Ethics Guide for Senior Officials

September 2005

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Memorandum
January 20, 2001

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Standards of Official Conduct

Everyone who enters into public service for the United States has a duty to the American people to maintain the highest standards of integrity in Government. I ask you to ensure that all personnel within your departments and agencies are familiar with, and faithfully observe, applicable ethics laws and regulations, including the following general principles from the Standards of Ethical Conduct for Employees of the Executive Branch:

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by applicable law or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating applicable law or the ethical standards in applicable regulations.

Executive branch employees should also be fully aware that their post-employment activities with respect to lobbying and other forms of representation will be bound by the restrictions of 18 U.S.C. 207.

Please thank the personnel of your departments and agencies for their commitment to maintain the highest standards of integrity in Government as we serve the American people.

GEORGE W. BUSH

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TABLE OF CONTENTS

STANDARDS OF CONDUCT FOR EXECUTIVE BRANCH EMPLOYEES.....2

CHAPTER ONE – GIFTS

I. REFERENCES.....7

II. GENERAL GUIDANCE.....7

III. EXAMPLES OF ACCEPTABLE "NON-GIFTS".....7

IV. GIFTS FROM OUTSIDE SOURCES.....8

V. GIFTS BETWEEN EMPLOYEES.....10

VI. GIFTS FROM FOREIGN GOVERNMENTS.....11

VII. PRACTICE TIP FOR AIDES.....11

VIII. INFORMATION PAPER ON WIDELY ATTENDED GATHERINGS.....12

CHAPTER TWO -- TRAVEL-RELATED GIFTS

I. REFERENCES.....14

II. PAYMENTS FROM NON-FEDERAL SOURCES FOR OFFICIAL, "MISSION-ENHANCING" TRAVEL.....14

III. GIFTS OF TRAVEL FROM FOREIGN GOVERNMENTS.....19

IV. FREQUENT FLYER MILES.....19

V. CREDIT CARDS.....19

VI. UPGRADES ON OFFICIAL TRAVEL PAID BY THE GOVERNMENT.....19

VII. UPGRADES ON OFFICIAL TRAVEL NOT PAID BY THE GOVERNMENT.....20

VIII. BUMPS (VOLUNTARY AND INVOLUNTARY).....21

IX. COMPENSATION FOR INCONVENIENCE OR INJURY.....21

X. GIFTS OF TRAVEL IN CONTRACTOR AIRCRAFT AND VEHICLES.....21

CHAPTER THREE – PRIVATE ORGANIZATIONS

I. REFERENCES..... 22

II. RELATIONSHIPS WITH PRIVATE ORGANIZATIONS.....22

III. FAMILY READINESS GROUPS..... 25

IV. PARTICIPATION IN THE MANAGEMENT OF NON-FEDERAL ENTITIES..... 26

V. INFORMATION PAPER PRIVATE ORGANIZATIONS.....28

VI. INFORMATION PAPER PARTICIPATION IN PRIVATE ORGANIZATIONS.....31

CHAPTER FOUR – FUNDRAISING

I. REFERENCES..... 35

II. OFFICIAL SUPPORT FOR FUNDRAISING ACTIVITIES 35

III. MILITARY BALL FUNDRAISERS AND SIMILAR EVENTS.....37

CHAPTER FIVE – RECEPTIONS AND CONTINGENCY FUNDS

I. REFERENCES..... 42

II. COMMANDER RECEPTIONS AND USE OF CONTINGENCY FUNDS.....42

CHAPTER SIX – FINANCIAL DISCLOSURE REPORTS

I. REFERENCES..... 44

II. FILING REQUIREMENTS.....44

III. FILING TIPS.....44

IV. CONFLICTS OF INTEREST..... 45

V. PRACTICE TIPS FOR AIDES..... 45

CHAPTER SEVEN – POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

I. PRE-SEPARATION MATTERS..... 46

II. "SWITCHING SIDES"..... 47

III. ONE YEAR "COOLING OFF" PERIOD..... 47

IV. PROCUREMENT INTEGRITY..... 49

V. FOREIGN GOVERNMENT EMPLOYMENT..... 49

VI. REEMPLOYMENT WITHIN THE GOVERNMENT.....50

VII. MISCELLANEOUS PROVISIONS.....50

VIII.CONCLUSION.....50

CHAPTER ONE

GIFTS

I. REFERENCES

A. DoD 5500.7-R, Joint Ethics Regulation (JER)(30 Aug 93), through Change 4 (6 Aug 98), Chapter 2 (Standards of Ethical Conduct) and Chapter 4 (Travel Benefits)

B. Office of Government Ethics (OGE), Standards of Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635, Subpart B, Subpart C

C. 5 U.S.C. § 7342 (2000)

D. AR 1-100, Gifts and Donations (15 Nov 83), DoDD 1005.13, Gifts from Foreign Governments (20 Jul 96)

II. GENERAL GUIDANCE

A. The ethical rules applicable to Army personnel are very detailed, specific, and complex. The *Standards of Ethical Conduct for Employees of the Executive Branch* 5 Code of Federal Regulations (CFR), effective on February 3, 1993, is applicable to all Federal employees, including Active and Reserve Component military members, civilian personnel, special Government employees and Federal Advisory Committee members. The DoD *Joint Ethics Regulation* (JER), DoD 5500.7-R was enacted on August 30, 1993 and four changes have been published. Chapter 2 of the JER incorporates the *Standards of Ethical Conduct for Employees of the Executive Branch.*

B. Because general officers are frequently offered gifts by individuals who are unfamiliar with the JER and its restrictive rules, they and their staff must constantly be on the alert for gift problems. For example, a new pair of cowboy boots, a western hat, or a free round of golf might be a violation of the JER and could result in sanctions.

III. EXAMPLES OF ACCEPTABLE "NONGIFTS"

- Food & refreshments not offered as part of a meal (coffee, donuts, soft drinks, etc.).
- Items with little intrinsic value (greeting cards, plaques, certificates, trophies, etc.).
- Loans from financial institutions on terms generally available to the public.
- Rewards and prizes for contests or events, including random drawings (if attendance at the event is not required by official duties).
- Items paid for by the government under contract or accepted by the government under a statute or regulation.
- Anything for which the employee pays full market value (what a willing buyer would pay a willing seller – the eBay rule).

IV. GIFTS FROM OUTSIDE SOURCES

A. Basic Rule. Department of the Army personnel may not solicit or accept a gift:

1. From a prohibited source (*e.g.*, someone who has an interest in the performance of official Army missions or who does business with the Army; or

2. Given because of the employee's official position.

B. Practical approach to determine acceptability of an item or service. Three questions:

1. Is the item a gift? A gift is any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It can include services as well as training, transportation, local travel, lodging, and meals. As noted at the start of this chapter, there are categories of "nongifts," such as, coffee and donuts or greeting cards. Generally, if an item has no resale value, it is a "nongift."

2. If the item is a gift, does an exception apply? Common exceptions where an employee may accept a gift from an outside source are:

a. Unsolicited gifts with a market value of $20 or less per source, per occasion, as long as the total value of all gifts received from a single source during a calendar year does not exceed $50 per year or call Government integrity into question.

b. Gifts based on a *bona fide* relationship, such as a family relationship or personal friendship.

c. Discounts and similar benefits offered to groups in which membership is not related to government employment (or "government discounts" where the same offer is broadly available to the public through similar groups), and certain benefits offered by professional associations or by persons who are not prohibited sources.

d. Legitimate awards that are part of a regular and established program of recognition for meritorious public service. An ethics counselor opinion is required if the value of the award exceeds $200.

e. Gifts resulting from the outside business activities of employees or their spouses.

f. Free attendance (not travel or lodging) provided by the sponsor of a widely-attended gathering, speaking engagement, or other event when attendance would further Army interests.

g. Food, refreshment, and entertainment at social events extended by persons who are not prohibited sources, where no one is charged a fee to attend the event.

h. Unsolicited gifts of free attendance for Army employees (and spouses) at events sponsored by the state or local governments or non-profit, tax exempt civic

organizations, where the Army has identified a community relations interest in the event.

i. Educational scholarships or grants for Army employees and dependents.

3. Would accepting a gift undermine Government integrity?

a. Even if a gift is allowed by one of the exceptions listed above, do not accept it if it would undermine Government integrity. KEY POINT - Avoid even the appearance of impropriety.

b. A gift is illegal (i.e., a bribe) if it is in exchange for an official action.

c. Gifts may not be accepted so frequently that anyone would question whether influence is being bought.

d. Gifts received by the spouse or dependent children of an Army employee are imputed to the Army employee.

e. Gifts (including the cost of widely attended gatherings and travel benefits from non Federal sources may never be solicited.

f. Some gifts may be prohibited by other statutes (*e.g.*, Foreign Gifts Act, 5 US Code § 7342 or the Procurement Integrity Statute, 41 US Code § 423.

C. Handling improper gifts. When an employee cannot accept a gift:

1. If possible, the employee should refuse the offer of an improper gift. Your Ethics Counselor will be able to assist you in tactfully explaining the limitations placed on Government employees.

OTHERWISE,

2. The employee must pay the donor its market value; or

3. The employee must return the gift, or,

4. Subject to Ethics Counselor approval, perishable items may be donated to a charity, shared within the office, or destroyed, or

5. With permission of the donor, the gift may be accepted as a gift to the Army under the provisions of AR 1-100. POC is James H. Davis, (703) 325-4530.

