

CHAPTER 3

ACTIVITIES WITH NON-FEDERAL ENTITIES

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

3-100. 5 C.F.R. 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria"
(reference (a))

SECTION 2. OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-200. Attendance

a. Agency Designees may permit their DoD employees to attend meetings, conferences, seminars, or similar events sponsored by non-Federal entities in their official DoD capacities at Federal Government expense if there is a legitimate Federal Government purpose in accordance with 5 U.S.C. 4101 et seq. (reference (b)) and 37 U.S.C. 412 (reference (c)), such as training a DoD employee beyond maintaining professional credentials or gathering information of value to the DoD.

b. DoD employees are prohibited from attending events sponsored by non-Federal entities in their official DoD capacities at Federal Government expense solely to acquire or maintain professional credentials that are a minimum requirement to hold the DoD position. See 5 U.S.C. 5946 (reference (b)) and 31 U.S.C. 1345 (reference (d)).

3-201. Membership

a. DoD employees may serve as DoD liaisons to non-Federal entities when appointed by the head of the DoD Component command or organization who 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 DoD Component memberships, 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 with non-Federal entities providing it is made clear to the non-Federal entities that the opinions expressed by liaisons do not bind DoD or any DoD Component to any action.

b. DoD employees may not accept DoD Component membership in a non-Federal entity on behalf of DoD except as provided by statute or regulation. DoD may pay for DoD memberships in accordance with opinions of the Comptroller General, such as 24 Comp. Gen. 814 (reference (e)). DoD is prohibited from paying for individual memberships by 5 U.S.C. 5946 (reference (b)). See also 10 U.S.C. 2601 (reference (f)). See subsection 3-301 of this Regulation, below, regarding allotments for payment of individual memberships held in a personal capacity.

3-202. Management. DoD employees may not participate in their official DoD capacities in the management of non-Federal entities without authorization from the DoD General Counsel, except as set out below.

a. The Secretary concerned, with the concurrence of the DoD General Counsel, may authorize, on a case-by-case basis, an employee under the Secretary's jurisdiction to serve without compensation as a director, officer, or trustee, or otherwise to participate in the management of an entity designated by the DoD General Counsel in accordance

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with section 3-202.b., below. Any such authorization shall be in writing, and shall identify the particular

employee to participate, specify the capacity in which that employee shall participate, and identify the entity. Such 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 the direct support of the employee. Such expenditures may not include travel and transportation allowances incurred by the employee while in a travel status. Participation in the management of the non-Federal entity may not constitute the employee's primary duty.

b. Designated Entities:

(1) In accordance with 10 U.S.C. 1033(b) and 1589(b) (reference (g)), the following entities are eligible for authorization under section 3-202.a., above:

- (a) Army Emergency Relief.
- (b) Air Force Aid Society, Inc.
- (c) Navy-Marine Corps Relief Society.
- (d) Coast Guard Mutual Assistance.

(2) The DoD General Counsel may designate, no more frequently than semiannually, entities that are not operated for profit and are any of the following:

- (a) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).
- (b) An entity that regulates international athletic competitions.
- (c) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).
- (d) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the Armed Forces may serve if authorized under section 3-202.a., above.

c. Requests for designation under this section shall be submitted in writing to the DoD General Counsel.

d. The DoD General Counsel shall ensure that designations of entities are published in the Federal Register. The Secretary concerned shall ensure that employee authorizations under this section are published in the Federal Register, and shall provide a copy of such publications to the DoD General Counsel.

3-203. Impartiality of Agency Designee and Travel-Approving Authority. When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the Agency Designee or travel approving authority is an active participant in the non-Federal entity, that

Agency Designee or travel approving authority may not act on the DoD employee's request but shall

defer such action to the next higher superior or another independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (h)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (i)).

3-204. Impartiality of DoD Employees. DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 C.F.R. 2635.402 and 2635.502 (reference (h)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (i)).

3-205. Remuneration. DoD employees may not receive any salary or salary supplement from a non-Federal entity for performance of DoD duties. See 18 U.S.C. 209 (reference (i)).

