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DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

ES 2022-00777

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Intelligence Community Public-Private Talent Exchange

REFERENCES: A. National Security Act of 1947, as amended
B. National Defense Authorization Act for Fiscal Year 2020:
Division E–Intelligence Authorizations for Fiscal Years 2018,
2019, and 2020, Sec. 5306 (P.L. 116-92) 20 December 2019
C. 50 U.S.C. Sec. 3334, *Intelligence Community Public-Private
Talent Exchange*
D. Executive Order 12333, as amended

Intelligence Community Policy Memorandum 600(02)

A. Purpose

1. This Intelligence Community Policy Memorandum (ICPM) establishes policy for the detail of Intelligence Community (IC) civilian personnel to the private sector, and personnel from the private sector to the IC, hereinafter referred to as IC Public-Private Talent Exchange (PPTE).
2. Recognizing that IC elements within departments are subject to departmental policy, and military personnel are subject to Department of Defense (DoD) and their respective Service policies, this ICPM complements, to the greatest extent possible, such policies. Accordingly, such departmental and Service policies relating to PPTE programs shall have primacy, if there are perceived inconsistencies with this ICPM. This ICPM applies to details under the authority of 50 U.S.C. Sec. 3334, and does not affect similar exchange programs that may be established under separate authority.

B. Policy

1. The PPTE will provide IC personnel detailed to the private sector the opportunity to gain skills and expertise in areas in which the private sector may have more specialized experience, depth, or knowledge than available in the IC and to give the IC the benefit of leveraging and learning from such expertise and knowledge when private sector employees are detailed to the IC.
 - a. Pursuant to a written PPTE agreement between an IC element, a private sector organization, and a participating IC employee, the head of an IC element may

UNCLASSIFIED

SUBJECT: Intelligence Community Public-Private Talent Exchange

- arrange for the temporary detail of the employee to the private sector organization.
- b. Pursuant to a written PPTE agreement between an IC element, a private sector organization, and a participating private sector employee, the head of an IC element may arrange for the temporary detail of the employee to the IC element.
2. For purposes of this policy:
 - a. The term “detail” means the assignment or loan of an IC element employee to a private sector organization without a change of position from the employing IC element, or the assignment or loan of an employee of a private sector organization to an IC element without a change of position from the employing private sector organization.
 - b. The term “private sector organization” means a for-profit organization, or a not-for-profit organization.
 - c. The term “small business concern” means a business that is independently owned and operated, is not dominant in its field of operation, and meets other criteria as specified by the Administrator of the Small Business Administration pursuant to 5 U.S.C. Sec. 3703 (e)(2) of the Small Business Act.
 3. A detail shall be for a period of not less than 3 months and not more than 2 years, with the option to extend up to a total of 3 years. A detail may be for a period in excess of 2 years, but not more than 3 years, only if the employing IC element head determines that the detail is necessary to meet critical mission or program requirements. No employee of an IC element may be detailed under the PPTE authority for more than a total of 5 years, inclusive of all details.
 4. A private sector or IC element’s detailee assignment may, at any time and for any reason, be terminated by the IC element head or the private sector organization.
 5. In accordance with 50 U.S.C. Sec. 3334, IC elements shall, to the degree practicable, ensure that small business concerns are represented as participants in their PPTE programs. Consistent with applicable law and Executive Order 13985, IC elements shall ensure that the small business concerns represented in their PPTE programs include underserved communities, such as minority-owned and women-owned businesses; Historically Underutilized Businesses or Disadvantaged Business Enterprises-certified businesses; minority-serving institutions, i.e., Historically Black Colleges and Universities, Hispanic-Serving Institutions, and diversity professional, not-for-profit organizations.
 6. An IC employee detailed to a private sector organization shall not engage in intelligence collection or counterintelligence activities during the course of the detail.

