

The Government Ethics Encyclopedia of Knowledge (“The GEEK”)

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Note: All information in this document is available on public websites. The guide does not necessarily contain all the legal authorities on any topic. It is intended to help you begin your research. Also, YOU are responsible for checking the currency of legal citations before using them.

19 September 2011 Edition

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[AFI 10-1004](#), Conducting Air Force Open Houses, 18 Feb 10

Aircraft – misuse of

- United States v. May, 625 F.2d 186 (8th Circuit, 1980) (former Adjutant General of the Iowa National Guard used National Guard aircraft, fuel & personnel to make eleven trips for personal convenience (ten trips to visit his fiancée and one trip to spend Thanksgiving with friends in Las Vegas); he was convicted of conversion of government property in violation of 18 USC 641, but his conviction was overturned because the instructions given to the jury on the definition of "conversion" were not accurate).
- DoD Directive 4500.56, DoD Policy on the Use of Government Aircraft and Air Travel, 14 Apr 09, para. 4a, states in relevant part: “It is essential that managers and commanders at all levels prevent misuse of transportation resources as well as the perception of their misuse.”

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- [DoD Directive 4500.09E](#), Transportation and Traffic Management, 11 Sep 07, para. 4 & 4.3, state: “It is DoD policy that: Transportation resources shall be used for official purposes only.”
- DoD Directive 4500.09E, Transportation and Traffic Management, 11 Sep 07 (para. E4.3, E4.3.1 & E4.3.2 discuss non-DoD use of DoD transportation)
- DoD 4515.13-R, Air Transportation Eligibility, Nov 1994 (para. C1.3 & C1.3.1 discuss ineligible traffic on military aircraft) (para. C6.1.1 discusses Space A travel)
- On the public website of the Office of the Deputy Under Secretary of Defense (Logistics & Materiel Readiness) is a one-page [memo](#) entitled “Troop Donations.” It provides guidance on using military aircraft to transport gifts for the troops.
- DoD Directive 5410.18, Public Affairs Community Relations Policy, 20 Nov 01, para. 4.3.9, states: “Charges for Admission. Charges for admission to DoD aircraft or other equipment are specifically prohibited. The sale of photos of attendees seated in DoD aircraft or equipment is also prohibited.”
- DoD Instruction 5410.19, Public Affairs Community Relations Policy Implementation, 13 Nov 01, para. E11.4.8, states in relevant part:

“No charges or fees shall be imposed by the military installation or its agents for admission, parking, or viewing any activities. Installations may provide special seating for distinguished visitors at no charge. Charges for admission to military aircraft or other equipment are specifically prohibited, as well as sales of photos of attendees at open houses donning military equipment or clothing or seated in military aircraft or equipment.”

- On the website of the DoD Standards of Conduct Office is a document entitled “Encyclopedia of Ethical Failure.” It contains scores of real-life examples of ethical violations, including one about a law enforcement official fired for landing a government helicopter at his daughter’s elementary school.
- AFI 11-401, Aviation Management, 10 Dec 10, para. 1.9.2, states:

“Commanders (including unit commanders) will ensure each flight is in the direct interest of government business and does not exceed flying hour allocations without specific approval. Commanders (including unit commanders) will **not** authorize flights for personal convenience or recreation.” [Bold text in original.]

Annual certification

- JER 8-400 (certification by 278 filers they are aware of certain laws & haven’t violated them)
- The 2011 Annual Post-Employment Certification [form](#) (on the DoD/GC-SOCO website)

Awards

- [AFI 65-601, Volume I](#), Budget Guidance and Procedures, 3 Mar 05 (para. 4.29)
- AFI 36-1004, The Air Force Civilian Recognition Program, 3 Dec 09 (para. 7.7 – Commander’s Public Service Award for citizen members of off-base organizations)

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- [AFI 36-2803](#), The Air Force Awards and Decorations Program, 15 Jun 01
- [AFI 36-2805](#), Special Trophies and Awards, 29 Jun 01

Bands, military

- [10 USC 974](#)
- [DoD Instruction 5410.19](#), Public Affairs Community Relations Policy, 13 Nov 01 (Enclosure 8)
- [AFI 35-110](#), U.S. Air Force Band Program, 22 Jan 10 (Chapter 6 covers where bands can perform)

Books

OGE Informal Advisory Opinion 08 X 3 (discussion of ethics issues related to book deals)
OGE Informal Advisory Opinion 08 X 2 (writing a book for compensation)
OGE Informal Advisory Opinion 01 X 10 (compensation for a book focusing on a core agency mission)
OGE Informal Advisory Opinion 01 X 7 (books concerning the policies, programs or operations of the agency)

Bribery

- [18 USC 201](#)
- JER 5-400

Business cards

- A one-page, 28 Aug 98 [memo](#) by the Office of the Secretary of Defense entitled “Printing of Business Cards”
- A one-page, 15 Jul 99 [memo](#) by the Office of the Secretary of Defense entitled “Printing of Business Cards”
- [AFI 65-601, Volume I](#), Budget Guidance and Procedures, 3 Mar 05 (para. 4.36)

Change of command ceremonies

[AFI 65-601, Volume I](#), Budget Guidance and Procedures, 3 Mar 05 (para. 4.27.2)

Coins

- [AFI 65-601, Volume I](#), Budget Guidance and Procedures, 3 Mar 05 (para. 4.29.2, 4.29.3, 4.29.5)
- [AFI 64-117](#), Air Force Government-Wide Purchase Card (GPC) Program, 31 Jan 06 (para. 2.4.9 – may not use GPC to buy promotional items for conferences, such as mugs or coins)
- AFMC [supplement](#) to AFI 36-2805, Special Trophies and Awards (para. 1.4.4.1 – official coins, para. 1.4.4.1 – AFMC fitness coins)
- “Commanders’ Coins: Worth Their Weight in Gold?”, an [article](#) by Major Kathryn R. Sommerkamp, The Army Lawyer, November 1997

Commercial sponsorship agreements

- [AFI 34-407](#), Air Force Commercial Sponsorship Program, 19 Jul 05
- [AFMAN 34-416](#), Air Force Commercial Sponsorship and Sale of NAFI Advertising Procedures, 5 Oct 04

Combined Federal Campaign (CFC)

- Executive Order 12353, Charitable Fund-Raising, 23 Mar 82
- Executive Order 12404, Charitable Fund-Raising, 10 Feb 83
- [5 CFR Part 950](#), Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations
- [DoD Instruction 5035.1](#), Combined Federal Campaign (CFC) Fund-Raising Within the Department of Defense, 31 Jan 08
- [DoD Instruction 5035.05](#), DoD Combined Federal Campaign – Overseas (CFC-O), 21 Feb 08
- [AFI 36-3101](#), Fundraising Within The Air Force, 12 Jul 02

Community Relations (COMREL)

- [DoD Directive 5410.18](#), Public Affairs Community Relations Policy, 20 Nov 01
- [DoD Instruction 5410.19](#), Public Affairs Community Relations Policy, 13 Nov 01
- [AFI 35-105](#), Community Relations, 26 Jan 10 (para. 45 – Honorary Commander program)
- DoD Directive 5410.18, Public Affairs Community Relations Policy, 20 Nov 03, para. 4.2.16, states: “Demeaning or Menial Use of DoD Personnel. Community relations activities shall not employ military personnel in uniform in such capacities as ushers, bag handlers, guards, escorts (to include escorts or other forms of support for beauty pageants, modeling, or similar events), messengers, parking lot attendants, or in similar capacities during public events conducted off military installations.” [Note: AFI 35-105, Community Relations, 26 Jan 10, para. 6.3.2.4, contains similar language.]

Conferences – general

- The [chapter](#) on non-Federal entities in 2010 DoD Ethics Counselor’s Deskbook (pages 12-33)
- The 12-page [chapter](#) on conference sponsorship and planning in the 2010 DoD Ethics Counselor’s Deskbook

Conferences – off-base conferences sponsored by a government organization

- Part 1 of Appendix R (in the 256-page [Appendices](#) document) of Joint Federal Travel Regulation / Joint Travel Regulation
- [AFI 65-601](#), Budget Guidance and Procedures, Volume 1, 3 Mar 05 (para. 10.2.5)

Conflict of interest – 18 USC 208

- [18 USC 208](#) (the conflict of interest statute)

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- [5 CFR 2635.402](#) (implementing regulation for 18 USC 208)
- OGE [memo](#) DO-10-005, dated 22 Apr 10 (guidance on 18 USC 208(b) waivers and 5 CFR 2635.502(d) authorizations)
- OGE memo DO-10-002, Jan. 28, 2010, Subject: Federal Travel Benefits and 18 U.S.C. § 208
- OGE memo DO-08-024, August 6, 2008, SUBJECT: Discretionary Trusts
- OGE Informal Advisory Opinion 07 X 4 (comprehensive guidance on 18 USC 208 waivers)

- On 19 Nov 96, the Office of Legal Counsel (OLC) of the Department of Justice issued an [opinion](#) entitled “Service on the Board of Directors of Non-Federal Entities by Federal Bureau of Investigation Personnel in their Official Capacities.” The opinion’s conclusion, which is stated on page 1 of the opinion, is as follows: “Section 208 of title 18 prohibits a government employee from serving on the board of directors of an outside organization in his or her official capacity, unless the service is authorized by statute or the employee obtains either a release of fiduciary obligations by the organization or a waiver of the requirements of section 208.”

- JER 5-302 (discussion of 18 USC 208(b)(1) waivers)
- JER 8-200 (applicability of 18 USC 208 to enlisted military personnel)

Conflict of interest – 5 CFR 2635.502 (appearance of impartiality rule)

- [5 CFR 2635.502](#) (the appearance of impartiality rule)
- 5 CFR 2635.702(d) states:

“Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of Sec. 2635.502.”

- OGE [memo](#) DO-10-005, dated 22 Apr 10 (guidance on 18 USC 208(b) waivers and 5 CFR 2635.502(d) authorizations)
- OGE Informal Advisory Opinion 01 X 8
- OGE Informal Advisory Opinion 99 X 8
- Format for a 5 CFR 2635.502(d) determination (see below):

DATE

MEMORANDUM FOR: *Employee*

FROM: *Supervisor (Commissioned Officer or GS-12/higher)*

SUBJECT: Appearance of a Conflict of Interest

1. Your position with the Air Force gives you the opportunity to participate in particular matters likely to have a direct and predictable effect on the financial interest of the *Name of former*

employer, for whom you formerly worked. This creates circumstances that raise a question regarding your impartiality in performing your duties for the Government.