3-206. Co-sponsorship. A DoD Component command or organization is a co-sponsor of an event when that DoD Component command or organization is one of the organizations that develops the substantive aspects of the event or provides substantial logistical support for the event. Co-sponsorship of events with a non-Federal entity is prohibited except as follows:

a. A DoD Component command or organization may co-sponsor a civic or community activity, except for fundraising or membership drives, where the head of the DoD Component command or organization determines that the activity is unrelated to the purpose or business of the co-sponsoring, non-Federal entity or the purpose or business of any of its members. See DoD Instruction 5410.20 (reference (j));

b. A DoD Component command or organization may co-sponsor a conference, seminar or similar event with a non-Federal entity when all of the following requirements are met:

(1) The head of the DoD Component command or organization finds that the subject matter of the event (or co-sponsored discrete portion) is scientific, technical or professional issues that are relevant to the mission of the DoD Component command or organization;

(2) The head of the DoD Component command or organization finds that the purpose of co-sponsorship is to transfer Federally developed technology or to stimulate wider interest and inquiry into the scientific, technical or professional issues identified above, and that the event is open to interested parties;

(3) The non-Federal entity is a recognized scientific, technical, educational, or professional organization approved for this purpose by the DoD Component DAEO, giving due consideration to the prohibition against giving preferential treatment to non-Federal entity in 5 C.F.R. 2635.101(b)(8) in subsection 2-100 of this Regulation (reference (h));

(4) The DoD Component command or organization accomplishes the co-sponsorship through a written agreement that includes the nature and purpose of the event; the

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undertakings and liabilities of the parties; funding responsibilities and costs (including admission fees);

a disclaimer of Government liability if the DoD Component command or organization reduces the level of its participation or completely withdraws; and a statement that the non-Federal entity will not use the fact of co-sponsorship of the event to imply DoD endorsement of the organization or its other events. If applicable, the DoD Component command or organization should execute the agreement pursuant to specific statutory authority, such as a contract, grant, or cooperative agreement as identified in 31 U.S.C. 6303 through 6306 (reference (d)); a Cooperative Research and Development Agreement (CRDA) as defined in 15 U.S.C. 3710a (reference (k)); a cooperative agreement or other transaction identified in 10 U.S.C. 2371 (reference (f)).

(5) No admission fee (beyond what will cover the reasonable costs of sponsoring the event) may be charged for a co-sponsored event, or no admission fee (beyond what will cover the reasonable costs of sponsoring the event) may be charged for the discrete portions of the event co-sponsored by the DoD Component.

c. If the DoD Component desires to sponsor an event, but requires assistance in making the arrangements, the DoD Component may arrange, through normal acquisition procedures, to have a non-Federal entity provide whatever assistance is necessary. If the event is open to individuals outside the Federal Government, attendance may not be limited to members of the supporting non-Federal entity. The supporting non-Federal entity may be permitted to mention its support in conference materials, but not in terms which imply that it is sponsoring or co-sponsoring the event.

3-207. Participation in Conferences and Similar Events. Subject to the provisions of subsection 3-211 of this Regulation, below, and in accordance with public affairs regulations and 31 U.S.C. 1345 (reference (d)), DoD employees may participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities.

3-208. Distributing Information. In accordance with public affairs regulations, official channels may be used to notify DoD employees of events of common interest sponsored by non-Federal entities.

3-209. Endorsement. ***Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-210., below.*** DoD employees may use or allow the use of their titles, positions, or organization names in conjunction with their own names only to identify themselves in the performance of their official duties. Use of titles, positions, and organization names when acting in a personal capacity is covered by subsection 3-300., below. Offering group life insurance programs sponsored by the State Military Department, to the same extent and similar manner as offering of the Servicemen=s Group Life Insurance (SGLI) program, is not an endorsement of a non-Federal entity in violation of this Regulation.