V. GIFTS BETWEEN EMPLOYEES

A. General Rules. An employee shall not:

1. Give a gift or solicit a contribution for a gift for a superior (*i.e.*, supervisor or those in supervisory chain); or

2. Accept a gift from a lower paid employee, unless the donor and recipient are personal friends who are not in a superior-subordinate relationship.

3. A gift to an employee's spouse or dependent children is considered a gift between employees subject to the rules above, unless there is an independent basis for the gift.

B. Exceptions to the Gift Prohibition:

1. Employees may give or receive gifts on an occasional basis, including traditional gift-giving occasions, such as birthdays and holidays. This includes:

a. Minor contributions of food that will be consumed at the office, meals at someone's home (of a type and value typically given to personal friends), and customary gifts, such as a bottle of wine, brought when invited to another's home.

b. Infrequent gifts (other than cash) having a value of $10 or less on appropriate occasions, such as Christmas or birthdays, or upon return from a vacation or TDY.

2. A subordinate may *voluntarily* give or donate toward a gift for a superior on a special infrequent occasion, such as marriage, PCS, or retirement.

a. Gifts on special infrequent occasions should be appropriate to the occasion. The limit per gift per donating group is $300.

(1) A donating group is comprised of all the contributors to that group gift. For a departing CG, each brigade can be a donating group; for a brigade commander, each battalion; and so on. (2) If a contributor gives to two donating groups, then the value of the gifts from the two groups is aggregated as if it were from a single donating group -- the $300 limit applies to the total value (JER 2-203a(2)).

b. An employee cannot *solicit* more than $10 from another employee for a group gift for a superior (JER 2-203b); however, an employee may contribute more than $10 if he or she so chooses.

c. Solicitations for gifts to a superior must be completely voluntary. Solicited individuals may decline to contribute. To avoid the appearance of improper pressure, no one should keep a list of contributors, and preferably, the collection should be handled by someone junior in the organization.

VI. GIFTS FROM FOREIGN GOVERNMENTS

A. There must be an initial determination as to whether the gift was to an individual or to a unit. If it is a gift to a unit, it can be carried on the property book of the unit welfare fund under the procedures in AR 1-100. If it is a gift to the individual, the procedures outlined in paragraphs B through E below must be followed.

B. Individuals may retain foreign gifts with a value of $285 or less. Value is based upon U.S. retail market value at the time of receipt. It is the recipient's burden to establish value.

C. Gifts under the $285 limit need not be reported public or confidential financial disclosure reports. Create and maintain a memorandum for record concerning the gift.

D. Gifts over the $285 threshold should be refused; however, when refusal would likely cause embarrassment, offend, or otherwise adversely affect U.S. foreign relations, the gift may be accepted.

1. If accepted under these circumstances, the recipient must make a record of the event, including: the circumstances surrounding the gift; the date and place of presentation; the identity of the foreign government and name and title of the donor; the name, grade and official capacity of the recipient; and, a brief description of the gift including its estimated U.S. retail value.

2. Ordinarily, this information, along with the gift, must be forwarded to the Commander, PERSCOM, ATTN: Mr. Jim Davis, Alexandria, VA 22332-0474, within 60 days of receipt of the gift. The gift is then forwarded to the General Services Administration for proper disposition. A request to retain the gift locally and use it in an official capacity, (*e.g.*, on display at the unit) can be forwarded to PERSCOM with the other information, and the gift may be held at the unit pending approval of the request.

E. In some circumstances, the recipient may purchase the gift for its full U.S. retail value. Contact your local Ethics Counselor for additional guidance.

VII. ***PRACTICE TIP FOR AIDES:*** Keep a log on all gifts received under any of the circumstances outlined in this chapter, and record the disposition of each gift. Even small items, such as pens, baseball hats, and coffee cups should be accounted for. The list should include the person making the presentation and the organization or Government entity he/she represents.

INFORMATION PAPER

DAJA-SC
29 SEP 2005

SUBJECT: Free Attendance at Seminars and Similar Functions

1. PURPOSE: To summarize when employees may accept free attendance at a seminar, conference, or similar function.

2. FACTS:

a. Participation in a Widely Attended Gathering. *Standards of Ethical Conduct for Employees of the Executive Branch* **(5 C.F.R. § 2635.204(g)(1))**

(1) Speaking and Similar Engagements. An employee may accept free attendance at a conference or other event where the employee will participate in an official capacity, as a speaker or panel participant, to present information on behalf of his agency, provided the offer is from the event's sponsor. This is limited to free attendance on the day of the official presentation, and permits the employee to accept conference fees, food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not permit acceptance of travel expenses.

(2) Other Official Participation. Under certain circumstances, employees in an official travel status may accept travel and related expenses to attend conferences and similar functions, in addition to free attendance at the event. This authority, 31 US Code § 1353, is covered in a separate information paper.

b. Participation in a Personal Capacity. **(5 C.F.R. § 2635.204(g)(2))** An employee attending an event in his personal capacity may accept a gift of free attendance if the event is "widely attended." The elements of a "widely attended gathering" are size, diversity, and a finding of agency interest.

(1) For the "size" element, there must be at least 20 or more individuals in attendance.

(2) For the "diversity" element, the event must be open to members from throughout a given industry or profession, or to all parties who may have an interest in the subject of the event.

(3) The Ethics Counselor must determine (verbally or in writing) that attendance is in the agency's interest because it will further agency programs and operations. The agency's interests may include promoting community relations or providing the opportunity to exchange views or technical information with members of a specific profession. If the person who invited the employee has interests that may be affected by execution of the employee's official duties, the

Ethics Counselor must make a further written determination that the agency's interest outweighs the appearance of improper influence.

(4) Cost of Attendance. Under this exception, there is no limit on the cost of free attendance. However, acceptance of free attendance only applies to activities that are integral to the event. Generally, sports activities, such as golf outings, will not be integral to a widely attended gathering, and may not be accepted. There are also some restrictions on how the costs are paid:

(a) The event's sponsor must bear the cost of free attendance or, if someone other than the sponsor bears the cost, the sponsor must decide who to invite and where to seat him or her.

(b) If someone other than the sponsor pays for attendance, the offer of free attendance may not be accepted unless more than 100 persons are expected to attend, and the value of free attendance (including the value of free attendance for an invited spouse or guest) does not exceed $285.

(c) Attendance of Spouses. An employee may accept free attendance for his spouse if spouses will generally accompany others in attendance, and the offer to the spouse is from the same source as the offer to the employee.

(5) Blanket Determinations of Agency Interest. There are no blanket agency interest determinations in the Department of the Army. The Department of Defense may issue lists or opinions that a certain event meets the minimum criteria for a WAG. However, these lists are not authority to accept free attendance. An Army Ethics Counselor must make an additional determination of agency interest. An Ethics Counselor may issue a class determination that attendance by all or a specific category of subordinate employees is in the agency's interest. This determination does not, however, eliminate the need for the written finding for individuals whose duties may present a conflict.

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CHAPTER TWO

TRAVEL-RELATED GIFTS

I. REFERENCES.

A. 5 US Code § 7342 (Foreign Gifts and Decorations Act)

B. 31 US Code § 1353 (Gifts of Travel Payments from Non-Federal Sources)

C. DoD Directive 4500.56, Subject: DoD Policy on the Use of Government Aircraft and Travel (2 Mar 97)

D. DoD Directive 1005.13, Gifts from Foreign Governments, 19 Feb 02.

E. Joint Travel Regulation (JTR) and Joint Federal Travel Regulation (JFTR)

II. PAYMENTS FROM NON-FEDERAL SOURCES FOR OFFICIAL TRAVEL.

A. Pursuant to 31 U.S.C. § 1353, you may accept, on behalf of the Army, a travel payment from a non-Federal source, if **all** of the following conditions apply:

1. The gift is in connection with a "meeting or similar function" relating your official duties.

2. The function will take place away from your permanent duty station.

3. You will attend the function in an official capacity.

4. Acceptance of the gift would not cause a reasonable person to question the integrity of Army programs or operations.

5. Acceptance of the gift is approved before the travel by the travel-approving authority and organization Ethics Counselor. If circumstances preclude coordination and approval before travel, acceptance may be approved within 7 days of the date of the travel. JER para. 4-100c(2)

B. "Meeting or Similar Function" means a conference, seminar, speaking engagement, symposium, training course, or similar event, sponsored by a non-Federal source. A "function" need not be widely attended, and includes but is not limited to:

1. An event in which you will participate as a speaker or panel member;

2. A conference, convention, seminar, symposium or similar event the primary purpose of which is to receive training (other than promotional vendor

training), or to present or exchange substantive information concerning a subject of mutual interest to a number of parties; OR

3. An event at which you will receive an award or honorary degree, which is in recognition of meritorious public service related to your official duties.

C. "Meeting or Similar Function" does **not** include:

1. A meeting or other event required to carry out the Army's statutory and regulatory functions (*i.e.,* a function essential to the Army mission), such as investigations, inspections, audits, site visits, negotiations, or litigation; or

2. Promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services. (JFTR para. U7901A; JTR para. C4901B)

D. Travel on commercial airlines. If the non-Federal source offers you a gift of travel on a commercial airline, you may accept travel in coach class or in premium class other than first class (e.g., business class). However, you may not accept a gift of travel in first class, unless conditions exist that would authorize the government to purchase a first class airline seat. (JFTR para. U7902D; JTR para. C4902D) See para. VI.B., below.

