



Ethics Guide for General Officer Aides

*Information for Personnel
Supporting Senior Officials*

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PREFACE

This handbook was prepared by the Army Standards of Conduct Office, Office of The Judge Advocate General,* for use by general officer aides and other support personnel. It highlights common standards of conduct issues faced by general officers. It provides broad guidance on a variety of matters, but is not a substitute for advice from an ethics counselor.

Ethics is the foundation for federal service. The public expects and deserves its officials to be fair and impartial and not to use their official position for personal gain. We fulfil this mandate by avoiding conflicts of interest and improper influence, and by being good stewards of government resources.

Executive Order 12674 sets the standards for our conduct as government employees and is the broad outline for the Army's ethics program:

- (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 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.**

* It is based on a handbook prepared by the Administrative and Civil Law Division, Office of the Staff Judge Advocate, III Corps and Fort Hood.

(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 the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Each installation has a designated Ethics Counselor. The Ethics Counselor is responsible for ensuring the command has an effective ethics program, that all training and reporting requirements are in place, and that the command has the information it needs to ensure that it operates in an ethical environment. The Ethics Counselor is also available for soldiers and employees who need ethics counseling and advice. The Army Standards of Conduct Office is the Ethics Counselor for HQDA. In other commands, the Ethics Counselor is located with the Staff Judge Advocate or in the post legal office.

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CHAPTER ONE

GIFTS

I. REFERENCES

A. DoD 5500.7-R, Joint Ethics Regulation (JER)(30 Aug 93), through Change 4 (6 Aug 98)

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

C. 5 U.S.C. § 7342 (1988)

D. AR 1-100, Gifts and Donations (15 Nov 83)

II. GENERAL GUIDANCE

A. The OGE *Standards of Ethical Conduct for Employees of the Executive Branch* became effective on February 3, 1993, and the DoD *Joint Ethics Regulation (JER)*, DoD 5500.7-R, on August 30, 1993. As a result, the ethical rules applicable to Army personnel are very detailed, specific, and complex.

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 even a free round of golf might be a violation of the JER and could result in sanctions.

III. GIFTS OVERVIEW

PROHIBITED GIFTS (IN GENERAL)

- Given because of an employee's official position.
- From an "outside source" (that has an interest in performance of Army operations).
- Even if it is a "nongift," or an exception exists, employees may not accept it if it would undermine government integrity.
- Examples of undermining government integrity include:
 - ⇒ Using official position to solicit or coerce someone to give a gift.
 - ⇒ Receiving a gift in exchange for an official action (bribe).
 - ⇒ Accepting gifts when prohibited by other statutes.
 - ⇒ Accepting gifts so frequently that someone would question whether influence is being bought.

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.
- Commercial discounts available to the general public, all government employees, or all military.
- Rewards and prizes for contests or events, including random drawings.
- Items paid for by the government under contract or accepted by the government under a statute.
- Anything for which the employee pays market value.

IV. GIFTS FROM OUTSIDE SOURCES

A. Basic Rule. DA 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
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 occasion, as long as the total value of all gifts received from a single source during a year does not exceed \$50.
 - b. Gifts based on an outside 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.

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

f. Free attendance (not travel or lodging) provided by the sponsor of a widely-attended gathering, speaking engagement, or other event where the government agency has determined it has an interest in the event (e.g., Dallas Military Ball) (*See information paper, Free Attendance at Seminars and Similar Functions, Appendix, p. A-1.*)

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? Even if a gift is allowed by one of the exceptions, do not accept it if it will undermine government integrity.

a. Official position cannot be used to solicit a gift or force someone to give a gift.

b. A gift is illegal if it is in exchange for an official action (that's a bribe).

c. Some gifts may be prohibited by other statutes (i.e., Foreign Gifts Act or Procurement Integrity Statute).

d. Finally, gifts may not be accepted so frequently that anyone would question whether influence is being bought.

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

1. If possible, the employee should refuse the offer of an improper gift; or
2. The employee should pay the donor its market value; or
3. The employee may return the gift.
4. Subject to Ethics Counselor approval, perishable items may be donated to a charity, shared within the office, or destroyed.
5. The Ethics Counselor may authorize that the gift be accepted on behalf of the Army and placed on an appropriated fund or non-appropriated fund property book (AR 1-100).

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.

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.

d. To avoid improper pressure, no one should keep a list of contributors, and preferably, the collection should be handled by someone junior in the organization.

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

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 \$260 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 \$260 limit need not be reported. A memorandum for record concerning the criteria in paragraph E1 should be made.