2. After considering the six factors listed below, I have determined that the government’s need to have you participate in your duties as a Government employee *outweighs/does not outweigh* the concerns that would result from having you participate in any matters possibly beneficial to your former employer. You therefore *may/may not* participate in particular matters likely to have a direct and predictable effect on the financial interest of *Name of former employer*.

3. In making my determination, in accordance with 5 CFR 2635.502(d) I have considered:
[For each factor, give a brief description of the facts in this case.]

- The nature of the relationship involved;
- The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- The sensitivity of the matter;
- The difficulty of reassigning the matter to another employee; and
- Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

4. I also considered that you have been reminded of your obligations under 5 CFR 2635.703(a) to not disclose “non-public information” to further the private interests of any individual, company or organization.

SUPERVISOR'S SIGNATURE BLOCK

Conflict of interest – spouses

[5 CFR 2635.402\(b\)\(2\)\(Example 2\)](#) – government employee’s spouse working for contractor

Contemptuous speech

- 10 USC 888 (ban on commissioned military officers using contemptuous word against the President and certain other political officials)
- An article on pages 2-13 of the July 1999 edition of The Army Lawyer. The article is at: http://www.loc.gov/rr/frd/Military_Law/pdf/07-1999.pdf
- Pages 299-301 of the 2008 Manual for Courts Martial, which is 981 pages long and is at: http://www.loc.gov/rr/frd/Military_Law/pdf/MCM-2008.pdf

Contractors

- The 27-page [chapter](#) on contractors in the workplace in the 2010 DoD Ethics Counselor’s Deskbook
- [List](#) of contractors that received at least \$25K in DoD contracts in FY 2010 (269-page list)
- A two-page, 7 May 99 [memo](#) by the DoD General Counsel entitled “Serving as Advisors to Defense Contractors”
- OGE memo DO-08-037, November 6, 2008, SUBJECT: Recent legislative activity affecting the executive branch ethics program
- Proposed Rule: Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, Federal Register, 13 Nov 09
- Administrative Conference of the United States (ACUS) [project](#) on Government Contractor Ethics (and the Recommendation that ACUS adopted on 16-17 Jun 11)

Dating between government employees and contractor employees

- [Attachment](#) to OGE memo DO-06-023: Ethics and Working with Contractors — Questions and Answers, para. 17.
- OGE Informal Advisory Opinion 91 X 37

Deployment-related ethics

The 5-page [chapter](#) on deployment-related ethics in the 2010 DoD Ethics Counselor’s Deskbook

Disclosure of information

- 41 USC 2102 (disclosure of source selection information). Note: The Procurement Integrity Act is 41 USC 2101 – 2107, and is on pages 50-55 of this 186-page PDF [document](#).
- 18 USC 1905 (Trade Secrets Act)
- 18 USC 1832 (theft of trade secrets)
- 5 CFR 2635.703 (disclosure of non-public information)

Documenting ethics advice

OGE memo DO-08-025, August 26, 2008, SUBJECT: New GAO Report; Documenting Ethics Advice

E-mail

- JER 2-301a
- [AFI 33-119](#), Air Force Messaging, 24 Jan 05 (para. 3.9 discusses permissible uses of e-mail)

Endorsement

- [5 CFR 2635.702\(c\)](#)

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- JER 3-209
- On 29 Aug 06, OGE issued DAEO-Gram DO-06-023, which is entitled “Ethics and Working with Contractors – Questions and Answers.” Attached to it is a 29-page document containing the questions and answers. Here is an excerpt from page 29:

“...OGE does not view its endorsement rule as applying to authorized agency actions; rather, the prohibition generally is focused on the personal, unauthorized conduct of individual employees who abuse their position to make endorsements.”

Ethics Counselor

JER 1-214 (definition of Ethics Counselor)

Ethics Pledge

- Executive Order 13490
- OGE memo DO-10-004, February 22, 2010, SUBJECT: Post-Employment Under the Ethics Pledge: FAQs
- OGE memo DO-09-020, May 26, 2009, SUBJECT: Ethics Pledge Issues: Speeches and Pledge Paragraph 2; Intergovernmental Personnel Act Detailees
- OGE memo DO-09-014, April 28, 2009, SUBJECT: Holdover Appointees and the Ethics Pledge
- OGE memo DO-09-011, March 26, 2009, SUBJECT: Ethics Pledge: Revolving Door Ban--All Appointees Entering Government
- OGE memo DO-09-010, February 26, 2009, SUBJECT: Who Must Sign The Ethics Pledge?
- OGE memo DO-09-008, February 23, 2009, SUBJECT: Authorizations Pursuant to Section 3 of Executive Order 13490, “Ethics Commitments by Executive Branch Personnel”
- OGE memo DO-09-007, February 11, 2009, SUBJECT: Lobbyist Gift Ban Guidance
- OGE memo DO-09-005, February 10, 2009, SUBJECT: Signing the Ethics Pledge
- OGE memo DO-09-003, January 22, 2009, SUBJECT: Executive Order; Ethics Pledge

Federal Acquisition Regulation (FAR)

The FAR [website](#)

Federal Advisory Committees

- [DoD Instruction 5105.04](#), Department of Defense Federal Advisory Committee Management Program, 6 Aug 07
- [DoD Instruction 5105.04 AFI 90-1401](#), Department of Defense Federal Advisory Committee Management Program, 22 Jul 10

Financial disclosure – general

- The 20-page [chapter](#) on financial disclosure in the 2010 DoD Ethics Counselor’s Deskbook
- The 22-page [chapter](#) on advanced financial disclosure in the 2010 DoD Ethics Counselor’s Deskbook

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- A four-page, 9 Dec 02 [memo](#) by OGE entitled “Application of the Financial Disclosure Requirements to Detailees under the Intergovernmental Personnel Act (IPA)”
- OGE [memo](#) LA-11-05, August 17, 2011, “Increased Gifts and Travel Reimbursements Reporting Thresholds for Financial Disclosure Reports and Nonsoror Widely Attended Gatherings Gift Exception Ceiling”
- OGE memo DO-08-040, December 16, 2008, SUBJECT: Conducting a Second Review of Financial Disclosure Reports for Current Employees Filling Newly-Vacant Positions
- OGE memo DO-08-024, August 6, 2008, SUBJECT: Discretionary Trusts
- OGE memo DO-08-022, July 22, 2008, SUBJECT: Financial Disclosure Requirements for Pooled Investment Funds

Financial disclosure - general/flag officers

- A DoD Standards of Conduct Office [memo](#) states: “Military officers who are seeking confirmation to or have been confirmed to hold positions of importance and responsibility as defined in 10 U.S.C. 601 (grades O-9 and O-10) may not hold financial interests in any of the largest ten defense contractors.”
- This DoD Standards of Conduct Office [memo](#) also states: “Additionally, military officers in the grades of O-9 and O-10 who occupy senior acquisition positions: e.g., Director of DLA, Heads of Army Material Command and the Air Force Material Command; and the Inspectors General of each military department are prohibited from holding interests in any defense contractor.” [Underlining in original.]

Financial disclosure – OGE Form 278 (formerly called the SF 278)

- [5 CFR Part 2634](#)
- 1 Jul 11 OGE Federal Register [notice](#) on change in reporting requirement for gifts
- OGE [memo](#) LA-11-03, April 19, 2011, SUBJECT: Public Financial Disclosure Report Guidance for Presidential Candidates
- OGE [memo](#) DO-10-020, December 17, 2010, SUBJECT: New Public Financial Disclosure Form (OGE Form 278)
- OGE memo DO-08-026, dated 27 Aug 08 (tips for termination reports)
- OGE memo DO-08-021, June 30, 2008, SUBJECT: New Policy Regarding Termination Public Financial Disclosure Reports of PAS Officials
- OGE Informal Advisory Opinion 07 X 5 (reporting political travel, food & beverages on 278)
- Public Financial Disclosure: A Reviewer’s Reference [Guide](#) (2004)
- Frequently Asked Questions ([FAQ](#)) about the OGE Form 278
- OGE Form 201 (form used by the public to request an OGE Form 278)
- Church of Scientology v. IRS, 816 F.Supp. 1138, 1152 (W.D. Tex. 1993) (SF/OGE Form 278 must be made available to the public in accordance with section 105 of the Ethics in Government Act, not FOIA)
- JER 7-200 to 7-209

Financial disclosure – OGE Form 450

- [5 CFR 2634.901 - .909](#)
- 1 Jul 11 OGE Federal Register [notice](#) on change in reporting requirement for gifts
- Frequently Asked Questions ([FAQ](#)) about the OGE Form 450
- [Guidance](#) for Reviewers of the OGE Form 450, Part I
- [Determining Which Positions Should File a Confidential Financial Disclosure Report: A Worksheet](#) (2009)
- OGE memo DO-09-004, January 30, 2009, SUBJECT: Guidance on the Use of Digital Signatures with the Confidential Financial Disclosure Form
- [Meyerhoff v. EPA](#), 958 F.2d 1498, 1500-02 (9th Cir. 1992) (OGE Form 450 not publicly available under the Ethics in Government Act or FOIA)
- JER 7-300 to 7-310

Fiscal law – general

The 69-page [chapter](#) on fiscal law in the 2010 DoD Ethics Counselor’s Deskbook

Fiscal law – use of appropriated funds for expenses to obtain professional credentials

- 5 USC 5757
- Comp. Gen. Dec. B-302548, Scope of Professional Credentials Statute, August 20, 2004

Fiscal law – use of appropriated funds for promotional items / incentive items / personal gifts

[AFI 65-601, Vol.1](#), Budget Guidance and Procedures, 3 Mar 05, para. 4.29, states in relevant part:

“Awards and Gifts. Do not use appropriated funds to purchase gifts for military members, employees, or private citizens unless specifically authorized by law. Currently, the only authority to use Air Force appropriated funds for gifts is AFI 65-603, which specifies the circumstances and the individuals to whom gifts (or “mementos”) may be presented.”