E Hotels that cost more than the government lodging rate. You may accept a gift of lodging above per diem only if the accommodations are "comparable in value to that offered to, or purchased by, other similarly situated individuals attending the function." (JTR para. C4902D)

F. Gifts to spouses. The Army may accept payment from a non-Federal source for an accompanying spouse when the spouse's presence at the meeting or similar function is in the Army's interest. (JFTR para. U7902B; JTR para. C4902B; JER 4-100d)

G. Form of payment. You may not accept cash payments on behalf of the government. Payments shall be in kind, or by check made payable to the Army. JER para. 4-101a(4)). The spouse must otherwise meet the requirements for official travel IAW the SECARMY travel policy.

I. Written report of payments received. If the total value of the travel payments exceeds $305, you must complete a written report of the payments received. (JFTR para. U7908A; JTR para. C4908A; JER para. 4-101a(5)) Travel payments are considered gifts to the Army, not gifts to the individual. Such payments do not have to be reported on your Public Financial Disclosure Report (SF 278) or Confidential Financial Disclosure Report (OGE Form 450).

GUIDELINES FOR ACCEPTANCE OF TRAVEL EXPENSES FROM NONFEDERAL SOURCES

(31 U.S.C. § 1353)

KEY CONCEPTS

NO SOLICITATION The offer of travel expenses (in-kind and by reimbursement) must be unsolicited and completely voluntary on the part of the offeror.

ONLY OFFICIAL TRAVEL This is considered to be a gift to the Army. You may not accept personal benefits or gratuities under this law.

CAN ONLY USE FOR CONFERENCE/SEMINARS/SIMILAR EVENTS This statute may not be used to accept travel to perform functions essential to agency mission (inspections, oversight visits, etc.) or to attend sales presentations.

DO NOT CLAIM REIMBURSEMENT ON YOUR TRAVEL VOUCHER FOR EXPENSES THAT HAVE BEEN PROVIDED UNDER THIS STATUTE.

HOW TO PROCESS AN OFFER

The approval authority is the official who normally approves TDY travel. Approval must be in writing.

Before approval, the travel authority must determine that acceptance would not undermine the integrity of Army programs or operations. The approval authority must have Ethics Counselor concurrence.

The statute applies only to attendance at conferences, seminars, speaking engagements, or similar events that take place away from the employee's duty station.

You are encouraged to accept "in-kind" travel expenses (that is, prepaid tickets and hotel). You may not accept direct cash reimbursement.

If the travel expenses provided exceed $305, the traveler must submit a report within 15 days, through the travel approving authority to the Ethics Counselor, listing the type and amount of travel benefits received (i.e., lodging, airfare, meals, etc.)

Ethics Counselors will compile the information on the reports on a consolidated SF 326 and forward them to Army Standards of Conduct Office for filing with the U.S. Office of Government Ethics.

MISCELLANEOUS RULES

First class air travel is not permitted even though non-federal money is used.

Invitations for spouse travel may be accepted ***only if*** the spouse's travel has been approved in accordance with separate Secretary of the Army guidance.

Sample Memo re: acceptance of 31 US Code 1353 travel benefits

MEMORANDUM FOR RECORD

SUBJECT: Approval of Acceptance of Travel Benefits under 31 USC 1353

1. **Travel benefits have been offered by** _____ **(name of non-federal entity) to** _____(name of army personnel who will receive the travel benefit) **to permit** (him/her) **to** _____(insert the reason the person will be traveling). **This event will occur on** _____(insert dates). **The Army employee will** _____(explain further what the army employee will be doing, if necessary. Attach program brochure or the offer letter from the non-Federal entity, if available.)

2. **The following travel and related expenses have been offered to be provided in-kind to the Department of the Army:**

Round-trip air fare	(approximate value)
Rental car	(estimate cost)
Lodging	(approximate hotel rate)
Meals	(identify the meals to be provided)
Registration fee	(list value)

3. **I have reviewed the offer of travel benefits** (attach offer, if possible) **from** _____ (insert the name of the non-Federal entity) **and performed a conflict of interest analysis, taking into account such factors as the source of the gift, the amount of the gift, to whom it is offered, whether there are any matters pending before the Army concerning the non-Federal entity offering the travel benefits and whether the proposed recipient of the travel benefits makes any decisions pertaining to the non-Federal entity.**

4. **I hereby determine that the acceptance of these travel benefits** would / would not (CHOOSE ONE) **cause a reasonable person with knowledge of all the relevant facts to question the integrity of the Army's programs or operations and** approve / disapprove (CHOOSE ONE) _____ (insert name and rank/grade of recipient of the travel benefits) **accepting the above-described travel benefits.**

5. **This approval has been coordinated with the Ethics Counselor for** _____ (insert office as applicable) **and written approval has been obtained as evidenced by the concurrence block below OR the attached written opinion** (CHOOSE

ONE). **If the travel benefits received exceed $250, the traveler will file an SF 326 (available at the GSA Forms Library at http://www.gsa.gov/Portal/formslibrary.jsp) with the Ethics Counselor within 15 days of completion of the travel.**

6. **A copy of this memorandum and attachments shall be retained by the recipient of the travel benefits and his/her ethics counselor.**

Insert signature block
and title of travel approval authority

Ethics Counselor Coordination

Concur _____ Nonconcur _____

(Insert name, rank/grade, title and date)

III. GIFTS OF TRAVEL FROM FOREIGN GOVERNMENTS. The Foreign Gifts and Decorations Act, 5 U.S.C. § 7342, is implemented by DoD Directive 1005.13, Gifts from Foreign Governments, 19 Feb 02. This statute authorizes acceptance of "travel taking place entirely outside the United States." Travel may not originate or terminate in the United States. As specified in the Directive, acceptance of such travel must be reported through channels to the Deputy Chief of Staff for Logistics who prepares an annual report to Congress.

IV. FREQUENT FLYER MILES. Frequent flyer miles earned on official travel may be retained personally by the traveler.

V. CREDIT CARDS. If you are authorized to use a personal credit card to pay for the costs of official travel (such as hotel, rental car or meals), and the credit card company has an arrangement with an airline under which you earn a frequent flyer mile for every dollar charged on the card, (i.e., an affinity card), you <u>may</u> keep those frequent flier miles for personal use.

VI. UPGRADES ON OFFICIAL TRAVEL PAID BY THE GOVERNMENT.

A. It is DoD policy that all air travel paid for by the government will be coach-class, with limited exceptions. (JFTR para. U3125; JTR para. C2204)

B. <u>Travel in first class at government expense</u>. JFTR para. U3125(B)(3) and JTR para. C2204(A)(5)(c) provide that first-class accommodations may be authorized only under the following circumstances:

1. No other accommodations are reasonably available (within 24 hours of required arrival/departure time);

2. The employee is so handicapped or otherwise physically impaired that other accommodations cannot be used, OR

3. Exceptional security circumstances exist.

C. "When an airline flight has only two classes of service, the higher class of service, regardless of the term used, is 'first class.'" (JTR para. C2204(A)(1))

D. The purchase of first class seats must be personally approved by the Secretary of the Army. Requests must be made 10 days prior to travel.

E. <u>Travel in premium class other than first class at government expense</u>. JFTR para. U3125(A)(4) and JTR para. C2204(A)(5)(d) provide that premium class other than first class (sometimes referred to as "business class") may be used only under the following circumstances.

1. Regularly scheduled flights along the required route only provide premium-class seats.

2. No space is available in coach, and travel is urgent and cannot be postponed.

3. Travel by an employee with a disability or other physical impairment, substantiated in writing by competent medical authority.

4. Premium-class seats are required for security purposes.

5. Coach-class accommodations on foreign carriers do not provide adequate sanitation or meet health standards.

6. Overall savings to the Government would result, such as avoidance of additional subsistence costs, overtime, or lost productive time incurred while waiting for available coach seats.

7. Travel is overseas, is over several time zones, and the flight time is in excess of 14 hours. The Secretary of the Army has further required there be insufficient time for rest before engaging in TDY duties.

VII. UPGRADES ON OFFICIAL TRAVEL NOT PAID BY GOVERNMENT.

A. A gift of an upgrade may be accepted in any of the following circumstances.

1. On-the-spot upgrades generally available to the public (or at least to all Federal employees or all military members), not based on rank or position. (usually offered in order to fill all seats in a plane)(JER para. 4-202a(1))

2. The upgrade is a promotional offer available to the public (or to all Federal employees or all military members). An example would an upgrade to first class that is offered to anyone who opens a frequent flyer account. (JER para. 4-202a(2)) This includes vouchers or upgrade stickers which are sometimes provided through the government contract travel office.

3. An upgrade is offered to anyone who accumulates enough frequent flyer miles in a club (such as a Gold Card Club).

B. Upgrades with personal funds. You may use personal funds to upgrade to first class or business class while on official travel.

C. Upgrades with frequent flyer miles. You may use frequent flyer points, earned during personal at of official travel to upgrade seats while on official travel.