D. Gifts over the \$260 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: TAPC-PDU-IP, Alexandria, VA 22332-0474, within 60 days of receipt of the gift. The gift is then forwarded to the General Services Agency 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 SJA 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.

CHAPTER TWO

PRIVATE ORGANIZATIONS

I. REFERENCES

- A. JER, Chapter 3
- B. 5 U.S.C. § 5703 (1988)
- C. AR 608-1, Army Community Service Program (30 Oct 90)
- D. AR 215-1, Nonappropriated Fund Instrumentalities and Morale, Welfare, and Recreation Activities (29 Sep 95)
- E. DA Pamphlet 608-47, A Guide to Establishing Family Support Groups (16 Aug 93)

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. (*See information paper on Private Organizations, Appendix, p. A-3*)
- 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 may not:
 - 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, rank 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 "agency designee" (a supervisor or an Ethics Counselor (EC) 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 "agency designee" 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 \$250, 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. (See information paper, *Free Attendance at Seminars and Similar Functions, Appendix, p. A-1.*)

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 AUSA chapter. 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 AUSA chapter. It would not be appropriate, however, for the liaison to use government resources to assist the local chapter with maintaining its mailing list, to visit local merchants to encourage them to join, or to spearhead the annual 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. (*See information paper, Official Participation in Management of Private Organizations, Appendix, p. A-6*)

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 not 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 SUPPORT GROUPS (FSGs)

A. Family Support Groups are primarily volunteer organizations. They should be supported primarily by volunteer effort. At the same time, family support groups can be affiliated with military units. Family Support Groups normally function at the company and battalion level as authorized by DA Pam 608-47. Army Community Service assists with unit and FSG outreach efforts as requested (AR 608-1, para. 11-3). To the extent FSGs further the unit's mission, they may receive official support and funding. Thus, they are different from most POs. (See information paper on *Family Support Group Fundraising, Appendix, p. A-8.*)

B. Family Support Group 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 FSG mission, including transportation of volunteers performing official FSG business. 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 FSGs. For example, official vehicles may not pick up FSG volunteers at their homes to transport them to the FSG office or meeting location.

C. Invitational travel orders may be authorized for volunteers in their capacities as FSG 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 FSG program.

D. Under AR 215-1, para 4-6j, commanders may authorize use of NAFs and available APFs to reimburse incidental expenses of FSG 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.

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, 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). (See information paper, *Official Participation in Management of Private Organizations, Appendix, p. A-6*)

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.

V. RULES ON INFORMAL FUNDS AND THEIR RESALE ACTIVITIES

A. Installation commanders may authorize informal funds to operate on DA installations without first being organized as POs under the JER. These funds are limited in scope, activities, membership, and net worth. Authorized examples of such funds include unit social funds, office coffee or popcorn funds, cup and flower funds, and family support groups.

B. Informal funds must comply with the following requirements:

1. The net worth of the fund may not exceed \$1000;
2. There must be a fund custodian, who will administer fund business during off-duty time. Custodians will report annually to their military rater or civilian supervisor concerning the fund's existence, purpose, and financial status. They will also promptly report any actual or suspected irregularities associated with the fund. Informal funds are not entitled to military banking privileges; and,
3. Informal funds may be used only for expenses consistent with the purpose and function of the fund. They may not be expended in any way that is, or appears to be, improper or contrary to Army interests. Individuals must comply with applicable ethical rules in expending the funds and in participating in the activities of the fund.

C. Limitations on resale activities of informal funds are contained in several regulations. Because the money involved is neither appropriated nor nonappropriated funds, but instead is private, there are no requirements that the money be spent at any particular place, such as the commissary or AAFES.

CHAPTER THREE

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). (See information paper on *Support to Private Organization Fundraising, Appendix, p. A-9.*)

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. MILITARY BALL 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, Appendix, p. A-11.)*
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;

Ethics Guide for General Officer Aides

- 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).

CHAPTER FOUR

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 FIVE

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 all general officers and SES employees. There is a \$200 fee for reports filed more than 30 days late.
- B. A new entrant report must be filed within 30 days of promotion to General Officer. Upon retirement, a termination report must be filed within 30 days of retirement.
- C. 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. Each section of the report should have an entry or a "None" block checked.
- B. All required schedules (A, B, C, and D) must be completed and attached.
- 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 (*i.e.*, "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 be redacted from broker statements (a copy of broker account statements may be attached instead of listing those assets on Schedule A and the purchases and sales on Schedule B).