SUBJECT: Intelligence Community Public-Private Talent Exchange

7. An employee of a private sector organization detailed to an IC element:
 - a. Shall be a U.S. citizen;
 - b. Shall continue to receive pay and benefits from the employing private sector organization and shall not receive pay or benefits from the IC element, except as provided in Section B.7.c;
 - c. Is deemed an employee of the IC element for the purposes of:
 - (1) 5 U.S.C., "Labor Management and Employee Relations," Chapters 73 and 81;
 - (2) 18 U.S.C., "Crimes and Criminal Procedure," Sec. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;
 - (3) 31 U.S.C., "Census," Sec. 1343, 1344, and 1349(b);
 - (4) 28 U.S.C., Chapter 171 (commonly known as the "Federal Tort Claims Act") and any other federal tort liability statute;
 - (5) The Ethics in Government Act of 1978 (5 U.S.C. App.); and
 - (6) 41 U.S.C., "Public Contracts," Chapter 21.
 - d. Shall be subject to the same requirements applicable to an employee performing the same functions and duties proposed for performance by the private sector employee;
 - e. May perform work that is considered inherently governmental in nature only when requested in writing by the IC element head;
 - f. May not be used to circumvent any limitation or restriction on the size of the IC element's workforce; and
 - g. May not, in the case of an IC element within the Department of Defense, be used to circumvent the provisions of 10 U.S.C. Sec. 2461, Armed Forces, "Public-Private Competition Required before Conversion to Contractor Performance."
8. A private sector organization:
 - a. Shall not be considered for participation in any IC PPTE program if foreign-owned; and
 - b. May not charge an IC element, or any other agency of the federal government, as direct costs under a federal contract, the costs of pay or benefits paid by the organization to an employee detailed to an IC element under the PPTE program for the period of the detail and any subsequent renewal periods.
9. Written PPTE agreements authorized pursuant to paragraph B.1.a-b. shall:

SUBJECT: Intelligence Community Public-Private Talent Exchange

- a. Require that all private sector detailees be U.S. citizens;
- b. Contain language specifying that a private sector employee detailed to an IC element shall abide by all restrictions governing collection, retention, use, analysis, and dissemination of intelligence information;
- c. Contain language stating that a private sector detailee must comply with applicable law, Executive Order, and policy, including IC policy and IC element policy and procedures; and that detailees shall adhere to the same requirements as IC employees with regard to personal conduct, security, ethical behavior, Equal Employment Opportunity compliance, and U.S. Persons guidelines;
- d. Contain language informing private sector employees of the prohibition on sharing, using, or otherwise improperly handling classified or unclassified non-public information during their respective details, including on IC programming, budgeting, resourcing, acquisition, procurement, or other matters for the benefit or advantage of the private sector organization, its employees, or for any other improper purpose;
- e. Contain language that cautions IC detailees that they shall be held to the restrictions contained in 5 Code of Federal Regulations 2635.502 upon returning to their employing IC elements; and cautions private sector detailees returning to their employing private sector organization, that they shall be excluded from participating in particular matters associated with their detail assignment for a period of time to be determined (but no shorter than one year) by the IC element and the private sector organization prior to the signature of each respective PPTE agreement, in order to mitigate organizational and personal conflicts of interest;
- f. Specify that, during the period of the detail, an IC employee is considered to be on a regular work assignment in the element, and contain specific terms and conditions related to an IC employee's continued status as a federal employee;
- g. Require that, upon completion of the detail, the IC employee serve in the IC element, or elsewhere in the civil service if approved by the IC element head, for a period that is at least equal to the length of the PPTE detail served;
- h. Stipulate that, upon completion of the detail, an IC element employee will be restored to active employment at the grade and tour of duty (part-time or full-time), but not necessarily the exact position, the employee held prior to departure for the PPTE detail;
- i. Provide that if an IC employee fails to meet the terms of the PPTE agreement for continued service in the IC or, as approved by the IC element head,

SUBJECT: Intelligence Community Public-Private Talent Exchange

elsewhere in the civil service, the employee shall be liable to the United States for payment as a debt due of all non-salary and benefit expenses incurred during the detail, unless that failure was for good and sufficient reason, as determined by the IC element head. An amount for which the employee is liable shall be treated as a debt due the United States;