D. **NOTE!** ***Active duty and Reserve Component military members are prohibited by the Secretary of the Army from occupying a first class seat while in uniform regardless of how the seat was obtained.***

VIII. BUMPS.

A. Involuntary bump. If you are involuntarily bumped from an overbooked flight on official travel, any compensation you receive (such as a check or a complimentary ticket) belongs to the government.

B. Voluntary bump. An employee on official travel may volunteer up a seat and take a later flight, as long as doing so would not interfere with the mission.

C. You may keep any benefits earned as a result of voluntarily relinquishing your seat on an overbooked flight. You may not claim per diem for the delay. Further, you are responsible for any additional travel expenses you may incur (extra night in the hotel, additional meals, etc.).

IX. COMPENSATION FOR INCONVENIENCE OR INJURY.

A. Compensation for personal injuries belongs to you, but compensation for delays or inconveniences which detract from mission performance belong to the government.

B. Luggage. You may keep payments as compensation for luggage that has been lost or delayed by the carrier. (JTR para. C1200(H); JFTR para. U1200(C))

X. GIFTS OF TRAVEL IN CONTRACTOR AIRCRAFT AND VEHICLES.

A. If the transportation is duty-related, it is a gift to the Army, not to the individual. The government generally should not accept such travel unless: (1) it is permitted in the terms of a contract, (2) the government has agreed to reimburse the contractor, or (3) acceptance was approved in advance under statutory gift authority.

B. However, if the contractor offers travel after working hours, it would generally be a personal gift to you, subject to the ordinary gift rules. If the trip is worth less than $20, it may be accepted under this *de minimus* exception.

CHAPTER THREE

PRIVATE ORGANIZATIONS

I. REFERENCES

A. JER, Chapter 3

B. 5 US Code § 5703 (1988)

C. AR 210-22 Operation of Private Organizations on Department of the Army Installations (22 Oct 01)

D. AR 215-1, Nonappropriated Fund Instrumentalities and Morale, Welfare, and Recreation Activities (29 Sep 95)

E. Secretary of the Army/ Chief of Staff of the Army memorandum dated 2 December 2002 on Private Organization Membership Campaigns.

II. RELATIONSHIPS WITH PRIVATE ORGANIZATIONS

A. Private organizations (POs) are allowed to operate on post for the benefit of soldiers, civilian employees, and family members. Generally, they do not conduct official business for the Army. Thus, they are authorized only limited official support, *e.g.*, a place on post to meet and authorization for soldiers to participate in their activities.

B. The first step in dealing with and resolving any PO issue is to determine whether a relationship with the PO is either personal or official. The nature of the relationship guides the analysis and generates the answer.

C. Soldiers and Army civilians are not precluded from joining, participating in, or holding office in POs. On the contrary, they are encouraged to do so, especially when such activity will enhance their professional or personal development, or enhance local military or civilian community activities.

D. When acting in a personal capacity, military personnel and civilian employees <u>may not:</u>

1. Accept positions as officers, directors, or similar positions in a PO offered because of their official duty position (JER, para. 3-301) (*e.g.*, a Chief of Staff may not accept appointment to the Board of Directors of the Chamber of Commerce offered because of his duty position);

2. Use office, title, or position in connection with personal participation in POs (5 C.F.R. § 2635.702(b)) (*e.g.*, name and duty position shown on PO's letterhead listing organization officers);

3. Personally solicit subordinates or prohibited sources (generally, DoD contractors), or permit the use of their names in a solicitation that targets subordinates or prohibited sources, in PO membership drives or fundraising campaigns (5 C.F.R. § 2635.808).

E. In addition to the basic rule that Army personnel are free to join a PO, actively participate in, or become an officer in a PO, other permissible activities are:

1. Military members may use their rank and component designation in connection with their PO activities (*e.g.*, General, U.S. Army), but may not refer to their official position or use the authority associated with that position (5 C.F.R. § 2635.702(e));

2. Under some circumstances, employees may be given time off and may use government resources in their personal participation with POs, when they meet specific criteria and have approval as set out in JER, para. 3-300b (writing papers for professional associations and learned societies), and JER, para. 3-300c (certain community support activities);

3. If approved by the Ethics Counselor for a General Officer in Command), occasional use of the telephone (no toll calls), computer, library, and similar resources during off-duty time (but no use of other Army personnel) (JER, para. 3-305);

4. If the Ethics Counselor determines that it is in the Army's interest, Army personnel may accept free attendance at a "widely attended gathering" sponsored by a PO, on their own time or during an excused absence (5 C.F.R. § 2635.204(g)(2)) (if the value of the free attendance exceeds $285, the Army employee must report this gift on his or her Financial Disclosure Report). For example, after consulting with his or her EC, a supervisor might conclude that it is in the Army's interest for a subordinate to attend a free technical symposium, including a cocktail party and dinner, attended by industry and government representatives and sponsored by a professional or technical association.

F. The Army may appoint official liaisons to POs where there is a significant and continuing Army interest to be served. However, they are only liaisons; when they participate they do so as Army employees and their loyalty is to the Army. Liaisons cannot be directors or board members of the PO. If they are officers, directors, or even active participants in the PO in their personal capacities, they may not be Army liaisons because of the conflict of loyalties. While as liaisons they may not participate in the management of the PO, but they may

participate in matters of mutual interest to the PO and the Army, and vote on those issues that relate to liaison activities. (JER, para. 3-302).

1. For example, a commander may appoint an officer as a liaison to the local civic organization. Among this officer's legitimate duties would be informing the chapter of the command's concerns with respect to its prospective activities, and to inform the commander of options, plans, and needs being explored by the civic organization. It would not be appropriate, however, for the liaison to use government resources to assist the civic organization with maintaining its mailing list, to visit local merchants to encourage them to join, or to spearhead a membership drive at the installation.

2. It is permissible to send an Army official TDY to perform liaison duties. It is also appropriate to send personnel on Army time and orders to participate in or attend a PO event, if there is a legitimate governmental interest and purpose for the Army's participation. (JER 3-200).

G. Under very limited circumstances, the Army may appoint officers to participate in the management of designated private organizations. This requires approval from the Office of the Secretary of Defense and is discussed in Section IV of this chapter.

H. The Army may support PO events by providing space, speakers, public address systems, and the like, if all of the criteria in JER 3-211a. are met. The Army can also provide speakers at PO events in accordance with the Public Affairs program and regulations (JER 3-209). The manner and degree of Army participation in an event determines what kind of event it is, *i.e.*, Army sponsored or Army supported. When the Army is supporting a PO event, it also must be clear that the Army is not endorsing the organization.

I. We must ensure that the expenditure of time and resources to help a PO is of direct benefit and interest to the Army, and commensurate with that interest. The fact that a PO is "friendly to the Army" and supports its goals and objectives is <u>not</u> sufficient justification to direct employees to use official Army time to do such things as:

1. Assist the PO with a membership or fundraising campaign;

2. Assist the PO with a PO seminar beyond providing speakers and other limited support;

3. Help the PO fix its computer system; or,

4. Assist the PO with auditing its books.

J. The *Standards of Ethical Conduct for Employees of the Executive Branch* prohibits government employees from using their title, office, or position to officially endorse a PO or its activities beyond that permitted in JER, para. 3-210 (*e.g.*, fundraising for the Combined Federal Campaign and Army Emergency Relief).

K. As with personal relationships with POs, there are also specific "do's and don'ts" for official relationships. Some specific prohibited activities are:

1. Do not designate a point of contact in a unit for a PO's membership drive or offer a pass or other official benefit to the unit with the highest membership or participation rate in the PO;

2. Commanders may not address their subordinates in formation or on Army letterhead to extol the virtues of a particular PO;

3. As part of professional development training, commanders or supervisors may not require their subordinates to attend a PO meeting to learn about the organization;

4. Commanders may not engage in coercive tactics such as requiring a soldier to explain a decision not to participate in or join a PO.

L. The laws and regulations governing relationships with private organizations are complex. Favoritism may not influence official actions, and everyone who seeks Army support or participation must receive fair and equal treatment. Army employees who are active in private organizations should seek advice from the Ethics Counselor assigned to their command to ensure that the private activity does not conflict with the performance of their official duties.

III. FAMILY READINESS GROUPS (FRGs)

A. Family Readiness Groups are primarily volunteer organizations. At the same time, FRGs can be affiliated with military units, but normally function at the company and battalion level. Army Community Service assists with unit and FRG outreach efforts as requested. To the extent FRGs further the unit's mission, they may receive official support and funding. In this narrow capacity, they are not considered POs.

B. FRG volunteers may generally use government facilities, mail, copying equipment, telephones, computers, and administrative supplies and equipment when performing official functions. Government vehicles can be used in support of the FRG mission, including transportation of volunteers performing official FRG business on behalf of the Army. Vehicle support must be provided by existing unit resources, cannot degrade the organization's mission, and cannot generate requirements for additional Army owned, leased, or rented vehicles. Statutory limitations on home-to-work (domicile-to-duty) transportation apply to transportation support of FRGs. For example, official vehicles may not pick up FRG volunteers at their homes to transport them to the FRG office or meeting location.

C. Invitational travel orders may be authorized for volunteers in their capacities as FRG members. Pursuant to AR 215-1, para. 4-6j, nonappropriated funds (NAFs) and available appropriated funds (APFs) may be used to pay enrollment expenses, travel, and per diem costs for volunteers who are traveling to receive training or who are participating in workshops, as authorized by installation commanders. Title 5 U.S.C. § 5703, as implemented by the Joint Travel Regulations, authorizes ITOs for persons performing a direct service for the government, such as experts, consultants, and other advisors. Such persons can include volunteers in the FRG program.