3-210. Fundraising and Membership Drives

- a. *DoD employees shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity except the following organizations*

which are not subject to the provisions of subsection 3-211 of this Regulation, below:

- (1) The Combined Federal Campaign (CFC);*
- (2) Emergency and disaster appeals approved by the Office of Personnel Management (OPM);*
- (3) Army Emergency Relief;*
- (4) Navy-Marine Corps Relief Society;*
- (5) Air Force Assistance Fund, including:*
 - (a) Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;*
 - (b) Air Force Village;*
 - (c) Air Force Aid Society;*
 - (d) General and Mrs. Curtis E. LeMay Foundation.*
- (6) Other 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 when approved by the head of the DoD Component command or organization after consultation with the DAEO or designee. (This includes most morale, welfare and recreation programs, regardless of funding sources).*

(7) For National Guard Members who are ADoD employees@ as defined in subsection 1-211., above, charitable, community, or civic organizations, as identified in 32 U.S.C. 508 and DoD Directive 1100.20 (references (l) and (m)), when approved by the head of the DoD Component command or organization after consultation with the DAEO, or designee; provided, however, that no member of the National Guard may be ordered, coerced, or compelled to participate in or contribute to any fundraising or membership drives.

b. Fundraising by DoD employees is strictly regulated by E.O. 12353 (reference (l)), 5 C.F.R. 950 (reference (m)), DoD Directive 5035.1 (reference (n)), DoD Instruction 5035.5 (reference (o)), DoD Directive 5410.18 (reference (p)), 5 C.F.R. 2635.808 (reference (h)) in subsection 1-200 of this Regulation, and by the prohibitions against preferential treatment established in subsection 3-209 of this Regulation, above.

3-211. Logistical Support of Non-Federal Entity Events

a. The head of a DoD Component command or organization may provide DoD employees in their official capacities to express DoD policies as speakers, panel members or other participants, or, on a limited basis, the use of DoD facilities and equipment (and the services of DoD employees necessary to make proper use of the equipment), as logistical support of an event sponsored by a non-Federal entity, except for fundraising and membership drive events, when the head of the DoD command or organization determines all of the following:

- (1) The support does not interfere with the performance of official duties and would in no way detract from readiness;

(2) DoD community relations with the immediate community and/or other legitimate DoD public affairs or military training interests are served by the support;

(3) It is appropriate to associate DoD, including the concerned Military Department, with the event;

(4) The event is of interest and benefit to the local civilian community, the DoD Component command or organization providing the support, or any other part of DoD;

(5) The DoD Component command or organization is able and willing to provide the same support to comparable events that meet the criteria of this subsection and are sponsored by other similar non-Federal entities;

(6) The use is not restricted by other statutes (see 10 U.S.C. 2012 (reference (f)) which limits support that is not based on customary community relations or public affairs activities) or regulations; and

(7) No admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the event, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the portion of the event supported by DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

b. The head of a DoD Component command or organization may provide, on a limited basis, the use of DoD facilities and equipment (and the services of DoD employees necessary to make proper use of the equipment), as logistical support of a charitable fundraising event sponsored by a non-Federal entity when the head of the DoD Component command or organization determines (1) through (6) of subsection 3-211.a. of this Regulation, above, and the sponsoring non-Federal entity is not affiliated with the CFC (including local CFC) or, if affiliated with the CFC, the Director, OPM, or designee, has no objection to DoD support of the event. OPM has no objection to support of events that do not fundraise on the Federal Government workplace (which is determined by the head of the DoD Component command or organization.)

c. Speeches by DoD employees at events sponsored by non-Federal entities are not precluded when the speech expresses an official DoD position in a public forum in accordance with public affairs guidance.

d. Involvement of DoD resources in air shows sponsored by non-Federal entities is approved or disapproved by the Office of the Assistant Secretary of Defense (Public Affairs).