Free speech by government employees

- [Garcetti v. Ceballos](#), 547 U.S. 410 (2006)
- [United States v. National Treasury Employees Union](#), 115 S.Ct. 1003 (1995)
- [Connick v. Myers](#), 461 U.S. 138 (1983)
- [Pickering v. Board of Education](#), 391 U.S. 563 (1968)
- OGE memo LA-11-06

Fundraising

- [5 CFR 2635.808](#)
- OGE memo DO-09-032, December 10, 2009, SUBJECT: A Reminder about Holiday Gifts & Fundraising
- JER 3-210a (endorsement of fundraising)
- JER 3-300a (fundraising in a personal capacity)

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- The 23-page [chapter](#) on Fundraising in the 2010 DoD Ethics Counselor’s Deskbook
- [AFI 36-3101](#), Fundraising Within The Air Force, 12 Jul 02

Furloughs

OGE Informal Advisory Opinion 04 X 6 (applicability of ethics laws and regs during furloughs)

Gambling

- [5 CFR 735.201](#)
- 41 CFR 102-74.395 (no gambling in GSA facilities)
- JER 2-302
- SOCO Advisory 10-06, by the DoD Standards of Conduct Office
- Gambling Law US [website](#) (contains information on Federal and State gambling laws) (no Federal endorsement intended!)

Gifts – \$20 / \$50 rule

[5 CFR 2635.204\(a\)](#)

Gifts – awards for meritorious public service or achievement

- 5 CFR 2635.204(d)
- OGE Informal Advisory Opinion 07 X 6 (cash award from non-Federal organization)

Gifts – benefit offered by non-prohibited source to group of employees not based on official responsibility and not favoring higher rank

- [5 CFR 2635.204\(c\)\(2\)\(iii\)](#)
- 27 May 10 DoD Standards of Conduct Office [memo](#) entitled “Gifts to Service Members and Their Families from Non-Federal Sources”, page 2, states, in relevant part:

“Exceptions. The following are examples of gifts acceptable under an exception:

...

For Groups. Opportunities and benefits offered from other than prohibited sources to a group of personnel that does not distinguish on the basis of official position, pay or rank. Examples would include all members in a particular unit; all personnel who responded to a particular disaster; and all personnel injured in a particular disaster or event (such as the bombing of the U.S.S. Cole, the attack on the Pentagon, the Iraq or Afghanistan theater of operations). 5 C.F.R. § 2635.204(c)(2)(iii)”

Gifts – contest prizes

- 5 CFR 2635.203(b)(5)
- Comp. Gen. Dec. B-199656, July 15, 1981
- OGE Informal Advisory Opinion 05 X 5
- OGE Informal Advisory Opinion 00 X 6
- OGE Informal Advisory Opinion 99 X 7

Gifts – discounts in general

- 5 CFR 2635.203(b)(4) (benefits free to the public or all government employees or all military)
- 5 CFR 2635.204(c) (four different discount provisions)
- OGE Informal Advisory Opinion 99 X 1 (detailed review of commercial discounts & benefits)

Gifts – from foreign governments

- [5 USC 7342](#)
- [DoD Directive 1005.13](#), Gifts and Decorations from Foreign Governments, 19 Feb 02
- JER 2-300b
- [AFI 51-901](#), Gifts from Foreign Governments, 16 Feb 05
- [AFI 51-901](#) combined with the AFMC Supplement to it
- [Notice](#) in 26 May 11 Federal Register re change in definition of “minimal value” from \$335 to \$350

Gifts – from registered lobbyists or lobbying organizations

- OGE notice in 13 Sep 11 Federal Register (proposed rule amending 5 CFR 2635 regarding gifts from registered lobbyists or lobbying organizations)
- A list of registered lobbying organizations can be found at the website [website](#) of the U.S. House of Representatives and the [website](#) of the U.S. Senate.

Gifts – general

- [5 CFR 2635.202](#) (general rules)
- [5 CFR 2635.203](#) (definitions)
- [5 CFR 2635.204](#) (exceptions to the ban on accepting gifts)
- [5 CFR 2635.205](#) (disposition of prohibited gifts)
- OGE memo DO-09-030, November 10, 2009 (gift of free attendance at events at the Kennedy Center for the Performing Arts)
- The 40-page [chapter](#) on Gifts in the 2010 DoD Ethics Counselor’s Deskbook
- Flow chart explaining the gift rules (prepared by Capt Ambar “Raju” Vyas & edited by Mr. Mark Stone, Wright-Patterson AFB OH, Spring 2011)

Gifts – giving away items paid for with government funds

[AFI 65-601, Vol.1](#), Budget Guidance and Procedures, 3 Mar 05, para. 4.29, states in relevant part:

“Awards and Gifts. Do not use appropriated funds to purchase gifts for military members, employees, or private citizens unless specifically authorized by law. Currently, the only authority to use Air Force appropriated funds for gifts is AFI 65-603, which specifies the circumstances and the individuals to whom gifts (or “mementos”) may be presented.”

Gifts – injured or ill service members

- JER 3-400
- SOCO Advisory 06-05, 31 Mar 06, by the DoD Standards of Conduct Office

Gifts – items with little intrinsic value intended solely for presentation

- [5 CFR 2635.203\(b\)\(2\)](#)
- A two-page, 30 Oct 03 [memo](#) by the DoD Standards of Conduct Office entitled “Gifts Intended Solely for Presentation”

Gifts – market value

- 5 CFR 2635.203(c)
- OGE memo DO-07-003, February 9, 2007, SUBJECT: Valuation of Gifts of Admission to an Event in a Skybox or Private Suite, states:

“The Office of Government Ethics consistently has advised that a gift of attendance in a skybox or private suite is determined by adding the market value of the most expensive publicly available ticket to the event to the market value of the food, parking and other tangible benefits provided in connection with the gift of attendance. Assume, for example, that an employee is offered free admission for two to a private suite at an arena to view a music concert. The most expensive ticket available to the public at retail for that event is \$150. However, in addition to the value of entrance to the event, attendance in the private suite comes with food and beverages provided during the concert valued at \$50 per person and a parking pass with a market value of \$25. Thus, the total value of the gift to the employee is \$425: \$300 for the admission for two, plus \$100 for the food and beverages for two, plus \$25 for the parking pass. [Footnote omitted.]”

Gifts - personal relationship exception

[5 CFR 2635.204\(b\)](#)

Gifts – rollout ceremonies

JER 2-300c

Gifts - social invitation rule

- [5 CFR 2635.204\(h\)](#)
- OGE Informal Advisory Opinion 08 X 1, dated 30 Jan 08

Gifts – solicitation

- 5 CFR 2635.202(a) states: “General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift: (1) From a prohibited source; or (2) Given because of the employee's official position.”
- 5 CFR 2635.202(c) states, in relevant part: “Notwithstanding any exception provided in this subpart..., an employee shall not: ... [s]olicit or coerce the offering of a gift.”

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- 5 CFR 2635.808(c) states, in relevant part: “Fundraising in a personal capacity. An employee may engage in fundraising in his personal capacity provided that he does not: (1) Personally solicit funds or other support from a subordinate or from any person [whom the employee knows is a prohibited source].”
- Chapter 30 of Volume 12 of the DoD Financial Management Regulation (DoD 7000.14-R) is 10 pages long and is entitled "Operation and Use of General Gift Funds." It contains a lot of guidance on the acceptance of gifts by DoD (including the Air Force) under 10 USC 2601. Chapter 30 also contains guidance on soliciting gifts. Section 300502 in Chapter 30 states: "Department of Defense personnel shall not solicit, fundraise for, or otherwise request or encourage the offer of a gift. Acceptance authorities shall not accept gifts offered contrary to this policy." Chapter 30 is at: http://comptroller.defense.gov/fmr/12/12_30.pdf
- Federal Acquisition Regulation (FAR) 3.101-2 is entitled “Solicitation and acceptance of gratuities by Government personnel.” It states:

“As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee’s agency, (b) conducts activities that are regulated by the employee’s agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties. Certain limited exceptions are authorized in agency regulations.”

- On 18 Nov 10, the DoD Standards of Conduct Office issued a memo entitled “Holiday Guidance For Department of Defense (DoD) Personnel.” On page 3, the memo states: “You may not solicit outside sources for contributions for your party. This includes funds, food, and items.”

Gifts – speaker’s rule

- 5 CFR 2635.204(g)(1), (g)(4) & (g)(6)
- OGE [memo](#) DO-10-003, dated 18 Feb 10 (free attendance at the event for the staff who accompany the official speaker)

Gifts – to superiors

- [5 USC 7351](#)
- [5 CFR 2635.301 - .304](#)
- JER 2-203
- DoD Standards of Conduct Office SOCO [Advisory](#) 09-03, 23 Mar 09, para. 6 (the Perry exception to the \$300 limit on group gifts to a superior should not be followed)
- Mark Stone’s 5-page, 11 Jul 11 document entitled “Information Paper on Retirement / PCS Gifts by DoD employees to a Superior”
- Mark Stone’s one-page, 19 Jul 11 document entitled “Bullet Background Paper on Air Force Employees Giving Gifts to a PCS’ing Superior” (see below)

BULLET BACKGROUND PAPER

ON

AIR FORCE EMPLOYEES GIVING GIFTS TO A PCS’ING SUPERIOR

PURPOSE

To state the key rules on AF employees giving PCS gifts to superiors. The term “employee” refers to military members and civilian employees.