D. Under AR 215-1, para 4-6j, commanders may authorize use of NAFs and available APFs to reimburse incidental expenses of FRG volunteers. This includes a portion of telephone bills attributable to official volunteer duties and POV mileage, if government transportation is not available.

E. In applying the above guidance, commanders must examine every proposed expenditure to determine if there is an adequate relationship between the proposed expenditure and the mission of the unit. The appropriateness of the expenditure will depend on factors such as the location of the unit, the needs and problems facing the unit, and the upcoming unit calendar. Inappropriate expenditures are: those of a social nature without a direct relationship to the unit's mission; those that benefit individuals rather than families; those that are based on rank or status; and, those that duplicate existing morale, welfare, and recreation programs.

F. Official FRGs may not fundraise in a manner other than specified in JER 3-210(a)(6), organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents. Nor may official FRGs accept gifts from outside sources, other than a gift to the Army under 10 USC 2601 and AR 1-100.

G. A private organization may form that has a mission similar to the official FRG. However, that private organization is <u>not</u> part of the official FRG, and is subject to private organization rules just as any other private organization.

IV. PARTICIPATING IN THE MANAGEMENT OF NON-FEDERAL ENTITIES

A. The Deputy Secretary of Defense has directed that officers in the grades O-7 through O-10 may not receive compensation for serving as an officer or member of the board of any non-federal entity other than professional associations and closely-held family entities. General officers wishing to serve on a compensated basis in the management of family entities or professional associations must first seek approval from the Secretary of the Army, who may approve such compensated service only where it is consistent with the principles stated here, as well as applicable standards of conduct.

B. In addition to the above, the Senate Armed Services Committee (SASC) is also concerned about officers in the grade of O-9 and O-10 using the status of their office for personal gain, or the gain of commercial enterprises that invite them to serve on their boards of directors.

Consequently, as a prerequisite for confirmation and as a continuing requirement, military officers nominated for O-9 and O-10 positions may not participate in the management of or serve on the boards of directors of companies that do business with DoD or focus their business on military personnel. This applies to both compensated and uncompensated service.

C. Change 4 to the JER, section 3-202, now provides for official participation in the management of certain designated entities, such as Army Emergency Relief (AER).

1. Before an Army employee can participate in his or her official capacity in the management of a non-federal entity, he or she must receive authorization from the Secretary of the Army, with the concurrence of the DoD General Counsel. The employee may serve without compensation as a director, officer, or trustee, or otherwise participate in the management of the entity, if designated by the DoD General Counsel in writing.

2. The authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity. Such authorization may not extend to participation in the day-to-day operations of the entity, nor involve the expenditure of appropriated funds except in direct support of the employee. Expenditures may not include travel and transportation allowances.

3. Participation and management of the non-federal entity may not constitute the employee's primary duty.

INFORMATION PAPER

DAJA-SC
25 July 2005

SUBJECT: Private Organizations

1. **Purpose:** To provide guidance on the ethical rules governing relations with private organizations (POs).

2. **Standards:**

a. Official endorsement of a PO is prohibited. (JER 3-209) Official endorsement of a PO **may not be stated or implied** by DoD employees. Additionally, **titles, duty positions, or organization names may not be used** to suggest official endorsement or preferential treatment (see JER 3-210 for exceptions).

(1) For example, it would be improper for a commander to sign and issue a memorandum on official letterhead that mentions several professional military associations by name and encourages soldiers to support such organizations.

(2) The following is an example of an improper endorsement by a commander in an official memorandum: "Professional military associations such as the Army Officers Association and the Army Enlisted Association are valuable tools for soldiers. Soldiers should consider the many benefits these organizations can provide."

PRACTICE TIP: *Be very careful whenever you're asked to sign a letter or comment favorably on behalf of a professional military association, charitable group, or commercial enterprise. You* ***may not*** *endorse such organizations in an official capacity. You must also avoid even the appearance of an official endorsement. For endorsements in a* ***personal*** *capacity, you must first decide that the endorsement is truly based on a personal relationship. For example, you may have been a member of a PO for many years, perhaps even before joining the military. Only if you conclude that the relationship is personal, may you consider the endorsement. Consult with your SJA on all such issues.*

b. No support of fundraising or membership drives. (JER 3-210) No official endorsement or other support of membership drives or fundraising (very limited exceptions: AER, CFC, certain MWR programs).

(1) **Do not** establish membership goals, provide incentives for joining a PO, maintain by-name membership lists, or track membership statistics to influence nonmembers.

PRACTICE TIP: *Avoid even the appearance that you are using your position or authority to endorse a PO. An endorsement, recommendation, or suggestion from a senior officer to subordinates is inherently coercive. Expression of a personal view may be perceived as coercion*

or undue influence. For subordinates, the perception becomes the reality..."the General wants me to join."

(2) No logistical support (employees as speakers, facilities, equipment, or employee services to run equipment, etc.) of fundraising or membership drives.

c. Logistical support of PO events. (JER 3-211) Provided that **all seven criteria in JER 3-211a** are satisfied, heads of Army commands or organizations may provide employees in an official capacity as speakers or panel members, or on a **limited basis,** the use of Army facilities and equipment (and employee services to ensure proper use of equipment) as logistical support of events sponsored by POs.

(1) **No official support of fundraising or membership drive events.**

(2) The statutory authority to provide limited support to an annual conference or convention of a national military association (e.g., the annual AUSA convention in Washington, D.C.) **does not authorize support of regional or local events or local chapters** of such POs.

d. Co-sponsorship of conferences with POs. (JER 3-206) Co-sponsorship of events with POs is prohibited except when:

(1) For a civic or community activity: The event or activity is unrelated to the purpose or business of the co-sponsoring PO.

(2) For a conference, seminar, or similar event: the subject matter is scientific, technical, or professional issues relevant to the mission of the Army command or organization; the purpose of co-sponsorship is to transfer Federally developed technology or to stimulate wider interest into such issues and the event is open to interested parties; the PO is a recognized scientific, technical, educational, or professional organization; the Army command or organization accomplishes the co-sponsorship through a **written agreement;** and no admission fee (beyond reasonable costs of sponsoring the event) may be charged for the event.

***PRACTICE TIP**: All co-sponsorship agreements must be staffed with the Office of the General Counsel of the Army, Deputy General Counsel (Ethics & Fiscal). This authority has not been delegated to Ethics Counselors in the field.*

e. Impartiality of Army personnel. (JER 3-203, 3-204; 18 U.S. Code 208) Army personnel who are active participants (*e.g.*, officers or board members) in a PO may not approve requests of other Army personnel to travel to or participate in PO activities. Army employees may not engage in any official activities in which a PO is a party or has a financial interest (including decisions to provide logistical support or to co-sponsor an event) if the Army employee is an active participant in the PO or has served as an officer in the PO within the last year.

f. Personal participation in POs. (JER 3-300, 3-301) Army personnel may participate voluntarily in POs as individuals in their **personal capacity**, provided they act **exclusively outside the scope of their official positions.**

(1) No use of official titles, positions, or organization names in connection with PO activities. If Army leaders are representing the Army in an official capacity with a PO and have the requisite authority to do so, they may use their official title, position, or organization name. When dealing with a PO on a purely personal basis, the JER permits the limited use of rank and branch of service alone.

(2) Army personnel may become members and participate in management of a PO in a personal capacity. However, officers in the grades of O-9 and O-10 may not participate in the management of or serve on the boards of directors of companies that do business with DoD or focus their business on military personnel (applies to compensated or uncompensated service). Except for organizations listed in JER 3-210a, Army personnel may not serve in a personal capacity as an officer, member of a board of directors, or in any similar position if such position was offered because of their Army assignment or position.

PRACTICE TIP: *Do not appear in uniform when speaking or otherwise participating in PO activities in a personal capacity. Do not appear in uniform or allow use of a photograph depicting you in uniform in conjunction with outside employment, a commercial enterprise, or PO activities in a personal capacity. Do not appear in uniform in a publication promoting a PO's fundraiser or membership drive. While the use of one's grade of rank and branch of military service is generally authorized for truly personal activities as a means of identification, senior Army personnel should not permit such use if it could be perceived as an official endorsement. Army leaders, particularly senior leaders, should understand that POs may seek them out to provide endorsements with the intent to reap the benefit of what appears to be an official Army endorsement.*

g. Use of Federal Government resources. (JER 3-305; 2-301; 3-211; 3-300b) Federal Government resources, including **personnel, equipment, and property,** shall be used for official purposes only (with minor exceptions). Generally, Army personnel may not be used to support the activities of a PO or support another Army employee in support of PO activities.

PRACTICE TIP: *Do not allow the use of Government office equipment (including telephones, copiers, e-mail), personnel, duty time, or other resources to support any PO, including AUSA, AAAA, NCOA or any other professional associations, even if the PO's interests may be consistent with Army interests.*

h. No management of POs in official capacity. (JER 3-202) DoD employees may not participate in the management of POs without authorization from the DoD General Counsel, and then only with designated organizations (e.g., Army Emergency Relief).