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 adjustment is recorded in a disqualification statement.

V. 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. The old report may be also used for next year's annual filing. If nothing has changed, a photocopy of the old report may be submitted with a new first page and current signature. A photocopy of the old report may also be used when minor changes are made. Pen and ink changes are acceptable.

CHAPTER SIX

POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

I. REFERENCES

- A. U.S. Const. Art. I, § 9, cl. 8
- B. 10 U.S.C. § 973
- C. 18 U.S.C. §§ 205; 207; 208 (1988)
- D. 41 U.S.C. § 423 (1988)

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

A. Negotiating for employment is the same as buying stock in a company. 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.

III. "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.

IV. 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.

V. 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 seven 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.

VI. 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, USAR PERSCOM, ATTN: ARPC-SFS-I, 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.

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. 29-4)

C. SF 278s. Termination Public Financial Disclosure Reports must be filed within 30 days of retirement.

D. 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)

E. Gifts from Foreign Governments. Military retirees and their immediate families may not retain gifts of more than \$260 in value from foreign governments. (5 USC § 7342)



APPENDICES

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INFORMATION PAPER{PRIVATE }

DAJA-SC
13 August 1999

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 an Official Capacity. (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 U.S.C. § 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 principle elements of a "widely attended gathering" are size and diversity. Free attendance is further justified by 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 employee's supervisor 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 supervisor must make a further written determination that the agency's interest outweighs the

appearance of improper influence. Supervisors should make this determination in consultation with their Ethics Counselor.

(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, social and 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 \$250.

(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. A supervisor may issue a blanket 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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INFORMATION PAPER

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SUBJECT: Private Organizations

1. PURPOSE: To provide information on relationships with non-federal entities (NFE)

2. FACTS:

a. Personal Participation - Permitted Activities

(1) DoD employees, acting in their personal capacity, may join and participate in NFE activities.

(2) DoD employees may become officers and directors of private organizations provided that the positions are not offered solely because of their federal position and that they act exclusively outside of their official position. If the employee files an SF 278 or an OGE 450 financial disclosure report, the position as a NFE officer must be reported.

(3) DoD employees may engage in fundraising on behalf of NFEs provided that no DoD endorsement is implied, and as long as they do not personally solicit prohibited sources or their subordinates.

(4) DoD employees may make presentations and publish papers as part of NFE activities. If the presentation or paper deals with DoD operations or policies, there must be a disclaimer that the views presented are personal and do not represent DoD.

(5) Subject to supervisory approval, DoD employees may use official time and material to prepare presentations and papers for non-profit associations and learned societies.

(6) DoD employees may represent a NFE that is composed of DoD employees and their dependents in discussions with the government except when the matter involves an administrative or judicial proceeding or the disbursement of funds.

b. Personal Participation - Prohibited Activities

(1) Subordinates may not be coerced to join or participate in NFE activities.

(2) An employee's official position may not be used to state or imply official endorsement of a NFE, its activities or fundraising efforts.

(3) DoD employees who are officers or directors of NFEs in their personal capacity may not participate in official federal actions that affect the interests of the NFE.

(4) DoD employees may not represent ordinary NFEs (as opposed to NFEs composed of DoD members) in discussions with the government.

c. Official Relationships - Permitted Activities

(1) Attendance. Consistent with sound fiscal principles governing training expenses, DoD employees may attend meetings, conferences, seminars and similar events sponsored by NFEs, and may participate as panelists and speakers. DoD employees may not attend such events at government expense solely to acquire or maintain professional credentials that are minimum requirements to hold a DoD position.

(2) Liaison. DoD employees may serve as liaisons to NFEs when appointed by the appropriate commander. Liaisons may represent DoD in discussions, but cannot bind their DoD organization to any action. A liaison may not participate in the management of the NFE.

(3) Information Distribution. In accordance with public affairs regulations, official channels may be used to inform DoD employees of professional development events; scientific and technical events; and morale, welfare, and recreation events sponsored by NFEs.

(4) Logistic Support to NFE Events. 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 DoD command or organization determines:

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

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

(c) The event is appropriate for DoD support;

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

(e) 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; and

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

(5) Co-Sponsorship. DoD may co-sponsor a scientific, technical, or professional event with a NFE when there is a *bona fide* DoD interest.

(6) Support to Fundraising. DoD may provide limited support to a charitable fundraising event, if the NFE is not affiliated with the Combined Federal Campaign (CFC), and the six factors in c.(4), above, are met.

d. Official Relationships - Prohibited Activities

(1) Management. Unless authorized by statute and approved by the Secretary of the Army, Army employees acting in their official capacity may not participate in management of NFEs.