DISCUSSION

- An individual subordinate may give a gift to a PCS’ing superior. There is no dollar limit on the gift. However, the gift must be appropriate to the occasion. [5 CFR 2635.302(b)]
- Gifts from a group containing one or more subordinates.
 - A PCS gift from a group containing one or more subordinates (a “donating group”) may not have a market value over \$300. [DoD 5500.7-R, Joint Ethics Regulation (JER), para. 2-203a] However, the cost of food, refreshments and entertainment provided to the PCS’ing employee and his or her personal guests to mark the occasion for which the gift is given shall not be included in determining whether the value of a gift or gifts exceeds the \$300 limit. [JER para. 2-203a(1)]
 - There is no limit on the number of donating groups that may give a PCS gift to a superior. However, the number should be based on common sense and reasonableness. [See Opinion of The Judge Advocate General of the Air Force 1995/67, 15 Aug 95]
 - It is permissible to solicit other AF employees to contribute to a PCS gift. [5 CFR 2635.304(c)] The solicitation may include a suggested dollar amount. [5 CFR 2635.304(c)(Example 5)] If the solicitation includes a suggested dollar amount, the solicitation must include the following language (or words to this effect): “You are free to give less or nothing at all.” [5 CFR 2635.303(f); 5 CFR 2635.304(c)(Example 5)] If the solicitation includes a suggested dollar amount, that amount may not be more than \$10. [JER para. 2-203b] The solicitation should state that contributions must be voluntary. AF employees may not coerce or pressure other AF employees to make a contribution. [5 CFR 2635.303(f)] It is permissible to contribute more than the suggested dollar amount for a PCS gift. For example, if the PCS gift will cost \$100, the suggested contribution is \$5, and the solicitation yields only \$75, an employee may volunteer to contribute more than \$5 to make sure the \$100 cost is covered.
 - Contractor employees may not be solicited to make a contribution to a PCS gift. [5 CFR 2635.202(a)(1)] If a solicitation e-mail is sent to a mail group containing contractor employees, the e-mail must make clear that the solicitation is directed at AF personnel and not at contractor personnel.

Mr. Stone/HQ AFMC/JAA/7-4951/mfs/19 Jul 11

Gifts – to the agency

- 10 USC 2601
- AFI 51-601, Gifts to the Department of the Air Force, 26 Nov 03
- [AFI 51-601](#) combined with the AFMC Supplement to it

Gifts – travel payments from non-Federal sources

- [31 USC 1353](#)
- 41 CFR Part 304
- JER 4-100c
- JER 4-101a
- SF 326 (must be completed if employee accepts more than \$250 in travel benefits)
- Agencies forward completed SF 326s to OGE, and OGE posts them on its website.
- A four-page information paper on travel payments from non-Federal sources (see below)

Information Paper on Federal Employees Accepting Travel Benefits from Non-Federal Sources

Introduction. There is a Federal law (31 USC 1353) that permits Federal agencies to accept gifts of travel expenses from non-Federal sources. The key provisions of the law’s implementing regulations are set forth below.

Basic rule. “[A Federal agency] may accept payment from a non-Federal source or authorize an employee and/or the employee’s spouse to accept payment on [the agency’s] behalf only when-

- (a) [The agency has] issued the employee (and/or the employee’s spouse, when applicable) a travel authorization before the travel begins;
- (b) [The agency has] determined that the travel is in the interest of the Government;
- (c) The travel relates to the employee’s official duties; and
- (d) The non-Federal source is not disqualified due to a conflict of interest under Sec. 304-5.3.” [41 CFR 304-5.1]

When this law may be used. Gifts of travel expenses may be accepted under this law in order to attend “a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee’s official station.” [41 CFR 304-2.1] The event must take

place away from your duty station for you to be able to accept travel expenses under this law. Examples of events for which travel expenses may be accepted under this law include:

“(1) An event where the employee will participate as a speaker or panel participant focusing on his/her official duties or on the policies, programs or operations of the agency.

(2) A conference, convention, seminar, symposium or similar event where the primary purpose is to receive training other than promotional vendor training, or to present or exchange substantive information of mutual interest to a number of parties.

(3) An event where the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulations.” [41 CFR 304-2.1]

When this law may not be used. Gifts of travel expenses may not be accepted under this law in order to attend “a meeting or other event required to carry out an agency's statutory or regulatory functions (i.e., a function that is essential to an agency's mission) such as investigations, inspections, audits, site visits, negotiations or litigation.” Gifts of travel expenses may not be accepted under this law in order to attend “promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal sources products or services.” [41 CFR 304-2.1]

Approval. “May my agency or I accept payment for travel expenses to a meeting from a non-Federal source? Yes, you or your agency may accept such a payment from a non-Federal source, but you may only accept when your agency specifically authorizes such acceptance under the requirements of this part. Except as provided in Sec. 304-3.13 of this part, your agency must approve acceptance of such payment in advance of your travel.” [41 CFR 304-3.3]

Approval authority. “Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting? An official at the highest practical administrative level who can evaluate the requirements in Sec. 304-5.3 [the conflict-of-interest test], must approve acceptance of such payments.” [41 CFR 304-5.2]

The DoD’s Joint Ethics Regulation, para. 4-100c, states: “Any official travel benefits from non-Federal sources accepted by the travel approving authority must be: (1) Approved in writing by the travel approving authority with the advice of the DoD employee’s Ethics Counselor; (2) If accepted under the authority granted by 31 U.S.C. 1353..., approved in advance of travel.”

Conflict of interest test. “What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?

(a) The approving official must not authorize acceptance of the payment if he/she determines that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. The approving official must be guided by all relevant considerations, including but not limited to the--

- (1) Identity of the non-Federal source;
 - (2) Purpose of the meeting;
 - (3) Identity of other expected participants;
 - (4) Nature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source;
 - (5) Significance of the employee's role in any such matter; and
 - (6) Monetary value and character of the travel benefits offered by the non-Federal source.
- (b) The agency official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.” [41 CFR 304-5.3]

Accepting travel expenses for travel by a Federal employee’s spouse. “May a non-Federal source pay for my spouse to accompany me to a meeting? Yes, a non-Federal source may pay for your spouse to accompany you when it is in the interest of and authorized in advance by your agency. All limitations and requirements of this part apply to the acceptance of payment from a non-Federal source for travel expenses and/or agency reimbursement of travel expenses for your accompanying spouse. Your agency may determine that your spouse's presence at an event is in the interest of the agency if your spouse will-- (a) Support the mission of your agency or substantially assist you in carrying out your official duties; (b) Attend a ceremony at which you will receive an award or honorary degree; or (c) Participate in substantive programs related to the agency's programs or operations.” [41 CFR 304-3.14]

Soliciting a gift of travel expenses. “May I solicit payment of my travel expenses from a non-Federal source to attend a meeting? No, you may not solicit payment for travel expenses from a non-Federal source to attend a meeting.” [41 CFR 304-3.5] “May I inform a non-Federal source of my agency's authority to accept payment for travel expenses to attend a meeting? Yes, you or your agency may inform the non-Federal source of your agency's authority to accept payment for travel expenses to attend a meeting.” [41 CFR 304-3.6]

Reporting travel expenses received. “Must I provide my agency with information about any payment I receive on its behalf? Yes. Your agency must submit to the U.S. Office of Government Ethics (OGE) a semiannual report (SF 326) of all payments it accepts under this part. You must be prepared to give your agency the information it needs in order to submit its report.” [41 CFR 304-3.15]

“What form must we use to report payments received by the agency from non-Federal sources? Your agency head or designee must submit Standard Form (SF) 326, Semiannual Report of Payments Accepted From a Non-Federal Source (fully completed) to report payments received from non-Federal sources. This applies to all payments that are more than \$250 per event for an

employee and accompanying spouse. For purposes of the \$250 threshold, payments for an employee and accompanying spouse shall be aggregated.” [41 CFR 304-6.4]

Financial disclosure reports. “If I am required to file a confidential or public financial disclosure report, must I report travel payments I receive from a non-Federal source on that report? Generally, no. As long as payments you receive from a non-Federal source are made to or on behalf of your agency, you are not required to report them as gifts on any confidential or public disclosure report you are personally required to file pursuant to law or Office of Government Ethics (OGE) regulations (5 CFR part 2634). ...The confidential financial disclosure report is OGE Form 450 and the public financial disclosure report is SF 278.” [41 CFR 304-3.17]

Limits. “Am I limited to the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source? Generally yes. Subsistence expenses are usually limited to the maximum subsistence allowances (per diem, actual expenses or conference lodging) prescribed in chapter 301 of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas and by the Secretary of State for travel in foreign areas. However, acceptance of payment for, and when applicable, reimbursement by an agency to an employee and the accompanying spouse of such employee are not subject to the maximum per diem or actual subsistence expense rates when traveling in CONUS or in non-foreign areas under the following conditions:

- (a) The non-Federal source pays the full amount of the subsistence expense, as authorized by your agency; and
- (b) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by other meeting attendees; and
- (c) Your agency has approved acceptance of payment from the non-Federal source prior to your travel; if your agency has not approved any acceptance from the non-Federal source, you may not exceed the maximum allowances. See Sec. 304-3.13. Note: The maximum subsistence allowances established by the Secretary of State for travel to foreign areas may not be exceeded.” [41 CFR 304-3.11]

Payment guidelines. “May we accept a monetary payment in the form of cash from a non-Federal source? No, you may not accept a monetary payment in the form of cash from a non-Federal source. Monetary payment(s) received from a non-Federal source must be in the form of a check or similar instrument made payable to the agency.” [41 CFR 304-6.1]

Definitions. “Non-Federal source means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, international or multinational organization (irrespective of whether an agency holds membership in the organization or association), or foreign, State or local government (including the government of the District of Columbia).” [41 CFR 304-2.1]

“Payment means a monetary payment from a non-Federal source to a Federal agency for travel, subsistence, related expenses by check or other monetary instrument payable to the Federal agency (i.e., electronic fund transfer (EFT), money order, charge card, etc.) or payment in kind.” [41 CFR

304-2.1] “Payment in kind means transportation, food, lodging, or other travel-related services provided by a non-Federal source instead of monetary payments to the Federal agency for these services. Payment in kind also includes waiver of any fees that a non-Federal source normally collects from meeting attendees (e.g., registration fees).” [41 CFR 304-2.1]

“Travel, subsistence, and related expenses (travel expenses) means the same types of expenses payable under chapter 301 of this title, the Foreign Affairs Manual (FAM), and the Joint Travel Regulations (JTR) for transportation, food, lodging or other travel-related services for official travel (e.g., baggage expenses, services of guides, drivers, interpreters, communication services, hire of conference rooms, lodging taxes, laundry/dry cleaning, taxi fares, etc).