(1) Army personnel may serve as **liaisons to POs** as part of their official duties, but only to represent DoD interests in an advisory capacity--no involvement in management or control.

(2) Army personnel **may not perform PO business as part of their official duties.**

3. Conclusion: Ethics is a commander's program. Commanders and senior leaders must ensure that all personnel are aware of the restrictions on official and personal involvement in PO activities. Commanders and senior leaders must set the example, and enforce compliance with the rules. Consult routinely with your Staff Judge Advocate and/or Ethics Counselor..

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INFORMATION PAPER

DAJA-SC
29 SEP 2005

SUBJECT: Official Participation in Management of Private Organizations

1. PURPOSE: To summarize the rules on private organization management.

2. FACTS:

a. Title 10 U.S.C. § 1033, authorizes DoD employees, in the course of their official duties, to participate in management of "designated" non-federal entities.

(1) To participate in management of a "designated" organization, individuals must be approved by the Secretary of the Army on a case-by-case basis. Secretarial authorization must be in writing, identify the individual employee, the entity in which the employee will participate, and specify the capacity in which the employee will participate.

(2) Limitations.

(a) Employees are not allowed to participate in internal management or day-to-day operations.

(b) Employees may not receive compensation from the organization.

(c) Appropriated funds will not be used to pay for the employee's participation in the organization, to include travel expenses.

(d) Employees will not be assigned to work on the non-federal entity's business as their primary duty.

(e) The net effect of the limitations is that Army employees may only participate in management of issues that have relevance to Army operations.

(3) "Designated" Organizations. Under the statute, the DoD General Counsel designates eligible organizations. Change 4 of the Joint Ethics Regulation designates *Army Emergency Relief, Air Force Aid Society, Navy-Marine Corps Relief Society,* and *Coast Guard Mutual Assistance* as eligible organizations. The DoD General Counsel may also designate:

(a) Entities that regulate and support the athletic programs of the service academies (including athletic conferences);

(b) Entities that regulate international athletic competitions (such as the U.S. Olympic Committee);

(c) Entities that accredit service academies and other DoD schools; and,

(d) Entities that regulate the performance, standards and policies of military health care (including health care associations and professional societies).

(e) Requests for designation must be submitted in writing to the General Counsel. Designations, and the individuals authorized for participation, will be published in the Federal Register.

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2 December 2002 MEMORANDUM FOR THE ARMY

SUBJECT: Private Organization Membership Campaigns

As the world's premier ground fighting force, the United States Army is well organized, equipped, and trained to succeed in any mission it is asked to perform both today and in the future, even as an already complex strategic environment continues to adapt and evolve. Many private organizations have been supporters of our success. These organizations tirelessly advocate to help in a variety of ways from shaping defense policy to positively improving the professional and personal well-being of soldiers, civilians, and their families. These private organizations enjoy close, historical ties with the military community. Many are composed largely of serving and retired military and civilian personnel from all of the components. As you know, official Army support to private organizations is strictly regulated (see DOD 5500.7-R, Joint Ethics Regulation and AR 600-20, Army Command Policy).

In spite of our best efforts, many soldiers perceive that they are being coerced to join certain organizations and that their membership in such organizations is tracked. Any coercion, real or perceived, is unacceptable and does not befit this magnificent Army. Any practice that involves or implies compulsion, coercion, undue influence, or reprisal in the conduct of membership campaigns is strictly prohibited. This prohibition includes holding repeated orientations or meetings, or counseling those who have decided not to join after being provided information about the organization. It also includes using membership statistics when evaluating an individual's duty performance. While you may discuss the general merits and benefits of joining and participating in private organizations, without showing favoritism for one organization over another, all of your actions must be done within the limits of the standards of conduct principles discussed above.

Senior leaders will ensure that the chain of command implements and abides by the standards of conduct involving private organization membership campaigns so that soldiers' rights are protected. Ethics counselors are available to assist with training regarding these rules.

Thomas E. White
Secretary of the Army

ERIC K. SHINSEKI
General, U.S. Army
Chief of Staff

CHAPTER FOUR

FUNDRAISING

I. REFERENCES

A. JER, Chapter 3

B. 31 U.S.C. § 1353 (1988)

C. 10 U.S.C. § 2601 (1988)

D. 5 U.S.C. § 4111 (1988)

E. 5 C.F.R. § 2635 (1998)

II. OFFICIAL SUPPORT FOR PRIVATE ORGANIZATION FUNDRAISING ACTIVITIES

A. Department of the Army officials may officially endorse only the Combined Federal Campaign (CFC), emergency or disaster relief fundraising specifically approved by the Director of the Office of Personnel Management (OPM), the Army Emergency Relief (AER) campaign, and organizations composed of soldiers, Army civilian employees, and family members fundraising on-post for the benefit of welfare funds for their own members or morale, welfare, and recreation (MWR) programs. Endorsements may include support for the fundraising effort by public appearances at campaign kickoffs, or by the use of name, title and position to promote the fundraising in memoranda, employee newsletters, or other routine communications. Department of the Army employees may not, in their official capacities, support, endorse, or participate in other local fundraising on behalf of private organizations (POs).

B. Within DA, only the CFC and AER campaign may solicit in the federal workplace for a monetary contribution or a pledge of a monetary contribution. Provided no on-the-job fundraising is involved, and if there is no conflict with the annual CFC and AER campaigns, the following fundraising activities may be locally authorized:

1. Fundraising in support of installation MWR activities. For example, bake sales and car washes may be authorized in public areas to raise funds for MWR activities.

2. Occasional fundraising in support of on-post POs pursuant to para 3-210a(6) of the JER. This is fundraising by organizations composed of members from the DoD community that can include dependents and retirees. The chain of command determines whether a group qualifies as an organization pursuant to this rule. Official support for such fundraising may only be given when the effort is limited to the DoD community. For example, an on-post Rod & Gun Club may be given use of a washing point to conduct a car wash.

3. Other limited activities to assist the unfortunate, authorized by local commanders and heads of activities, including the placing of collection boxes in public use areas of DoD buildings or installations for the voluntary donation of foods or goods (but not cash) for charitable causes.

C. Any fundraising campaign must observe the principle of true, voluntary giving. Each DA employee has the right to give or not give as the individual so chooses. Employees must have the option of disclosing their contributions or keeping them confidential. Any campaign practice involving compulsion or coercion is prohibited. The following practices are specifically prohibited:

1. Solicitation of employees by their commander, supervisor, or any individual in their supervisory chain;

2. Inquiries by a supervisor about an employee's contribution;

3. Noting an individual's participation or nonparticipation in that individual's performance appraisal or evaluation report;

4. Developing and using lists of non-contributors;

5. Providing and using contributor lists for purposes other than the routine collection and administration of contributions; and,

6. Granting of special favors, privileges, or entitlements, such as special passes or leave privileges, as an inducement to contribute.

D. Purely personal, unofficial, volunteer efforts by DA employees to support fundraising for POs are allowed where the efforts do not imply DoD endorsement. The JER permits employees to engage in such fundraising subject to the following restrictions:

1. Employees may not personally solicit or allow someone to use their name or position to solicit funds or support from a subordinate;

2. Employees may not personally solicit, or allow someone to use their name or position to solicit funds or support from a prohibited source. A prohibited source includes any person who: is seeking official action by the Army; does or seeks to do business with the Army; conducts activities regulated by the Army; has interests that may be substantially affected by performance or nonperformance of the employee's duties; or is an organization, the majority of whose members are prohibited sources.

III. FUNDRAISERS AND SIMILAR EVENTS

A. When a fundraising event will donate **ALL** of the proceeds to organizations such as these (Combined Federal Campaign, OPM approved emergency and disaster relief efforts, Army Emergency Relief, Navy-Marine Corps Relief Society, Air Force Assistance Fund), a DoD employee may:

1. Officially endorse and attend the event in an official capacity;

2. Provide official logistical support if all the criteria of para 3-211 of the JER are met (these criteria would be met easily for events by organizations listed in para 3-210 of the JER);

3. Accept unsolicited free attendance and travel benefits on behalf of the DoD component, if accepted in accordance with 31 U.S.C. § 1353. ***(See information paper on Acceptance of Travel Expenses from Non-Federal Entities.)***

4. Accept unsolicited free attendance and travel benefits for an accompanying spouse on behalf of the DoD component, if accepted in accordance with 31 U.S.C. § 1353; and,

5. Use appropriated travel funds for travel needs not covered by benefits accepted under 31 U.S.C. § 1353.

B. When a fundraising event will donate **any part** of the proceeds to charitable organizations that are not listed above, a DoD employee may

1. Attend the event in an ***official capacity*** only if the DoD employee is performing official duties (*e.g.*, by receiving an award for meritorious public service or by giving a speech when there has been a determination in accordance with public affairs guidelines that the event is an appropriate forum for the expression of an official DoD position), and may:

a. Accept unsolicited free attendance and travel benefits on behalf of the DoD component, if accepted in accordance with 31 U.S.C. § 1353;

b. Accept unsolicited free attendance and travel benefits for an accompanying spouse on behalf of the DoD Component, in accordance with 31 U.S.C. § 1353;

c. Use appropriated travel funds for travel needs not covered by benefits accepted under 31 U.S.C. § 1353;

d. Attend the event in a ***personal capacity,*** and accept unsolicited free attendance (including any meal integral to the event) under a gift acceptance exception, only if the criteria of 5 C.F.R. § 2635.204(g)(2), for a widely attended gathering are met;

e. Provide official logistical support to the event only if the criteria of para 3-211 of the JER are met;

f. But may not accept travel benefits from any source for attendance in a personal capacity (acceptance of travel benefits under 31 U.S.C. § 1353, 10 U.S.C. § 2601, or 5 U.S.C. § 4111 would be improper in these circumstances).