3-212. Relationships Governed by Other Authorities. In addition to the provisions of this Chapter, certain organizations have special relationships with DoD or its employees specifically

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recognized by law or by other directives. These organizations include:

- a. Certain banks and credit unions (DoD Directive 1000.11 (reference (q)));
- b. United Service Organization (DoD Directive 1330.12 (reference (r)));

- c. Labor organizations (5 U.S.C. Chapter 71 (reference (b)); DoD 1400.25-M, Chapter 711 (reference (s)));
- d. Combined Federal Campaign (E.O. 10927 (reference (t)), DoD Directive 5035.1 (reference (n)));
- e. Association of Management Officials and Supervisors (DoD Instruction 5010.30 (reference (u)));
- f. American Registry of Pathology (10 U.S.C. 177); Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. 178); American National Red Cross (10 U.S.C. 2542); Boy Scouts Jamborees (10 U.S.C. 2544); Girl Scouts International Events (10 U.S.C. 2545); Shelter for Homeless (10 U.S.C. 2546); National Military Associations; Assistance at National Conventions (10 U.S.C. 2548); Assistance from American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation and Assistance in Foreign Areas (10 U.S.C. 2606); Civil Air Patrol (10 U.S.C. 9441-9442) (reference (f)); and Assistance for certain youth and charitable organizations (32 U.S.C. 508) (reference (l));
- g. The Military Department of each State and territory (section 101 of reference (l)).

SECTION 3. PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-300. Participation

a. Fundraising and Other Activities. Subject to other provisions of this Regulation, DoD employees may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions.

(1) Except as provided in 5 CFR 2635.807(b) (reference (h)) in subsection 2-100 of this Regulation, DoD employees may not use or allow the use of their official titles, positions or organization names in connection with activities performed in their personal capacities as this tends to suggest official endorsement or preferential treatment by DoD of any non-Federal entity involved. Military grade and military department as part of an individual's name (e.g., Captain Smith, U.S. Navy) may be used, the same as other conventional titles such as Mr., Ms., or Honorable, in relationship to personal activities.

(2) Purely personal, unofficial volunteer efforts to support fundraising outside the Federal Government workplace are not prohibited where the efforts do not imply DoD

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endorsement. The Heads of DoD Component commands or organizations may, on a limited basis,

authorize their DoD employees or dependents of those employees to participate in fundraising activities in designated areas on Federal Government installations, such as public entrances, in community support facilities, and in personal quarters. The Head of the DoD Component command or organization has the authority to determine which areas, if any, are considered to be outside the Federal Government workplace. See E.O. 12353 (reference (n)), 5 C.F.R. 950 (reference (o)), and DoD Directive 1344.7 (reference (x)). These activities may be further limited by Federal Government building and grounds regulations.

b. Professional Associations and Learned Societies. Agency Designees may permit excused absences for reasonable periods of time for their DoD employees to voluntarily participate in the activities of non-profit professional associations and learned societies and may permit the limited use by their DoD employees of Federal Government equipment or administrative support services to prepare papers to be presented at such association or society events or to be published in professional journals when:

(1) The participation or paper is related to the DoD employee's official position or to DoD functions, management or mission; and

(2) The Agency can derive some benefit from the participation or preparation, such as expansion of professional expertise by DoD employees or improved public confidence derived from the professional recognition of the DoD employee's competence;

(3) The participation or preparation of the paper does not interfere with the performance of official DoD duties.

c. Community Support Activities. Agency Designees may permit excused absences for reasonable periods of time for their DoD employees to voluntarily participate in community support activities that promote civic awareness and uncompensated public service such as disaster relief events, blood donations, and voting and registering to vote.

d. Impartiality of Agency Designee and Travel Approving Authority. When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the Agency Designee or travel approving authority is an active participant in the non-Federal entity, that Agency Designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (h)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (i)).

3-301. Membership and Management. DoD employees may become members and may participate in the management of non-Federal entities as individuals in a personal capacity provided they act exclusively outside the scope of their official position. Except for such service in the

organizations listed in subsection 3-210.a. of this Regulation, above, a DoD employee may not serve in a personal capacity as an officer, member of the Board of Directors, or in any other similar position in any non-Federal entity offered because of their DoD assignment or position. DoD employees may authorize an allotment for membership dues to a non-Federal entity as provided in 5 C.F.R. 550.311 and 550.331 (reference (w)) and DoD 7000.14-R (reference (x)).