(2) Fundraising/Membership Drives. Except for certain authorized organizations, including organizations composed primarily of DoD employees or their dependents when fund raising within the DoD community or, if a National Guard Member, charitable, community, and civic organizations identified in 32 U.S.C. 508 or DoD Directive 1100.20, a DoD employee may not officially endorse an NFE's fundraising or membership drive.

(3) Endorsement. In dealing with NFEs, DoD employees shall not engage in preferential treatment. This includes no official endorsement of a NFE, or any event, product, service or enterprise of a NFE. (Offering group life insurance programs sponsored by the State Military Department, similar to the Servicemen's Group Life insurance Program, is not a prohibited endorsement.)

(4) Support. DoD will not provide support to NFE activities unless there is a valid agency interest. There must be some benefit to the agency before extending even minimal support, such as providing a liaison.

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INFORMATION PAPER

DAJA-SC
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SUBJECT: Official Participation in Management of Private Organizations

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

2. FACTS:

a. On 6 August 1998, Change 4 to the *Joint Ethics Regulation (JER)*, DoD 5500.7-R was signed. The Change involves two subjects: designation of public areas for fundraising and management of private organizations. The Change clarifies that post and facility commanders have authority to designate areas of the post that are open to the public for fundraising purposes. When an area, such as the entrance to a building, has been so designated, it is not governed by restrictions on fundraising in the federal workplace.

b. Official Management of Private Organizations. Congress recently passed 10 U.S.C. § 1033, authorizing DoD employees, in the course of their official duties, to participate in management of "designated" non-federal entities. The statute requires implementing regulations. Change 4 is that regulation

(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 as a primary duty to work full-time on the non-federal entity's business.

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

(4) **"Designated" Organizations.** Under the statute, the DoD General Counsel designates eligible organizations. Change 4 designates *Army Emergency Relief, Aid 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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INFORMATION PAPER{PRIVATE }

DAJA-SC
13 August 1999

SUBJECT: Family Support Group (FSG) Fundraising

1. **PURPOSE:** To provide information on proper management of Family Support Group fundraising.

2. **FACTS:**

a. Significant guidance on FSG management is in DA Pamphlet 608-47, *A Guide to Establishing Family Support Groups*. However, this pamphlet was published prior to the *Joint Ethics Regulation*, DOD 5500.7-R, and is subject to that regulation.

b. When FSGs engage in fundraising, they are private organizations.

c. The Army cannot officially support or endorse FSG 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.

d. When FSGs 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*, para. 3-210a.(6). If authorized by the post commander, soldiers may be released to support the event, and Army equipment may be used so long as it does not interfere with mission requirements. DA Pam 608-47, para. 3-6; *JER*, para. 3-211.

e. Commanders may only authorize fundraising activities that occur outside the federal workplace, such as in public entrances, in community support facilities, and in personal quarters. *JER*, para. 3-300a.

f. Commanders, acting in their official capacity, may use official communication channels and briefings to encourage soldiers and their families to volunteer for FSG activities. DA Pam 608-47, para. 4-2; *JER*, para. 3-208.

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INFORMATION PAPER{PRIVATE }

DAJA-SC
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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 logistical support to NFE fundraising activities on his installation only if he has obtained permission, in advance, from the Office of Personnel Management (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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**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 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), rather than cash reimbursement.

If the travel expenses provided exceed \$250, the traveler must submit a report within 30 days, through the travel approving authority to the Ethics Counselor.

The report will be forwarded by the Ethics Counselor through the 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. See SecArmy travel letter dated 8 April 1999.

INFORMATION PAPER

DAJA-SC
13 August 1999

SUBJECT: Contact with DoD Contractors

1. **Purpose:** To provide guidance on discussions with contractor representatives.

2. **Facts:**

a. General Policy - Preserve competitiveness; maintain a level playing field. Be sensitive to whether a specific meeting, an action, or release of information would give a competitive advantage to a contractor. All similarly situated contractors should receive equal treatment. When you meet with a contractor, assume that you are speaking to the entire DoD contractor community.