INFORMATION PAPER

DAJA-SC
29 SEP 2005

SUBJECT: Support to Private Organization Fundraising

1. PURPOSE: To provide information on a Post Commander's ability to allow fundraising activities in support of a non-Federal entity (NFE).

2. FACTS:

a. A Post Commander may provide logistic support to NFE fundraising activities on his installation only if he has obtained permission, in advance, from OPM. The reason for this rule is that most NFEs are affiliated with the Combined Federal Campaign (CFC). As such, all fundraising by the organization should be within the context of the CFC. This rule would also apply to local chapters that are affiliated with the CFC. [**NOTE:** OPM has indicated that, generally, it will not approve exceptions for fund-raising outside of the CFC.]

Example: *The local Amvets chapter, a CFC affiliate, wants to host a fundraising 10K race on post and asks for logistical support. Without OPM approval, the Post Commander cannot approve either the race or the support.*

b. The exception to this general rule is when the NFE fundraising event is in direct response to an OPM approved emergency or disaster relief appeal.

Example: *A branch of the local river has flooded in a nearby community. The President has designated the area eligible for Federal disaster relief, and OPM has announced that Federal agencies may allow employees to collect food, blankets and funds to assist victims of the flood. The Post Commander may authorize soldiers and employees to use official time and resources to collect donations to be given to the Red Cross for relief in this disaster.*

c. OPM permission is not required if the event raises gifts-in-kind such as food, clothing or toys, rather than funds.

Example: *The United Way sponsors a Food Bank for needy families. They have asked for access to the post housing area to conduct the collection. The Post Commander can approve the request.*

d. OPM approval is not required if the fundraising does not occur in the Federal workplace. The Federal workplace includes, by definition, the entire DoD installation. The installation commander may, however, designate limited areas as public places on the installation where similarly situated groups may solicit funds.

Example: *The Red Cross has asked whether it can set up a card table and a "Cross Your Heart" display soliciting donations outside of the PX on Valentine's Day weekend. In the past the Post Commander designated this area as a public area. He has authorized both the Girl Scouts to sell cookies and the Disabled American Veterans to sell poppies in this area. The Commander has the authority to authorize the Red Cross appeal in the same place because it is a designated public area, and similar organizations have been granted access in the past.*

e. After obtaining OPM approval for an on-post NFE fundraising event, a commander may provide logistical support. On a limited basis, DoD facilities and equipment (and the personnel necessary for proper use of the equipment) may be provided when the head of the post commander determines:

(1) The support does not interfere with the performance of official duties and does not detract from readiness.

(2) The support promotes legitimate DoD community relations, public relations or recruiting interests, or military training objectives can be met by providing the support.

(3) The event is appropriate for DoD support.

(4) The command is able and willing to provide the same support to comparable events sponsored by similar organizations.

(5) No admission fee beyond the reasonable cost of the event itself will be charged, or no fee will be charged for **that portion** of the event supported by DoD. (That is, DoD support to an event must be incidental to the fundraising purpose, and cannot be the basis of the fundraising.)

(6) The support is not restricted by other statutes.

Example: *The USO has obtained OPM approval to conduct a fundraising concert in conjunction with the CFC. Local celebrities and entertainers have offered their services. The USO has asked if the post theater may be used for the concert. Use of the post theater can be authorized. (This scenario is a good example of how DoD may support a fundraising event without directly contributing assets to the fundraising itself.)*

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INFORMATION PAPER

DAJA-SC
29 SEP 2005

SUBJECT: Family Readiness Group (FRG) Fundraising

1. **PURPOSE:** To provide information on proper management of FRG fundraising.

2. **FACTS:**

a. When FRGs engage in fundraising, they are private organizations.

b. The Army cannot officially support or endorse FRG fundraising outside of the Army community. Soldiers and their families must be careful to avoid implying that the Army officially supports or endorses external fundraising. *JER*, para. 3-209.

c. When FRGs have on-post events, such as bake sales that are designed to raise funds among members of the Army community, the post commander may authorize official support, and encourage soldiers and their families to support the event. JER 3-210(a)(6).

d. Commanders may authorize fundraising activities when they occur on installations but outside the federal workplace, such as in public entrances, in community support facilities, and in personal quarters. JER 3-300a.

e. Commanders, acting in their official capacity, may use official communication channels and briefings to encourage soldiers and their families to volunteer for FSG activities. *JER*, para. 3-208.

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CHAPTER FIVE

RECEPTIONS AND CONTINGENCY FUNDS

I. REFERENCES

A. AR 37-47, Representation Funds of the Secretary of the Army (31 May 96)

B. AR 215-1, Nonappropriated Fund Instrumentalities and Morale, Welfare, and Recreation Activities (29 Sep 95)

C. AR 1-101, Gifts for Distribution to Individuals (31 Dec 87)

II. COMMANDER RECEPTIONS AND USE OF CONTINGENCY FUNDS

A. Expenditures of appropriated or unit funds for food and beverages for change of command receptions are prohibited unless approved by the Administrative Assistant to the Army. Commanders desiring to have a change of command reception with food and beverages will do so at their personal expense.

B. A reception for a newly assigned commander may be held to meet with dignitaries, local government officials, and distinguished local citizens, within the following constraints.

1. New commander receptions are not change of command receptions. They are intended to be official functions, not personal or social. They should be conducted as separate events from changes of command but may be conducted immediately following the change of command. They may not, however, be held simultaneously with a change of command reception.

2. DA 43.0012 representational funds may be used to extend official courtesies to authorized guests, for entertainment required to maintain community relations, and for receptions for new commanders or senior officials for the purpose of meeting with authorized guests.

3. Additional criteria for the use of .0012 funds is contained in AR 37-47 (*e.g.*, specific guest-to-employee ratio requirements and funding request requirements).

C. Mementos and gifts purchased with .0012 funds and maintained by protocol are for specific uses and persons, and generally cannot be given to DoD or DA personnel.

D. Contact your resource management office or legal office for additional guidance on the use of contingency funds.

CHAPTER SIX

FINANCIAL DISCLOSURE REPORTS

I. REFERENCES

A. Public Financial Disclosure: Reviewer's Reference, Office of Government Ethics, (1994)

B. 5 C.F.R. § 2634

C. JER, Chapter 7

II. FILING REQUIREMENTS

A. Annual Public Financial Disclosure Reports (SF 278) are due no later than May 15 of each calendar year. This statutory filing requirement applies to active duty General Officers, SES employees, and Reserve General Officers who serve more than 60 days on active duty during the reporting period. There is a $200 fine for reports filed more than 30 days late.

B. A new entrant report must be filed within 30 days of promotion to General Officer.

C. Termination SF 278 reports must be filed within 30 days of retirement. A Reserve General Officer who did not serve more than 60 days on active duty during the calendar year in which he is transferred to the Retired Reserve need not file a termination SF 278. (JER 7-203)

D. The purpose of the SF 278 is to assist the Army in identifying potential conflicts of interest between official duties and outside financial interests.

III. FILING TIPS

A. In 2004, the Secretary of the Army issued a memorandum that SF-278 reports are to be filed electronically in the Army's Financial Disclosure Management (FDM) program. The URL is https://www.fdm.army.mil/FDM. The web site is a secure Army managed web site operated by OTJAG. The FDM program stores your data from each report so filing successive reports is essentially a matter noting changes from a previous year. You may also use the CAC to electronically sign your SF-278 report.

B. All required schedules (A, B, C, and D) must be completed and attached. If you receive a "red flag" or error message, please take the necessary steps to correct the missing information.

C. The value of each asset on Schedule A must be reported, as well as the type and amount of income it generates.

D. Mutual funds must be identified by specific fund name, not just fund family (*e.g.*, "Fidelity

Magellan" rather than "Fidelity").

E. Underlying assets of trusts and investment and brokers' funds must be identified.

F. Accrued income from IRA accounts should be reported in the income block (even if the income is not withdrawn).

G. A position description, or OER support form, must be attached to the report.

H. Account numbers, social security numbers, and home addresses should not be included in the report.

IV. CONFLICTS OF INTEREST The purpose of financial disclosure reports is to identify and avoid potential conflicts of interest. When potential conflicts are identified, action must be taken to avoid a conflict from arising. Typically, the filer's duties will be adjusted so that official actions that may trigger a conflict will be avoided. This is accomplished by use of a disqualification letter. An electronic template is available at DA SOCO. If you need one, e-mail your request to soco@hqda.army.mil. A copy of the disqualification letter must be kept with all copies of the financial disclosure forms (including the one retained at DA SOCO).

VI. FINANCIAL INTEREST IN THE LARGEST DEFENSE CONTRACTORS
Military officers who are seeking confirmation to or have been confirmed to hold positions of importance and responsibility as defined in 10 USC §601 may not hold financial interests in any of the largest ten defense contractors. DoD Washington Headquarters Services, Directorate for Information, Operations and Reports maintains a list of the largest contractors for DoD. Interests in these companies must be divested. Certificates of divestiture may be available, and should be obtained prior to selling stock.