3-302. Impartiality of DoD Employees. DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 C.F.R. 2635.402 and 2635.502 (reference (h)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (i)).

3-303. Interference with Employment of Local Civilians. Enlisted members on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession. See 10 U.S.C. 974 (reference (f)).

3-304 Competition with Civilian Musicians. Members of military bands are very restricted in the degree to which they may compete off base with civilian musicians. See 10 U.S.C. 3634, 6223 and 8634 (reference (f)).

3-305. Use of Federal Government Resources

a. Authorized Uses. See subsection 2-301 of this Regulation, above.

b. Prohibited Uses. *Because of the potential for significant cost to the Federal Government, and the potential for abuse, DoD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DoD employee in support of non-Federal entities, nor for any other non-Federal purposes, except as provided in subsections 3-211 and 3-300.b. of this Regulation, above.*

3-306. Prior Approval of Outside Employment and Business Activities

a. A DoD employee, other than a special Government employee, who is required to file a financial disclosure report, SF 450 or SF 278, Appendix C of this Regulation, shall obtain written approval from the Agency Designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with subsection 3-306.b. of this Regulation, below. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation.

(1)Business activity means any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public.

(2)Employment means any form of non-Federal Government employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant,

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contractor, general partner or trustee.

(3) Prohibited source has the meaning set forth in 5 C.F.R. 2635.203(d) (reference (h)) in subsection 2-100 of this Regulation, as modified by the separate Agency designations in subsection 2-201 of this Regulation, above.

b. The DoD Component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of subsection 3-306.a. of this Regulation, above, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

c. A copy of the request for prior approval and the written approval shall be kept with the filed copy of the DoD employee's financial disclosure report, SF 450 or SF 278, Appendix C of this Regulation, or with the local Ethics Counselor.

d. Such DoD employees who have not obtained prior approval and who are, on the effective date of this supplemental rule, already engaged in an outside activity that requires prior approval shall have 90 days from that date to obtain such approval.

e. Except to the extent that when procedures have been established by higher authority for any class of DoD employee (e.g., DoD Directive 6025.7 (reference (y)), Agency Designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity.

(1) The commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed outside activity will detract from readiness or pose a security risk.

(2) If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this Regulation.

3-307. Teaching, Speaking and Writing

a. Disclaimer for Speeches and Writings Devoted to Agency Matters. *A DoD employee who uses or permits the use of his military grade or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 C.F.R. 2635.807(b)(1) (reference (h)) in subsection 2-100 of this Regulation, shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's Agency, as defined in subsection 2-201 of this Regulation, and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency's position.*

(1) The required disclaimer shall expressly state that the views presented

are those of the speaker or author and do not necessarily represent the views of DoD or

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its Components.

(2) Where a disclaimer is required for an article, book or other writing, the disclaimer shall be printed in a reasonably prominent position in the writing itself. Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

b. Security Clearance. A lecture, speech, or writing that pertains to military matters, national security issues, or subjects of significant concern to DoD shall be reviewed for clearance by appropriate security and public affairs offices prior to delivery or publication.

c. Honoraria. Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of 5 U.S.C. App. 501 (reference (b)) and 5 C.F.R. 2636 (reference (a)) in subsection 3-100 of this Regulation, above. However, on February 22, 1995, the U.S. Supreme Court decided United States v. National Treasury Employees Union (reference (bb)), affirming a court of appeals decision enjoining enforcement of the honoraria prohibition against Federal employees below grade GS-16. The ban may still be enforceable against Federal employees in grades GS-16 or above and those paid under other schedules. Section 542 of Public Law 102-484 (reference (cc)) exempts military officers and civilian employees at certain schools within the Department of Defense from the statutory ban on receipt of honoraria. A list of such schools is maintained by the Chairman of the Joint Chiefs of Staff. The restrictions of 5 C.F.R. 2635.807(a) (reference (h)) in subsection 2-100 of this Regulation continue to apply to all DoD employees.

