

INFORMATION PAPER

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SUBJECT: Management of Non-Federal Entities vs. Liaisons

1. **PURPOSE:** To provide information on official relationships with non-Federal entities.

2. **FACTS:**

a. Management of Non-Federal Entities

Congress recently enacted a statute, 10 U.S.C. §1033, authorizing DOD employees, in the course of their official duties, to participate in the management of "designated" non-Federal entities (private organizations). This statute is implemented by Change 4 to the *Joint Ethics Regulation (JER)*, DOD 5500.7-R. It is important to note that this law has a specific and limited impact. Very few non-Federal entities will be "designated," under the law and when participation is approved, it will only be for limited purposes.

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

When Army employees are authorized to participate in the management of a non-Federal entity, they still will not be allowed to participate in the internal management or day-to-day operations. Employees may not receive compensation from the organization. Further, Congress specified that appropriated funds will not be used to pay for the employee's participation in the organization, to include travel expenses. Finally, the statute bars employees from being assigned as a primary duty to work full-time on the non-Federal entity's business. The practical effect of this authorization is that Army employees may only participate in management of activities that have relevance to Army operations.

Under the statute, the DOD General Counsel has responsibility for designating organizations. Change 4 designated the Army Emergency Relief as an eligible organization. The DOD General Counsel may also designate any of the following not-for-profit entities:

- An entity that regulates and supports the athletic programs of the service academies;
- An entity that regulates international athletic competitions (such as the U.S. Olympic Committee);
- An entity that accredits service academies and other DOD schools; and,
- An entity that regulates the performance, standards and policies of military health care (including health care associations and professional societies).

Requests for designation must be submitted in writing to the DOD General Counsel. Designations, and the names of individuals authorized for participation, will be published in the Federal Register.

b. Liaisons

As an alternative to official participation in management of a non-Federal entity, there is continuing authority for DOD employees to serve as official liaisons to private organizations. Paragraph 3-201a of the *JER* authorizes the appointment of an official liaison to non-Federal entities. The liaison represents DOD interests in an advisory capacity.

Paragraph 3-201a specifies that a Commander may appoint a liaison when he/she determines there is a significant and continuing DOD interest to be served by such representation. Liaisons serve as part of their official DOD duties, under Army membership, and represent only DOD interests to the non-Federal entity in an advisory capacity. Liaisons may not be involved in matters of management or control of the non-Federal entity. Liaisons may officially represent DOD in discussions of matters of mutual interest providing it is made clear to the non-Federal entity that the opinions expressed by liaisons do not bind DOD/Army to any action. Otherwise, liaisons may participate in, and vote on, matters of mutual interest to the Army and the organization.

Army liaisons owe their loyalty to the Army. Liaisons are not directors or board members of the private organization. If liaisons are officers, directors, or even active participants in the private organization in their personal capacities, then they may not be Army liaisons because of the obvious conflict of interest in loyalties.

Long standing DOD policy does not permit DOD officials to serve as liaisons to defense contractors or other entities that seek to do business with DOD (e.g., sitting on a contractor's advisory board).

Mr. Tanner/1-2373/0485