Director, Division of Commissioned Corps Personnel & Readiness (DCCPR).

And submitted to:

Chief, Office Support Services, DCCPR.

The DCCPR should also be contacted if you have questions about any of the above.

Other considerations

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

Retired USPHS 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--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. [7 Op. O.L.C. 114, at 120 \(October 28, 1993\)](#).

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. For example, the uniformed services may suspend retirement pay up to the amount of the foreign salary (or other emoluments) received, if the foreign salary is less than or equal to one's retirement pay. [65 Comp. Gen. Op. 382 \(1986\) \(affirmed in 1990\)](#). If 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 amount may be collected during the period of the violation. See [Comp. Gen. Op., B-193562](#).