SECTION 4. PERSONAL ACCEPTANCE OF GIFTS FROM NON-FEDERAL ENTITIES

3-400. Acceptance of Gifts by Injured or Ill Service Members and Their Family Members. Pursuant to the authority at section 8127 of P.L. 109-148, the FY 2006 Defense Appropriations Act (reference (dd)), and notwithstanding 5 U.S.C. 7353 (reference (b)), 5 C.F.R. 2635 (reference (h)), and paragraph 1-300.b., above, covered DoD employees, described at subsection 3-401, below, and the family members of such employees may accept unsolicited gifts from non-Federal entities subject to the following limitations:

- a. This authority does not apply to gifts from foreign governments and their agents.
- b. This authority does not apply to gifts that
 - (1) are accepted in return for being influenced in the performance of an official act;
 - (2) are solicited or coerced; or
 - (3) are accepted in violation of any other statute, including 18 U.S.C. sections 201(b) and 209 (reference (i)).
- c. For gifts with an aggregate market value in excess of "minimal value," as adjusted by the General Services Administration in accordance with 41 C.F.R.

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102-42.10 (concerning gifts from foreign governments) (reference (ee)), per source per occasion, or with an aggregate market value exceeding \$1000 received from any one source under the authority of this subsection in a calendar year, an agency ethics official must make a written determination that:

(1) The gift is not offered in a manner that specifically discriminates among covered DoD employees merely on the basis of type of official responsibility or of favoring those of higher rank or rate of pay;

(2) The donor does not have interests that may be affected substantially by the performance or nonperformance of the covered DoD employee's official duties; and

(3) Acceptance would not cause a reasonable person with knowledge of the relevant facts to question the integrity of DoD's programs or operations.

An agency ethics official may issue a blanket determination to cover all or any category of gifts or all or any group of DoD covered employees. This authority is in addition to, and in no way limits, any other statutory or regulatory authority of covered employees and their family members to accept gifts from non-Federal entities.

3-401. Covered DoD Employees. For purposes of this section, covered DoD employees are

a. members of the Armed Forces on active duty, as described at paragraphs 1-211.b, 1-211.c, 1-211.d, and 1-211.e (except for duties and functions performed under the authority of title 32, United States Code), above, who

b. while on active duty on or after September 11, 2001 incurred an illness or injury, as described below:

(1) as described in 10 U.S.C. 1413a(e)(2) (reference (f)), which is currently

(a) as a direct result of armed conflict;

(b) while engaged in hazardous service;

(c) in the performance of duty under conditions

simulating war; or

(d) through an instrumentality of war; or

(2) in an operation or area designated by the Secretary of Defense as a combat operation or a combat zone. The Secretary designates the following as combat zones under this subparagraph.

(a) any area designated by the President of the United States by Executive Order as an area in which U.S. Armed Forces are engaging or have engaged in combat;

(b) any area designated for treatment as a combat zone by Public Law, including P.L. 104-117 (reference (ff)); and

(c) any area certified by the Secretary of Defense for combat zone tax benefits for directly supporting military operations in combat zones.

3-402. Definitions

a. Family Members. Parents, siblings, spouse, children, and dependent relatives.

b. Gift. Gift shall have the meaning set forth at 5 C.F.R. 2635.203(b), (reference (h)).

c. Market value. *Market value shall have the meaning set forth at 5 C.F.R. 2635.203(c), (reference (h)).*

3-403. Acceptance of Gifts by Certain Reserve and National Guard Members. *Notwithstanding paragraph 1-300.b., above, enlisted members of the Reserve on inactive duty for training and all members of the National Guard, defined at paragraph 1-211.e and subsection 1-233, above, who meet the criteria at subsection 3-401.b., above, and family members of such members, may accept unsolicited gifts from non-Federal entities in accordance with paragraph 3-400, above.*