***PRACTICE TIP:** If there has been a significant exchange of information in a meeting with a contractor, you may wish to distribute publicly available information to the community of interested DoD contractors.*

b. Setting an Agenda. After agreeing to meet with a contractor, the contractor should submit a letter stating the name of the firm, the topic for discussion, and identifying any current contracts, competitions, or active proposals that the company has pending with the Army.

c. Primary Purpose of Meetings is to Receive Information. While it is all right to ask informational and clarifying questions during a briefing, you should avoid asking contractors to send follow-up information. The meeting should not be the basis for further action, and should not unintentionally solicit formal proposals.

d. Unauthorized commitments. Do not make unauthorized commitments, promises purporting to bind the government, or representations that would compromise the government's position. For the same reason, do not offer assistance or advice. Contractors may interpret suggestions as requests to take action, resulting in a claim against the Army.

e. Impartiality. Do not give preferential treatment to any private party. Accordingly, do not give VIP visitor treatment to contractor representatives who visit in that capacity or who intend to discuss contractor business; *i.e.*, no government vehicle rides from the airport, no all-day escort, no officially-hosted free dining.

f. "Inside" Information. Do not release "inside" information that is not otherwise available to the public (or to a relevant community of DoD contractors). This includes:

- (1) Information not available to the public under the Freedom of Information Act;

(2) Information protected under the Privacy Act, Trade Secrets, and classified material;

(3) Selective release of advance procurement information, Army requirements, or premature release of contract award decisions; and,

(4) Acquisition information, such as, unopened bids, proposed costs, the Army's estimate of costs, source selection plans, price evaluations, competitive range determinations, ranking of bids, proprietary information (such as labor rates), reports of Source Selection Evaluation Boards, and other information marked: "SOURCE SELECTION INFORMATION."

PRACTICE TIP: Avoid *private* discussions about the contractor's business and its relationship with the Army. Conduct meetings in your office--not at the contractor's office. Your staff members should sit in on discussions.

g. **Gifts.** Small gifts are occasionally offered in meetings with contractors. Food and refreshments that are not a meal (e.g., coffee and donuts) may be accepted. You may also accept presentation items, such as commemorative coins, or items worth less than \$20. Consult your legal advisor when something other than a nominal gift is offered. Gifts that may not be retained personally will usually become Army property.

h. Restricted Contacts with Former DoD Officials and Retired Military Officers.

(1) Former senior DoD civilian employees (SES level V and above) and retired general officers are prohibited from attempting to influence official actions in their former department or agency for one year after their departure. (This is the one-year "cooling off" restriction.) *18 USC 207(c)*

(2) Former officers and employees are forever prohibited from representing someone in a particular matter that involved non-federal parties, and in which they were personally and substantially involved while working for the government. *18 USC 207(a)(1)*

(3) Federal officials who had authority to award contracts, make payments, set overhead rates, and settle claims of more than \$10 million are prohibited for a period of one year after the official action, from working for the contractor who received the payment. *41 USC 423*

PRACTICE TIP: Decline meetings with competing contractors once a solicitation has been released, and avoid discussing or responding to questions on matters that are being litigated. In these situations, there is a very real danger of inadvertently making improper disclosures.

3. Conclusion: Within the limits of these restrictions, you may discuss matters of mutual interest with DoD contractors. They may present capability briefings and discuss technological developments. Do not hesitate to request the assistance of the Office of The Judge Advocate General or Army General Counsel.

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INFORMATION PAPER

DAJA-SC
13 August 1999

SUBJECT: Outside Speaking, Teaching, and Writing

1. PURPOSE: To provide information on the rules for outside speaking, teaching, and writing.

2. FACTS:

a. Federal employees are prohibited from receiving compensation for outside speaking, teaching, or writing that relates to their official duties. 5 C.F.R. § 2635.807.

b. In essence, employees are not allowed to "re-merchandise" work they do for the government. Thus, employees may not receive compensation for teaching, speaking, or writing on anything:

(1) Prepared as part of their official duties; or

(2) Dealing with an activity related in significant part to their official duties (current duties or duties performed within the last year).

c. One exception to this rule is that employees may accept travel expenses for unofficial teaching, speaking, or writing that is related to their duties when it "deals in significant part with . . . [a]ny ongoing or announced policy, program or operation of the agency." 5 C.F.R. § 2635.807(a)(2)(i)(E)(2).

d. This rule also does not prohibit receiving payment for:

(1) Teaching at an accredited educational institution even if the instruction is based upon work done for the government; or

(2) Teaching, speaking, or writing that is based upon general professional training or educational background, even when the topic falls within the employee's area of employment. *For example*, a rocket scientist can be paid for presenting a paper on orbital physics, so long as it is prepared on his own time and does not draw substantially from work he has done for the government. Academic information and material that would otherwise be available to the public may be used.

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