These expenses also include conference or training fees (in whole or in part), as well as benefits that cannot be paid under the applicable travel regulations, but which are incident to the meeting, provided in kind, and made available by the meeting sponsor(s) to all attendees. For example, this definition as applied to this chapter would allow an employee or spouse to attend a sporting event hosted by the sponsor(s) in connection with the meeting that is available to all participants. However, it would not allow the employee to accept tickets to a professional sporting event, concert or similar event, for use at a later date even if such tickets were given to all other participants.” [41 CFR 304-2.1]

Mark Stone / HQ AFMC/JAA / Wright-Patterson Air Force Base OH / 12 Nov 10

Gifts – travel payments from tax-exempt organizations

- [5 USC 4111](#)
- OGE Informal Advisory Opinion 07 X 8 (discussion of 5 USC 4111)
- JER 4-102

Gifts – widely attended gathering (WAG) rule

- [5 CFR 2635.204\(g\)](#)
- A 15-page, 5 Dec 07 OGE [memo](#) memo entitled “Widely Attended Gatherings”
- A four-page, 3 Jul 08 [memo](#) by the DoD Standards of Conduct Office entitled “Special Edition: Application of the Widely Attended Gathering (WAG) Gift Exception to Invitations to Play Golf or Attend Sporting, Recreational or Entertainment Events”
- 1 Jul 11 OGE Federal Register [notice](#) on change from \$335 to \$350 re non-sponsor gifts
- OGE [memo](#) LA-11-05, August 17, 2011, “Increased Gifts and Travel Reimbursements Reporting Thresholds for Financial Disclosure Reports and Nonsponsor Widely Attended Gatherings Gift Exception Ceiling”
- Flow chart explaining the WAG rule (prepared by Capt Raju Vyas & edited by Mr. Mark Stone, Wright-Patterson AFB OH, June 2011)

Giving ethics advice

Attorney-client privilege. JER 1-214 states in relevant part:

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“Legal assistance officers (or equivalent) who also serve as Ethics Counselors must clearly separate these roles. Communications received in an Ethics Counselor capacity are not protected by the attorney-client privilege while communications received in a legal assistance capacity may be. Attorneys who serve as Ethics Counselors must advise individuals being counseled as to the status of that privilege prior to any communications.”

Golf

[AFI 34-116](#), Air Force Golf Course Program, 24 Jun 11 (para. 1.3 – use of golf courses by NFEs)

“Good government” groups (no Federal endorsement intended !!!)

- Citizens for Responsibility and Ethics in Washington
- Project on Government Oversight
- Public Citizen

Government purchase card

[AFI 64-117](#), Air Force Government-Wide Purchase Card (GPC) Program, 31 Jan 06 (para. 2.4 – list of prohibited purchases)

Guides

The 2010 DoD Ethics Counselor’s [Deskbook](#)

Holiday guidance

- OGE memo DO-09-032, December 10, 2009, SUBJECT: A Reminder about Holiday Gifts & Fundraising
- A five-page, 18 Nov 10 [memo](#) by the DoD Standards of Conduct Office entitled “Holiday Guidance for Department of Defense (DoD) Personnel”

Inherently governmental functions

Office of Federal Procurement Policy (OFPP) Policy [Letter](#) 11-01, Performance of Inherently Governmental and Critical Functions, dated 9 Sep 11.

Intergovernmental Personnel Act (IPA)

A four-page, 9 Dec 02 [memo](#) by OGE entitled “Application of the Financial Disclosure Requirements to Detailees under the Intergovernmental Personnel Act (IPA)”

Job hunting rules

- [18 USC 208\(a\)](#) (ban on negotiating for employment)
- [5 CFR 2635.601 - .606](#) (the job hunting rules for Executive Branch employees)
- OGE memo DO-04-029, September 20, 2004, SUBJECT: Seeking Employment

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- JER 2-204c (disqualification letters)
- JER 8-500b (DoD employees may not give inside information to prospective employer)
- JER 8-501 (DoD employees may obtain written advice on the job hunting rules)

Joint Ethics Regulation

[DoD 5500.7-R](#), Joint Ethics Regulation, 30 Aug 93

Leave – civilian employees

- [DoD Instruction 1400.25 Volume 630](#), DoD Civilian Personnel Management System: Leave, Dec 1996 (para. 6 lists 11 reasons to grant excused absence)
- [AFI 36-815](#), Absence and Leave, 5 Sep 02

Leave – military members

- [DoD Instruction 1327.06](#), Leave and Liberty Policy and Procedures, 16 Jun 09
- [AFI 36-3003](#), Military Leave Program, 26 Oct 09

Letters of recommendation

- [5 CFR 2635.702\(b\) & Example 1](#)
- Mark Stone’s one-page, 6 Jun 11 document entitled “Bullet Background Paper on Government Employees Writing Letters of Recommendation”
- Language for an article in an ethics newsletter (prepared by Mark Stone) (see below). The article is based on 5 CFR 2635.702(b).

Writing Letters of Recommendation

We routinely answer questions concerning the legality of government employees writing letters of recommendation. Government ethics rules do not prohibit government employees from writing letters of recommendation. However, there are conditions that must be met if a government employee would like to use official stationery and his or her official title in the signature block of a letter of recommendation. In order for a government employee to write a letter of recommendation and to use his or her official title and official stationery, all of the following three conditions must be met. First, the letter has been requested by the individual, OR by a company or organization that is considering the individual for some type of position or benefit. Second, the government employee has personal knowledge of the ability or character of the individual. Third, the government employee has dealt with the individual in the course of Federal employment, OR the government employee is recommending the individual for Federal employment. If you have any questions on this subject, please contact _____ at _____.

Lobbying, use of public funds for

- [18 USC 1913](#)

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- Application of Anti-Lobbying Restrictions to HUD Report Losing Ground, Comp. Gen. Dec. B-284226.2, August 17, 2000 (Department of Housing and Urban Development (HUD) prepared a report describing how cuts by Congress in HUD programs would have an adverse impact on families and communities and mailed it to its main constituents. No violation of 18 USC 1913 or appropriations act provision.)
- Lobbying Activity in Support of China Permanent Normal Trade Relations, Comp. Gen. Dec. B-285298, May 22, 2000 (Department of Agriculture employee sent an e-mail to two farmers' organizations stating that a Member of Congress "needs to hear from farmers in his district" about the pending legislation on permanent normal trade relations (PNTR) for China. No violation of 18 USC 1913, but there was a violation of an appropriations act provision.)
- Forest Service Violations of Section 303 of the 1998 Interior Department Appropriations Act, Comp. Gen. Dec. B-281637, May 14, 1999 (Actions by Forest Service employees to implement a Communication Plan for the Forest Service Natural Resource Agenda violated an appropriations act anti-lobbying provision.)
- Matter of: The Honorable William F. Clinger, Comp. Gen. Dec. B-270875, July 5, 1996 (The activities of five Federal agencies did not violate 18 USC 1913. A series of publications entitled "America's Job Fax," prepared and distributed by the Department of Labor, did not violate the annual Labor-HHS appropriations act.)
- Comp. Gen. Dec. B-262234, December 21, 1995 (Remarks made by a Fish and Wildlife Service employee at a press conference called to generate opposition to a pending amendment to the Clean Water Act tended to promote public opposition to the legislative proposal and hence violated the Department of Interior Appropriations Act restriction.)
- Comp. Gen. Dec. B-239856, April 29, 1991 (Actions by employees of the National Endowment for the Arts (NEA) in connection with NEA's then pending reauthorization did not violate 18 USC 1913 or the anti-lobbying provision in the 1990 Interior Department Appropriations Act.)
- Comp. Gen. Dec. B-229069.2, August 1, 1988 (National Security Council memorandum regarding funding for the Nicaraguan Contra Forces did not violate 18 USC 1913)
- Comp. Gen. Dec. B-229257, June 10, 1988 (Speeches and statements by the Chairman of the FTC advocating repeal of the statutes creating the Postal Service monopoly did not violate 18 USC 1913. Questions prepared by the FTC and given to the press for use in questioning the Postmaster General about weaknesses in the Postal Service did not violate the publicity and propaganda provision in the FTC's appropriations act.)
- Comp. Gen. Dec. B-231210, June 7, 1988, aff'd upon reconsideration, B-231210, June 4, 1990 (The Legal Services Corporation may not retain private law firms for the purpose of lobbying the Congress.)

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- 66 Comp. Gen. 707, B-229069, September 30, 1987 (Actions by State Department's Office of Public Diplomacy for Latin America and the Caribbean in support of Nicaraguan contra forces.)
- Comp. Gen. Dec. B-226449, Legality of the Secretary of Agriculture’s Statements Concerning the Wheat Poll, April 3, 1987 (Secretary of Agriculture’s statements that wheat producers should not vote in favor of mandatory production limits in a non-binding poll did not violate 18 USC 1913, the appropriations act anti-lobbying provision, or the GAO’s position that the government should not disseminate misleading information.)
- Comp. Gen. Dec. B-223098.2, October 10, 1986 (Public information materials of the SBA, including a pamphlet entitled "The Future of SBA," did not violate 18 USC 1913. However, the "suggested editorials" prepared by the SBA for distribution to newspapers did violate the "publicity and propaganda" provision in the appropriations act.)
- 64 Comp. Gen. 281, B-217678, February 19, 1985 (There were no anti-lobbying provisions that applied to the Tennessee Valley Authority in the appropriations acts for fiscal year 1985.)
- 63 Comp. Gen. 624, B-129874, September 26, 1984 (Federal judges are not prohibited by 18 USC 1913 or the anti-lobbying provisions in the applicable appropriations act from expressing their views on legislation directly to Congress or the public.)
- Comp. Gen. Dec. B-212235, November 17, 1983 (A Commerce Department official wrote an article and published it in Business America, a Commerce Department publication. The article explicitly urged readers to contact their elected representatives in Congress to support certain amendments to the Export Administration Act. GAO considered publication of the article sufficiently questionable to refer the matter to the Department of Justice.)
- Comp. Gen. Dec. B-212069, October 6, 1983 (A press release by the Director of the Office of Personnel Management criticizing certain Members of Congress who wanted to delay a civil service measure that the administration supported did not violate the appropriations act publicity and propaganda provision.)
- Comp. Gen. Dec. B-193545, March 13, 1979 ("The Federal criminal statute dealing with lobbying with appropriated funds, 18 U.S.C. Sec. 1913 (1976), does not extend to attempts to influence State legislatures.")
- Comp. Gen. Dec. B-129874, September 11, 1978 (Discusses providing assistance to lobbying groups. Also, canned editorials and sample letters to the editor in support of Consumer Protection Agency legislation would have violated the publicity or propaganda provision, if they had been prepared.)
- 56 Comp. Gen. 889, August 10, 1977 (There is no violation if appropriated funds are not involved. A newsletter concerning the Clinch River Breeder Reactor Project contained material that would have violated the law if the newsletter had been financed in any way with appropriated funds.)