Military officers in the grades of O-9 and O-10 who occupy senior acquisition positions, e.g. Head of Army Materiel Command, Director of DLA, and the Inspector General of the Army are prohibited from holding interests in any defense contractor.

These are the prerequisites for confirmation by the Senate, and continue throughout the officer's assignment to the billet.

VI. PRACTICE TIP FOR AIDES: Retain a copy of the report. When the filer has a significant change of duties or change of position, the SJA at the gaining command should review the report for potential conflicts in the new position. Consider utilizing the SF 278 programs in Adobe and Excel, that will allow you to retain all financial data from year to year. Monitor the top ten contractor's list to ensure that DoD holdings that were not top ten in previous years have not ascended to the proscribed list.

CHAPTER SEVEN - POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

I. PRE-SEPARATION MATTERS (18 USC § 208)

A. Any discussion, even if tentative, is negotiating for employment. Something as simple as going to lunch to discuss future prospects could be the basis for a conflict of interest.

B. If a federal employee could own stock in a company without creating a conflict with his official duties, then he can negotiate for employment with that company. No special action is required.

C. A conflict of interest arises when a government employee has the opportunity to influence his personal, financial interests through the execution of his official duties. Since the conflict of interest statute identifies negotiation for employment as an accountable personal financial interest, action must be taken to resolve potential conflicts.

D. If negotiating for employment creates a conflict, there are two ways to resolve it:

1. Disqualification. With the approval of his supervisor, the employee may change duties so that he has no contact with official actions affecting that company. This means the employee is completely divorced from any action affecting the company. He cannot have knowledge or input to those matters. If disqualification is not an option, then;

2. Termination of Discussion. The employee must immediately terminate all employment discussions. "Leaving the door open" for the possibility of employment at a later time does not resolve the conflict.

E. Travel, Meals & Reimbursements. Government employees may accept travel expenses to attend job interviews if such expenses are customarily paid to all similarly situated job applicants. These payments must be reported on Schedule B of the SF 278.

F. Terminal Leave. Military officers on terminal leave are still on active duty. While they may begin a job with another employer during this time, their exclusive loyalty must remain with the government until their retirement pay date. Two restrictions apply to non-government employment during terminal leave:

1. All officers and employees are prohibited from representing anyone in any matter in a U.S. forum, or in any claim against the U.S. (18 USC § 205)

2. Commissioned officers are prohibited from holding a state or local government office, or otherwise exercising sovereign authority. (10 USC § 973) This does not prohibit employment by a state or local government, just the exercise of governmental authority. For example, a police officer or judge exercises governmental authority, but a motor pool chief does not.

3. Permissive TDY (PTDY) may NOT be used to begin employment. Officers may begin employment only AFTER beginning terminal leave. (AR 600-8-10 para. 5-35) provides that PTDY may only be used for house-hunting, job-hunting or other activities to facilitate relocation.

II. "SWITCHING SIDES" (18 USC § 207)

A. This statute applies to all former federal employees, whether or not retired, but does not apply to enlisted personnel. In very simple terms, this rule prohibits former federal employees from representing someone on the same matter on which they worked for the government. This restriction does not apply to "behind the scenes" assistance. Thus, a former employee may prepare an internal negotiation or capture strategy on a covered matter, but may not present that material in discussions with federal employees.

B. Former officers and employees are ***forever*** prohibited from trying to influence a federal employee on any particular matter involving non-federal parties in which they participated personally and substantially while working for the government.

C. For two years, former federal employees are prohibited from trying to influence a federal employee on a matter involving non-federal parties that was under the former employee's supervision during his last year of active duty. For agency heads, this restriction applies to every action pending in the agency during the last year of federal service, whether or not the former employee had any knowledge of, or personal input to, the matter.

III. ONE YEAR "COOLING OFF" PERIOD (18 U.S.C. §207)

A. This prohibition applies to all retired general officers, and former senior civilian employees (SES level V and above).

B. These former employees are prohibited from attempting to influence official actions in their former department (Army) for one year after their departure. If the last assignment was a joint or OSD entity, the restriction applies to the joint entity and the service from which retired.

C. Also, for a period of one year, retired general officers and SES employees may not aid, advise, or represent any foreign entity to help influence any U.S. government entity or employee.

SAMPLE DISQUALIFICATION MEMO

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Notice of Disqualification

1. This is to notify you that I have a financial interest in the following organization(s) because I (state specific reason[s]):

(Name the company[ies] or organization[s] here)

2. Therefore, pursuant to law (18 U.S.C. Section 208) and the Standards of Ethical Conduct (5 C.F.R. Sections 2635.402[c], 502[e] and 604), I am required to disqualify myself from participating in any official matter that will have a direct and predictable effect on the financial interests of the above-listed companies or organizations, or matters in which they are a party or represent a party. This means that I cannot act directly or through others in deciding, approving or disapproving any such matters in my official capacity; nor may I recommend, investigate, advise or otherwise contribute to or influence such official matters.

3. Accordingly, any official matter that will, or may, conflict with the above-listed financial interest(s) must be handled without my knowledge or participation. If such official matter would otherwise have required my personal decision, approval or disapproval, the matter should be referred to (give the position name of your alternate) for action.

Your Signature Block

DISTRIBUTION:

Immediate supervisor
Immediate subordinate
Any others who should know

IV. PROCUREMENT INTEGRITY (41 USC § 423)

A. The concept of "procurement official" by implication no longer exists. Involvement in, or support to, acquisition activities does not trigger this statute. The former federal employee must be in one of the following explicit categories, performing the identified function:

1. Procuring contracting officer, source selection authority, member of source selection evaluation board, or chief of financial or technical evaluation team on a contract award of $10,000,000 or more;

2. Program manager, deputy program manager, or administrative contracting officer on a contract of $10,000,000 or more;

3. Personally made a decision to award a contract, subcontract, modification, task order or delivery order of $10,000,000 or more; or

4. Approved a claim or made another personal decision to make a payment of $10,000,000 or more.

B. Former officials who fall into any of the above-listed categories may not accept compensation from the contractor or party who received the payment, for a period of one year from the date when the action occurred, or the date when they last served as an approval authority. This restriction does not apply to another division or affiliate of a contractor that does not produce the same product or services.

B. For more information on the Procurement Integrity Act, see http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/JA/lo/lojaf/ethics/updates/000920.htm

V. FOREIGN GOVERNMENT EMPLOYMENT (U.S. Constitution)

A. Retired military members must obtain a waiver to work for a foreign government.

1. Title 37 USC § 908 allows foreign government employment with approval of the Secretary of the Army. (AR 600-291). Retired officers should send their requests for approval thru CDR, RCPAC, ATTN: AGUZ-RCPD-PAD, 9700 Page Blvd., St. Louis, MO 63132-5200. Note that these waivers often take 3 or 4 months to be approved, so plan accordingly.

2. This Constitutional requirement applies to employment by corporations owned or controlled by foreign governments, but does not apply to independent foreign companies. It does not preclude retired officers from working as an independent consultant to a foreign government, as long as they are careful to maintain their independence.

3. When seeking employment outside of the DoD contractor community, a military retiree should always ask, "Is this company owned or controlled by a foreign government?"

B. Retired officers who represent a foreign government or foreign entity may be required to register as a foreign agent. (22 USC § 611 and 28 CFR 5.2). The Registration Unit, Criminal Division, Department of Justice, Washington, DC 20530, (202) 514-1219, can provide further information.

VI. REEMPLOYMENT WITHIN THE GOVERNMENT

A. Dual Compensation Laws. On 1 October 1999, 5 USC § 5532 (restricting dual compensation) was repealed. Accordingly, there are no reductions in retired or retainer pay for former or retired members of the Armed Forces who are employed in Federal Civilian positions.

B. Employment in DoD. Under normal conditions, to avoid appearances of favoritism or preferential treatment, 5 USC § 3326 (attached) and DoD 1402.1 (21 Jan 82) prohibit a retired member of the Armed Forces from being appointed to a civil service position in DoD or a component thereof for 180 days after retirement unless the retiree has received a waiver from his or her Service Secretary. However, under 5 USC § 3326 this provision may be waived when the nation is in a "state of national emergency." As of September 14, 2001, this provision has been waived.

VII. MISCELLANEOUS PROVISIONS

A. Use of Title. Retirees may use military rank in private commercial or political activities as long as their retired status is clearly indicated; no appearance of DoD endorsement is created, and DoD is not otherwise discredited by the use. (JER, para. 2-304)

B. Wearing the uniform. Retirees may only wear their uniform for funerals, weddings, military events (such as parades or balls), and national or state holidays. They may wear medals on civilian clothing on patriotic, social, or ceremonial occasions. (AR 670-1, para. 30-4)

C. Inside Information. All former officers and employees must protect "inside information," trade secrets, classified information, and procurement sensitive information after leaving federal service. (18 USC §§ 794 and 1905)

D. Gifts from Foreign Governments. Military retirees and their immediate families may not retain gifts of more than $285 in value from foreign governments. (5 USC § 7342)

VIII. CONCLUSION

Be sensitive to the position of your friends and former colleagues. When you contact them in your capacity as a contractor, avoid using your former position or rank to influence their behavior, and stay within the limits of the statutes discussed in this outline.

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