- j. Provide that an IC element head may waive, in whole or in part, collection of a debt based on a determination that the collection would be against equity and good conscience and not in the best interest of the United States, after taking into account any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee; and
 - k. Contain language requiring both the IC and private sector detailees to acknowledge the obligations of the employee regarding information prohibited from disclosure pursuant to 18 U.S.C. Sec. 1905, "Disclosure of Confidential Information, Generally," including but not limited to personally identifiable information, Privacy Act protected information, private sector trade secrets, and intellectual property.
10. The Assistant Director of National Intelligence/Human Capital (ADNI/HC) is the accountable official for this policy.
11. The ADNI/HC:
- a. Shall monitor IC-wide implementation of IC PPTE programs and ensure compliance with reporting requirements on the use of the exchange programs according to applicable law and policies;
 - b. Shall establish an IC PPTE Program Manager (PM) to provide oversight and guidance to individual IC elements' IC PPTE programs;
 - c. Shall prepare, in coordination with the Office of the Director of National Intelligence (ODNI)/Office of General Counsel, PPTE agreement templates pursuant to B.1.a-b., containing statutory and policy requirements for, and legal restrictions on, IC and private sector PPTE participants, and make them available to IC elements and appropriately vetted private sector organizations;
 - d. Shall, in collaboration with the ODNI Domestic Engagement, Information Sharing and Data Office, conduct outreach to private sector organizations about IC PPTE opportunities and provide IC elements information to enable them to conduct their own recruitment activities;
 - e. Shall establish and oversee both a classified website and an unclassified, public-facing IC PPTE website and make available relevant information to IC elements and prospective, appropriately vetted, private sector organizations about IC PPTE programs;

SUBJECT: Intelligence Community Public-Private Talent Exchange

- f. Consistent with Executive Order 13985 and Executive Order 14035, shall work, in collaboration with the Intelligence Community Diversity, Equity, and Inclusion Office, to integrate and advance IC diversity, equity, and inclusion goals in the IC implementation of the PPTE programs;
- g. Shall provide IC elements guidance on vetting procedures for all prospective private sector organizations;
- h. Shall, in consultation with the IC Chief Financial Officer (CFO), provide guidance for National Intelligence Program resources associated with the IC PPTE programs and activities, and for the transfer or reprogramming of such resources, as may be required;
- i. May, notwithstanding any other provision of law, and in consultation with the IC CFO, establish criteria for IC elements to use appropriated funds to reimburse small business concerns for the salaries and benefits of its employees during the periods when the small business concern agrees to detail its employees to the IC under the PPTE program; and
- j. In coordination with the IC Chief Human Capital Officers (CHCO) Council, shall:
 - (1) Take into consideration areas of private sector expertise that are critical to the IC in order to strengthen IC capabilities, including the training of IC employees against these goals;
 - (2) Develop guidelines for the implementation of IC PPTE programs, including for reporting on IC elements' PPTE agreements with private sector organizations and small business concerns; and
 - (3) Establish mechanisms to determine whether the public-private exchange improves the efficiency and effectiveness of the IC.

12. IC element heads:

- a. Shall implement IC PPTE programs according to this policy and guidelines established by ADNI/HC, CHCO Council and the IC CFO, and respond to applicable reporting requirements;
- b. Shall establish a PPTE point of contact (POC) responsible for coordinating with the Intelligence Community Human Capital (HC)/IC PPTE PM;
- c. Shall implement IC PPTE programs in accordance with Intelligence Community Directive 110, *Intelligence Community Equal Employment Opportunity and Diversity*, and shall respond to related ODNI reporting requests;