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- Comp. Gen. Dec. B-133332, March 28, 1977 (Discusses providing assistance to lobbying groups.)
- Comp. Gen. Dec. B-178448, April 30, 1973 (The White House was opposed to 15 bills that were pending in Congress because it believed they would exceed the administration's 1974 budget. The White House prepared a kit entitled, "Battle of the Budget 1973." The kit included statements that people should be urged to write their representatives in Congress to support the administration's opposition to the 15 bills. This violated the publicity or propaganda provision of an appropriations act.)
- Comp. Gen. Dec. B-116331, May 29, 1961 (Actions by the Post Office to defeat pending legislation violated 18 USC 1913.)

Medical research

- DoD Directive 3216.02, Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research, 25 Mar 02
- AFI 40-402, Protection of Human Subjects in Biomedical and Behavioral Research, 5 May 05

Merit Systems Protection Board (MSPB) cases

MSPB cases are available on the MSBP [website](#).

Military rank, use of

- [5 CFR 2635.702\(e\)](#)
- [5 CFR 2635.807\(b\)\(3\)](#)
- JER 3-300(a)(1)

Misuse of position

- [5 CFR 2635.702 & .702\(a\)](#)
- OGE Informal Advisory Opinion 07 X 11 (misuse of Federal position to help another person get a job)

Mutual funds

- [5 CFR 2640.201](#)
- On 3 May 11, OGE published in the Federal Register a proposed rule that would clarify the exemption on sector mutual funds at 5 CFR 2640.201(b).

Nepotism

- [5 USC 3110](#)
- 5 USC 2302(b)(7)

Non-appropriated funds (NAFs) and non-appropriated fund instrumentalities (NAFIs)

- The 16-page [chapter](#) on NAFIs and MWR in the 2010 DoD Ethics Counselor’s Deskbook
- [AFI 34-201](#), Use of Nonappropriated Funds (NAFS), 17 Jun 02
- OGE Informal Advisory Opinion 08 X 5 (teaching courses offered by a non-appropriated fund instrumentality (NAFI))

Non-Federal entities – attending NFE meetings & conferences in an official capacity

- [5 CFR 410.404](#) (when a government employee may attend an NFE conference as a training activity)
- JER 3-200a states: “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.”
- Part 2 of Appendix R (in the 256-page [Appendices](#) document) of Joint Federal Travel Regulation / Joint Travel Regulation reads in relevant part as follows:

“A. General. A DoD civilian employee and/or a Uniformed Service member may attend and participate in conferences/meetings of recognized professional organizations to maintain and improve professional competency at GOV’T expense (including TDY expenses), subject to the availability of funds and the employee’s/member’s work responsibilities.

B. Authority. Title 5 USC §4110 and 37 USC §412 authorizes conference attendance expenditures for meetings concerned with the functions and activities of the Uniformed Services/DoD AGENCY which contribute to improved conduct, supervision, or management of the component’s functions and activities are authorized as a necessary expense. This authority applies to attendance at technical, scientific, professional, or similar private membership non-Federal societies and organizations (38 Comp. Gen. 800 (1959) and 55 Id. 1332 (1976)). This authority is independent of the training authority included in JTR, par. C4630 and JFTR, par. U1050 unless it is administratively determined that training is the primary purpose of attendance at a meeting.

...

D. Non-Government Sponsored Conferences

...

3. Purpose. A Uniformed member and/or a DoD civilian employee may attend conferences at GOV’T expense to:

- a. Further Service or DoD AGENCY programs;
- b. Present scientific and technical papers which further the development of the U.S. resources; and
- c. Maintain an effective professional, scientific, technical, managerial, and supervisory workforce.”

Non-Federal entities – co-sponsorships

- JER 3-206
- The [chapter](#) on non-Federal entities in the 2010 DoD Ethics Counselor’s Deskbook (pages 15-17)

Non-Federal entities – general

The 40-page [chapter](#) on non-Federal entities in the 2010 DoD Ethics Counselor’s Deskbook

Non-Federal entities – DoD Liaison

JER 3-201a

BULLET BACKGROUND PAPER

ON

SERVING AS A DOD LIAISON TO A NON-FEDERAL ORGANIZATION

PURPOSE

To provide guidance regarding the rules that apply to individuals serving as a DoD Liaison

DISCUSSION

- A commander may appoint an employee as a DoD Liaison to a non-Federal organization, if he or she determines that doing so would serve a significant and continuing DoD interest.
- Liaisons may officially represent DoD in discussions of matters of mutual interest.
- Liaisons represent the interests of DoD (not the interests of the non-Federal organization) in an advisory capacity.
- Liaisons should make clear to the non-Federal organization that the opinions they express do not bind DoD or AF to any action.
- Liaisons serve as part of their official duties and thus may use official resources (such as government time, GOVs, secretarial services, etc).
- Liaisons may not be involved in matters of management or control of the non-Federal organization (and therefore may not vote on such matters).
- If the name of the Liaison will be listed on the website or letterhead of the non-Federal organization next to the names of leaders of the organization, the term “DoD Liaison” should be placed next to the Liaison’s name.
- Liaisons may not officially endorse the non-Federal organization, or its events, products, services, or enterprises.

- Liaisons may not participate in, or provide advice concerning, any efforts by the non-Federal organization to influence congressional action on any legislation or appropriation matters pending before the U.S. Congress.
 - Rationale: The DoD Appropriations Act for FY 2010, Public Law 111-118, Section 8014, states: “None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.”

Mark Stone/HQ AFMC/JAA/7-4951/mfs/29 Oct 10

Non-Federal entities – informing other DoD employees about NFE events

JER 3-208

Non-Federal entities – management positions

- On 19 Nov 96, the Office of Legal Counsel (OLC) of the Department of Justice issued an [opinion](#) entitled “Service on the Board of Directors of Non-Federal Entities by Federal Bureau of Investigation Personnel in their Official Capacities.” The opinion’s conclusion, which is stated on page 1 of the opinion, is as follows: “Section 208 of title 18 prohibits a government employee from serving on the board of directors of an outside organization in his or her official capacity, unless the service is authorized by statute or the employee obtains either a release of fiduciary obligations by the organization or a waiver of the requirements of section 208.”
- [Memorandum](#) from the Director of the Office of Science and Technology Policy, “Scientific Integrity,” December 17, 2010
- [Article](#) on The White House Blog entitled “Scientific Integrity: Fueling Innovation, Building Public Trust,” December 17, 2010
- OGE’s notice in the 3 May 11 Federal Register (proposed rule that would permit Executive Branch employees to serve in management positions in non-profit organizations in an official capacity)
 - JER 3-202 (service in an official capacity)
 - JER 3-301 (service in a personal capacity)

Non-Federal entities – personal participation in NFE activities

- JER 3-300
- Mark Stone’s one-page, 12 May 11 document entitled “Participation by DoD Personnel in Non-Federal Entities (NFEs) in a Personal Capacity” (contains 28 legal authorities) (see below)

Participation by DoD Personnel in Non-Federal Entities (NFEs) in a Personal Capacity

- NFEs include private companies, non-profit organizations, and professional associations or societies. The term “NFE activity” includes routine meetings, membership drives, fundraising events, and conferences. Note: This paper mentions many of the rules on this topic (but not all).

It is permissible for you to do the following.

- Participate in NFE activities in your personal, off-duty capacity, if you act exclusively outside the scope of your official position. [DoD 5500.7-R, Joint Ethics Regulation (JER), 3-300a]
- Participate in the management of an NFE (e.g., as an officer, director or trustee) in your personal capacity. However, if you are offered a management position in an NFE because of your DoD assignment or position, you may not serve in that position, even in your personal capacity. [JER 3-301] Also, if you file a financial disclosure report (OGE Form 278 or OGE Form 450), you must report your service in the NFE in the following positions: officer, director, trustee, general partner, proprietor, representative, executor, employee or consultant. [5 CFR 2634.307(a) & .907(e)(1)]
- Use, or permit the use of, your military rank and branch of service (e.g., Colonel, USAF, or Colonel, USAF (Retired)) in connection with your participation in an NFE activity. [JER 2-304 & 3-300a(1)]
- Use official channels (e.g., informational memoranda) to notify other agency employees about an NFE activity. [JER 3-208] The notification must be purely factual, may not be an actual or implied official endorsement of the activity, and may not convey the impression that base leaders encourage or expect participation by employees. A 28 May 96 DoD/GC-SOCO memo states that “all words of praise for any non-Federal entity or event should be avoided in informational memoranda” and that “words such as ‘endorse,’ ‘support,’ ‘encourage,’ ‘recommend,’ and ‘urge’ should not be used....” Also, sending information by official e-mail must comply with your agency’s e-mail regulation.

It is not permissible for you to do the following (except where authorized by statute or regulation).