3-404. Retroactivity. *This section shall apply to acceptance of such gifts beginning on September 11, 2001.*

3-405. Delegation. *To the extent not included in current delegations, DoD DAEOs and Deputy DAEOs may delegate authority to make the written determination required by paragraph 3-400.b., above, to any agency ethics official, including such officials outside the DoD Component, located at the duty station of covered DoD employees or having sufficient knowledge of the conditions and circumstances of the covered DoD employees and the offered gifts.*

3-406. Relationship to illegal gratuities statute. *Unless accepted in violation of subparagraph 400.b.(1), above, a gift accepted under this section shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B), reference (i)).*

SECTION 5. REFERENCES

3-500. References

- (a) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition
- (b) Title 5, United States Code, Chapter **s 71 and 73**, App. 501, 4101 and 5946
- (c) Title 37, United States Code, Section 412
- (d) Title 31, United States Code, Sections 1345, and 6303 through 6306
- (e) Decisions of the Comptroller General, Volume 24, page 814, 1945
- (f) Title 10, United States Code, Sections 177, 178, 974, **1413a**, 2012, 2371, 2541, 2542, 2544, 2545, 2546, 2548, 2601, 2602, 2604, 2606, 3634, 6223, 8634, 9441 and 9442
- (g) Title 10, United States Code, Sections 1033 and 1589
- (h) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (i) Title 18, United States Code, Sections **201**, 208 and 209
- (j) DoD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business," January 16, 1974

(k) Title 15, United States Code, Section 3710a

- (l) Title 32, United States Code, Section 508
- (m) DoD Directive 1100.20, "Support and Services for Eligible Organizations and Activities Outside the Department of Defense," January 30, 1997
- (n) Executive Order 12353, "Charitable Fund-Raising," March 23, 1982, as amended
- (o) Title 5, Code of Federal Regulations, Part 950, "Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations," current edition
- (p) DoD Directive 5035.1, "Fund-Raising Within the Department of Defense," August 28, 1990
- (q) DoD Instruction 5035.5, "DoD Combined Federal Campaign - Overseas Area," August 17, 1990
- (r) DoD Directive 5410.18, "Community Relations," July 3, 1974
- (s) DoD Directive 1000.11, "Financial Institutions on DoD Installations," July 26, 1989
- (t) DoD Directive 1330.12, "United Service Organizations, Inc.," November 9, 1987
- (u) DoD 1400.25-M, "DoD Civilian Personnel Manual," January 24, 1978, authorized by DoD Directive 1400.25, "Department of Defense Civilian Personnel Manual System," January 24, 1978
- (v) Executive Order 10927, "Abolishing the President's Committee on Fund-Raising Within the Federal Service and Providing for the Conduct of Fund-Raising Activities," March 18, 1961
- (w) DoD Instruction 5010.30, "Intramangement Communication and Consultation," May 2, 1989
- (x) DoD Directive 1344.7, "Personal Commercial Solicitation on DoD Installations," February 13, 1986
- (y) Title 5, Code of Federal Regulations, Part 550, "Pay Administration," current edition
- (z) DoD 7000.14-R, "Financial Management Regulation," June 1994, authorized by DoD Instruction 7000.14, November 15, 1992
- (aa) DoD Directive 6025.7, "Off Duty Employment by DoD Health Care Providers," October 21, 1985
- (bb) United States et al. v. National Treasury Employees Union et al., No. 93-1170, slip op. (Sup. Ct., February 22, 1995)
- (cc) Public Law 102-484, "National Defense Authorization Act of 1993," October 23, 1992
- (dd) *Public Law 109-148, "Department of Defense Appropriations Act, 2006," December 30, 2005*
- (ee) *Title 41, Code of Federal Regulations, Part 102-42, "Utilization, Donation, And Disposal Of Foreign Gifts And Decorations," current edition*
- (ff) *Public Law 104-117, 109 Stat. 827 (1996)*