SUBJECT: Intelligence Community Public-Private Talent Exchange

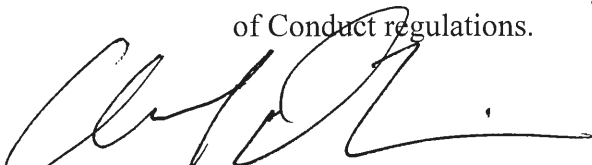
- d. Shall ensure that prior to the onset of any detail, a prospective private sector organization undergoes thorough vetting. At a minimum, the following criteria shall be included in the vetting process:
 - (1) Foreign involvement, e.g., foreign ownership, control, or influence;
 - (2) Compliance with U.S. law;
 - (3) Acquisition and contractual issues, including potential conflicts of interest; and
 - (4) Counterintelligence and security issues.
- e. May fulfill the vetting requirements through their IC element's own internal vetting process, a Departmental vetting process, or by entering into an agreement with another IC element to conduct vetting on their IC element's behalf, provided that the process used for vetting prospective private sector organizations is consistent with this Policy Memorandum;
- f. May recognize and accept another IC element's vetting determination on a prospective private sector organization;
- g. Shall ensure that any private sector detailee receives the appropriate level of security clearance and eligibility for access to classified national intelligence during the period of the detail assignment, in accordance with applicable laws and policies, prior to the onset of the detail;
- h. Shall fund the personnel security investigation for the incoming private sector detailee; should the private sector organization decide not to put forth their candidate for an assignment after a personnel security investigation has been initiated, the IC element shall seek reimbursement from the private sector organization for the associated cost;
- i. Shall ensure that detailees sign the appropriate Non-Disclosure Agreement both upon being granted access to classified information and, again, when no longer requiring such access (at debriefing); and are made aware of their lifelong responsibility to protect classified information, consequences of unlawful disclosure of all level of classified information, and comply with the pre-publication review requirements established by IC elements to protect classified information;
- j. Shall include in each PPTE agreement, the statutory requirements for and legal restrictions on IC and private sector PPTE participants that are included in the PPTE agreement templates made available to them by ADNI/HC;
- k. Shall certify, upon signature of the applicable PPTE agreement, that the temporary detail of the IC employee shall not have an adverse or negative impact on mission attainment or organizational capabilities; and

SUBJECT: Intelligence Community Public-Private Talent Exchange

1. Shall certify, upon signature of the applicable PPTE agreement, that in the case of an IC element in the Department of Defense, the duties of the IC employee being detailed will not be performed or augmented by contractor personnel in violation of 10 U.S.C. Sec. 2461.

13. IC Designated Agency Ethics Officials shall:

- a. Consult with the Office of Government Ethics as needed to develop procedures for the program aimed at ensuring the uniform implementation of the ethics laws to private sector detailees, including the avoidance of any prohibited conflict of interest or appearance of impropriety;
- b. Create and implement a process whereby agency ethics officials communicate to the private sector employer ethics restrictions during and after the private sector employee's detail;
- c. Create and implement a process whereby agency ethics officials conduct pre-hire conflict of interest reviews prior to each private sector detailee's appointment, and on an ongoing basis as needed if the private sector detailee's financial interests and/or duties change;
- d. Provide an ethics training module for private sector detailees that focuses on the criminal conflict of interest statutes, including the prohibition against government employees representing outside parties against or before the United States and the post-governmental employment restrictions, use of non-public information, and the receipt of gifts from outside sources;
- e. Ensure each private sector detailee completes, prior to on-boarding and on an annual basis, an Office of Government Ethics (OGE) Form 450, *Confidential Financial Disclosure Report*, unless:
 - (1) The detailee's rate of pay meets the requirement to file an OGE Form 278e, *Public Financial Disclosure Report*; or
 - (2) If the detailee encumbers a position traditionally held by a Senior National Intelligence Service/Senior Intelligence Service/Senior Executive Service officer, then the detailee must file an OGE Form 278e, *Public Financial Disclosure Report*.
- f. Ensure each outgoing IC detailee receives an ethics consultation, reminding them of their continued obligations under the criminal statutes and Standards of Conduct regulations.


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Date

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