- Use your own official time to participate in an NFE activity (5 CFR 2635.705(a)), or direct or pressure subordinates to use official or personal time to support an NFE activity in which you are participating in your personal capacity. (5 CFR 2635.702(a), .705(b) & .808(c); JER 3-305b).
- Use govt. property or resources to support an NFE activity (5 CFR 2635.704), or use your official position or authority to coerce or pressure DoD contractors or their employees to support an NFE activity in which you are participating in your personal capacity. [5 CFR 2635.702(a) & .808(c)]

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- Use, or permit the use of, your official title or organization name (e.g., Director, Base Contracting Office) in connection with an NFE activity. [5 CFR 2635.702(b) & .807(b); JER 3-300a(1)]
- Take any action that constitutes an express or implied endorsement by your agency of an NFE, or an NFE event, product, service or enterprise. [5 CFR 2635.702(c); JER 3-209; JER 3-210a]
- Participate personally and substantially in a particular govt. matter in which an NFE has a financial interest (e.g., a decision on whether to provide support to an event by the NFE), if you are an officer, director, trustee, general partner or employee of the NFE. [18 USC 208(a); 5 CFR 2635.402]
- Act as an agent for an NFE before any Federal agency (not just your own) in connection with any particular matter in which the U.S. Government is a party or has a direct and substantial interest (e.g., serving as the negotiator for an NFE in negotiations with a Federal agency). [18 USC 205; JER 5-403] This rule does not apply to enlisted military personnel. [18 USC 202; JER 5-403a]

Mark Stone, Lt Col, USAFR / ASC/JA / Wright-Patterson Air Force Base OH / 12 May 11

Non-Federal entities – paying for organizational memberships with appropriated funds

- [AFI 65-601, Volume I](#), Budget Guidance and Procedures, 3 Mar 05 (para. 4.44)
- In Chemical Safety and Hazard Investigation Board – Membership Fees, Comp. Gen. Dec. B-305095, dated 8 Dec 05, the Comptroller General stated:

“The general rule regarding membership fees is that an agency may use its appropriation to pay for an agency membership in a private association when the membership furthers the purpose of the appropriation. The expenditure of appropriated funds to pay membership dues of federal employees in an organization, association, or society is generally prohibited by 5 U.S.C. Sec. 5946. However, the prohibition of 5 U.S.C. Sec. 5946 does not apply to memberships in an agency’s name. In such cases, the payment of membership fees is proper if it would constitute a necessary expense. [Citations omitted.]”

- In Matter of Bureau of Land Management - Availability of Appropriations to Pay Expenses for Employees to Obtain a Certified Government Financial Manager Designation File, Comp. Gen. Dec. B-260771, 11 Oct 95, the Bureau of Land Management was advised it could not use its appropriations to reimburse employees for the cost of obtaining a Certified Government Financial Planner designation. The opinion likens the procurement of the designation to payment for professional licenses which may be necessary for an employee to qualify for and then satisfactorily perform government duties. Expenditure of appropriated funds in either case is prohibited.
- In Matter of Dr. Robert Gelber - Reimbursement of Medical Staff Dues, Comp. Gen. Dec. B-241706, June 19, 1991, the opinion addresses the U. S. Public Health Services claim for

reimbursement of Dr. Gelber's annual medical staff dues at a local hospital. Payment of the dues allows hospital staff privileges. Without the privileges, Dr. Gelber could not see patients related to his duties as a member of the PHS Commissioned Corporation stationed at Regional Hansen's Disease Center in San Francisco, California. The reimbursement was allowed because Dr. Gelber's medical staff privileges are essential to the agency's performance of its mission.

- In Matter of Defense Medical Systems Support Center - Health and Fitness Programs, Comp. Gen. Dec. B-240371, January 18, 1991, 70 Comp Gen 190, the Center contracted with a private fitness center to provide an exercise facility for its civilian and military employees. When the Center requested renewal of the contract, the request was denied prompting the Center's Director to request an opinion. HELD: The Center was not using appropriated funds to pay for membership and fees "in a society or association," a practice that violates 5 USC § 5946. Instead, the Center used the funds to provide memberships in a private facility, which was used in turn to provide a health fitness program, by contract, to the Center's employees. The activity is authorized by 5 USC § 7901, which does not conflict with 5 USC § 5946.
- In Matter of Coast Guard Membership Fees, Comp. Gen. Dec. B-221569, June 2, 1986, the Coast Guard was allowed to use appropriated funds to pay for agency membership in an unspecified "private organization." The opinion is important because it identifies two critical criteria. First, use of the funds for membership will be allowed if the agency can show that the benefit to be derived accrues to the agency as a whole, even if individuals within the agency receive incidental benefit. Second, appropriated funds can only be used if the agency can establish that the membership will “contribute substantially to fulfillment of its mission.” The opinion does not define “contribute substantially to fulfillment of its mission.”
- In Matter of Federal Law Enforcement Training Center, Comp. Gen. Dec. B-213535, July 26 1984, The Director of the Federal Law Enforcement Training Center purchased a membership in a local Chamber of Commerce for \$65.00 and sought reimbursement for the membership fee. The Director argued that he purchased the membership "for the benefit of the Center." No membership was procured in the name of the Center. HELD: Reimbursement is not authorized. "Payments must be made directly to a public creditor by an authorized disbursing officer of the United States out of public funds and no officer or employee of the Government can create a valid claim in his favor by paying obligations of the United States from his own funds." While a membership in the name of the Center would likely be authorized because such a membership would further the Center's mission, membership fees may not be obtained in the name of employees, however, unless authorized by a specific appropriation, or the membership is part of an employee training program authorized by 5 USC 4109 & 4110.
- In Matter of Payment of Agency's Membership Fees in Private Organization, Comp. Gen. Dec. B-205356, July 23, 1982, 61 Comp Gen 542, the Commander of the Naval Air Development Center sought to use \$100.00 of appropriated funds for membership fees in the Warminster (PA.) Rotary Club. The Commander was initially advised that use of appropriated funds for the membership was improper. He sought the opinion of the Comptroller General. HELD: The membership was to be taken out in the name of the Naval Air Development Center and not in the name of the Commander individually. The membership for the Center was deemed appropriate because the Commander established that the membership was necessary to carry out

the Center’s mission. The primary benefits of membership accrued to the Center and not to any individual and would contribute substantially to the Center effectively carrying out its mission.

- In Matter of State Bar Membership Fee, Comp. Gen. Dec. B-204215, 28 Dec 81, an estate tax attorney with the Internal Revenue Service may not be reimbursed his state bar membership fee. The membership fee is a personal expense incurred by the attorney to qualify for his government employment. [See Matter of Sharon Danic - Reimbursement of State Bar Membership Dues, Comp. Gen. Dec. B-204213, 9 Sep 81, for an opinion identical to B-204215.]
- In Matter of Department of Defense – Payment of Training Instructor’s Licensing Fees, Comp. Gen. Dec. B-201052, December 23, 1981, 61 Comp Gen 162, The Army Management Engineering Training Agency sought to pay licensing fees for its Methods Time Management (MTM) instructors. MTM is a non-profit corporation which provides biomechanics training. Its clients, such as the Army, were considered members of the "MTM Association." MTM collected a membership fee from its clients. As part and parcel of membership and payment of the fees, MTM provided instructor certification and training materials. If the fee isn’t paid, the training materials are not provided. DoD General Counsel argued that “because instructors must first be trained and certified by the MTM Association before they can train others, the licensing fee is directly related to the training of instructor and hence, the personnel of DoD.” HELD: The payment of the fee is a necessary cost directly related to the training itself within the contemplation of 5 USC § 4109(b).
- In Matter of Linda Rose - Payment of Individual Membership, Comp. Gen. Dec. B-198720, June 23, 1980, Ms. Rose requested reimbursement of her \$20.15 membership to Federally Employed Women (FEW). 5 USC § 5946 prohibits reimbursement because the membership is an individual membership.
- In Matter of Payment For Travel Club Membership Fees, Comp. Gen. Dec. B-103315, June 8, 1978, 57 Comp Gen 526, the San Francisco office of Housing and Urban Development requested reimbursement for Air Travel Club memberships. Specifically, HUD wanted to buy travel club cards that gave employees discounted fares when they flew between islands in Hawaii. Normally, these cards are purchased in the name of individual employees. However, one of the airlines agreed to provide the memberships to the agency. 5 USC § 5946 does not prohibit this practice.
- In Matter of Federal Mediation and Conciliation Service - Payment of Membership Dues, B-205768, March 2, 1978, the opinion addresses whether the Federal Mediation and Conciliation Service can spend appropriated funds for the membership dues of the Deputy Director in the Association of Labor Relations Agencies. The payment of dues was requested regarding an individual membership and not an agency or organization membership. Therefore, the payment is disallowed by 5 USC § 5946.

Non-Federal entities – professional associations (PA’s)

- JER 3-300a (participation in PA activities and preparation of papers for PA’s)
- [Memorandum](#) from the Director of the Office of Science and Technology Policy, “Scientific Integrity,” December 17, 2010

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- [Article](#) on The White House Blog entitled “Scientific Integrity: Fueling Innovation, Building Public Trust,” December 17, 2010

Non-Federal entities – providing speakers, equipment & facilities to NFE events

- JER 3-211
- DoD Standards of Conduct Office SOCO [Advisory](#) 09-03, 23 Mar 09, para. 7
- DoD Standards of Conduct Office SOCO [Advisory](#) 11-02, dated 2 Jun 11, para. 6

Non-Federal entities – standard-setting organizations

- OGE memo DO-98-025, Application of 18 U.S.C. 208 to Service on Boards of Standards-Setting Organizations, 2 Sep 98
- 2010 DoD Ethics Counselor’s Deskbook, chapter on NFEs, page G-9
- [DoD 4120.24-M](#) Defense Standardization Program (DSP) Policies and Procedures, March 2000

Non-public information

[5 CFR 2635.703](#)

Off-duty employment – civil office rule

- [10 USC 973\(b\)](#)
- JER 5-407
- JER 9-901b
- 56 Comp. Gen. 855

Off-duty employment – contracting with Federal employees

- FAR 3.601
- JER 5-402
- Science Pump Corporation, Comp. Gen. Dec. B-255737, 94-1 CPD ¶ 246, March 25, 1994. Individual who was hired by the University of Colorado and who worked at an institute created by a cooperative agreement between the University and the National Oceanic and Atmospheric Administration was not a Federal employee for purposes of FAR 3.601.
- Gurley’s Inc., Comp. Gen. Dec. B-253852, 93-2 CPD ¶ 123, August 25, 1993. Substantial control found where Air Force husband and wife were president and vice president, respectively, of the bidder and where they substantially controlled the business.
- KSR, Inc., Comp. Gen. Dec. B-250160, 93-1 CPD ¶ 37, January 13, 1993. Substantial control was determined where the Army employee was president and one of five equal shareholders in the company.

- Marc Industries, Comp. Gen. Dec. B-246528, 92-1 CPD ¶ 273, March 10, 1992. Bureau of Land Management properly determined that an Air Force noncommissioned officer (NCO) substantially controlled the bidder. The NCO represented the contractor in prework conferences, served as the contact for any complaints, and, based on his involvement with the firm, was previously disciplined for violating Air Force conflict of interest regulations.
- HH & K Builders, Inc., Comp. Gen. Dec. B-238095, 90-1 CPD ¶ 219, February 23, 1990. Award was not disturbed where, although the sole owner’s husband was a Government employee, the Air Force had determined sufficient separation between his wife’s ownership and his official Air Force duties.
- Wildcard Associates, Comp. Gen. Dec. B-235000, 68 Comp. Gen. 563, 89-2 CPD ¶ 74, July 24, 1989. Firm had sufficient interest to file protest, even though two of its partners were Government employees. Both partners were eligible to retire from Federal service and asserted that they would do so if the firm was awarded the contract.
- John Peeples, Comp. Gen. Dec. B-233167, 89-1 CPD ¶ 178, February 21, 1989. Navy improperly rejected bid bond of firm guaranteed by individual who happened to be a Government employee.
- Tamara L. Wolf, Comp. Gen. Dec. B-233317, 68 Comp. Gen. 212, 89-1 CPD ¶ 99, January 31, 1989. Protest dismissed since bidder, a Government employee, was prohibited from receiving the contract under FAR 3.601.
- Speakman Co. v. Weinberger, 837 F.2d 1171 (D.C. Cir. 1988). Appeals Court, in reversing District Court, held that the award of a Navy contract to a former Government employee was proper where the former employee terminated his Government employment prior to the contract award date.
- Dynamic Science, Inc., Comp. Gen. Dec. B-228743, 87-2 CPD ¶ 196, August 21, 1987. The term “Government employee” in FAR 3.601 applies only to Federal employees.
- Friends of the Waterfront, Inc., Comp. Gen. Dec. B-225378, 66 Comp. Gen. 190, 87-1 CPD ¶ 16, January 6, 1987. The Army Corps of Engineers properly disqualified a firm from competing for the contract since the firm’s co-founder and officer was a Government employee who had signed the firm’s bid.
- Big Sky Resource Analysts, Comp. Gen. Dec. B-224888, 87-1 CPD ¶ 9, January 5, 1987. Award to former U.S. Forest Service seasonal employee upheld where former employee terminated his Government employment one day prior to the contract being awarded.
- Revet Environment & Analytical Laboratories, Inc., Comp. Gen. Dec. B-221002.2, 86-2 CPD ¶ 102, July 24, 1986. Environmental Protection Agency (EPA) properly disqualified firm from bidding on contract. Firm was owned by an EPA employee and, even though he later divested himself, there was still the appearance of a conflict of interest.

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- Cooley Container Corporation, Comp. Gen. Dec. B-220801, 86-1 CPD ¶ 114, January 31, 1986. The Army properly disqualified a firm from bidding on the contract. Husband, an Air Force employee, was the sole incorporator of the firm.
- Mesa, Inc., Comp. Gen. Dec. B-220657, 85-2 CPD ¶ 724, December 27, 1985. FAR 3.601 does not prohibit a potential bidder from employing a Government employee.
- Defense Forecasts, Inc., Comp. Gen. Dec. B-219666, 65 Comp. Gen. 87, 85-2 CPD ¶ 629, December 5, 1985. Arms Control and Disarmament Agency (ACDA) properly determined that there was the appearance of a conflict of interest when the firm proposed to use, as a consultant, a special Government employee of ACDA.
- Ernaco, Inc., Comp. Gen. Dec. B-218106, 85-1 CPD ¶ 592, May 23, 1985. EPA properly disqualified firm on basis that its majority shareholder was also a special Government employee who had been retained by the EPA to provide consulting services.
- J. Allen Grafton, Comp. Gen. Dec. B-212986, 84-1 CPD ¶ 263, March 5, 1984. The U.S. Forest Service unreasonably rejected a bid from the son of an employee, where the employee had no responsibility for the contract and where there was no indication that the employee disclosed confidential agency information to his son.
- Joann Flora, Comp. Gen. Dec. B-212776, 83-2 CPD ¶ 520, October 31, 1983. Disqualification to purchase used government vehicles by unmarried woman who lived with Department of Agriculture employee as spouse was upheld. Agency regulations prohibited the sale of surplus property to employees or members of their household and the employee was responsible for determining whether property should be repaired or condemned.
- International Alliance of Sports Officials, Comp. Gen. Dec. B-210172, 83-2 CPD ¶ 328, September 15, 1983. Agency did not abuse its discretion in accepting low bid of organization owned or controlled by Government employees where other bid was 25 percent higher.
- Heidi Holley, Comp. Gen. Dec. B-211746, 83-2 CPD ¶ 241, August 23, 1983. The U.S. Forest Service properly rejected the bid of a Forest Service employee’s wife where agency regulations generally prohibited awarding contracts to family members and where the employee would be supervising the performance of the awarded contract.
- Electronics West, Inc., Comp. Gen. Dec. B-209720, 83-2 CPD ¶ 127, July 26, 1983. Disqualification of firm for Army contract was appropriate even though the Government employee’s status with the firm changed from president to treasurer.
- Sterling Medical Associates, Comp. Gen. Dec. B-209493, 83-1 CPD ¶ 215, March 1, 1983. Navy’s award of contract for radiology services to Veteran’s Administration (VA) doctor upheld where Navy had no knowledge of doctor’s status at time of award and where doctor terminated his employment with VA thereafter.

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- National Service Corporation, Comp. Gen. Dec. B-205629, 82-2 CPD ¶ 76, 26 Jul 82. Held that Government employee had no substantial ownership or control of the firm. The partnership, which originally owned the business, was dissolved and the firm was incorporated. The govt. employee owned no stock in the firm and was employed only part-time as a bookkeeper.
- Elogene Thurman, Comp. Gen. Dec. B-206325, 82-1 CPD ¶ 487, May 24, 1982. General Services Administration properly disqualified wife of Government employee from bidding on contract since her husband, in fact, operated the business.
- American Truss & Mfg. Corp., Comp. Gen. Dec. B-205962, 82-1 CPD ¶ 477, May 18, 1982. Army properly refused to award contract to firm where a Government employee owned 50 percent of the firm’s stock and was its secretary/treasurer while his wife owned the remaining stock and was the firm’s president.
- Valiant Security Agency, Comp. Gen. Dec. B-205087, 61 Comp. Gen. 65, 81-2 CPD ¶ 367, October 29, 1981, reconsideration denied, B-205087.2, 81-2 CPD ¶ 501, December 28, 1981. Refusal to award contract to firm owned by Government employee upheld, even where firm was low bidder.
- Biosystems Analysis, Inc., Comp. Gen. Dec. B-198846, 80-2 CPD ¶ 149, August 25, 1980. Award of contract by U.S. Forest Service to firm, one of whose principals was employed by the U.S. Fish and Wildlife Service, was upheld. At time of award, U.S. Forest Service had no knowledge that one of the principals was a Government employee and no misrepresentations were made by the awardee.
- Air Force Manual 64-302, Nonappropriated Fund (NAF) Contracting Procedures, 3 Nov 00, para. 11.11 (award of NAF contracts to government employees permitted).

Off-duty employment – covered non-career employees

- 5 CFR 2635.804
- OGE Informal Advisory Opinion 05 X 7 (restrictions on covered non-career employees)
- OGE Informal Advisory Opinion 05 X 2 (2) (Who is a “covered non-career employee?”)
- OGE Informal Advisory Opinion 04 X 10 (whether an agency director is a “covered non-career employee?”)

Off-duty employment – expert witness

[5 CFR 2635.805](#)

Off-duty employment – general

- [5 CFR 2635.802](#)
- [5 CFR 2635.803](#)
- JER 2-206
- JER 2-303

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- JER 3-306
- The 20-page [chapter](#) on Outside Activities in the 2010 DoD Ethics Counselor’s Deskbook
- SOCO Advisory 06-13, 22 Dec 06, by the DoD Standards of Conduct Office, para. 1, entitled “Application of 18 U.S.C. 205 and 203 to Federal Personnel Working As Contractors in the Federal Workplace (Usually on Terminal Leave or Moonlighting).”
- Air Force Form 3902 (off-duty employment approval form)
- [AFMC Instruction 51-201](#), Off-Duty Employment, 15 Dec 04
- Mark Stone’s 12-page, 19 Nov 10 document entitled “40 Rules on Off-Duty Employment by Executive Branch Employees”

Off-duty employment – medical personnel

AFI 44-102, Medical Care Management, 1 May 06 (para. 1.7 – off-duty employment by medical personnel)

Off-duty employment – participation in media productions

The [chapter](#) on Outside Activities in the 2010 DoD Ethics Counselor’s Deskbook (page 7)

Off-duty employment – sales to subordinates or junior ranking personnel

- JER 2-205 (soliciting sales to a subordinates or junior ranking personnel)
- JER 5-409 (soliciting sales to a subordinates or junior ranking personnel)

Off-duty employment – teaching, speaking & writing (see also the section on “Books” above)

- [5 CFR 2635.807](#)
- OGE Informal Advisory Opinion 10 X 1, March 19, 2010
- OGE Informal Advisory Opinion 08 X 5 (teaching courses offered by a non-appropriated fund instrumentality (NAFI))
- JER 2-207 (mandatory disclaimer for speeches & writings related to DoD matters)
- JER 2-307a (mandatory disclaimer for speeches & writings related to DoD matters)
- JER 3-307b (security review of lecture, speech or writing related to DoD matters)

Off-duty employment – working for a foreign government (military members)

AFI 36-2913, Request for Approval of Foreign Government Employment of Air Force Members, 19 Nov 03, para. 2.2, states: “Active duty members, ANG, and USAFR members of the Ready Reserve are ineligible for employment by foreign governments.”

Off-duty employment – working for the U.S. Government

- [5 USC 5536](#) (the extra pay for extra services law)
- JER 5-405
- Comp. Gen. Dec. B-251541, July 21, 1993 (interprets 5 USC 5536)

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- Comp. Gen. Dec. B-204533, Dec 30, 1981 (and cases cited therein) (interprets 5 USC 5536)
- 52 Comp Gen 471 (interprets 5 USC 5536)
- Comp. Gen. Dec. B-102611, May 4, 1951 (interprets 5 USC 5536)
- 28 Comp Gen 459 (1949) (B-82024) (interprets 5 USC 5536)
- 22 Comp Gen 127, 149 (interprets 5 USC 5536)
- An Army Lawyer article on moonlighting military doctors (which discusses 5 USC 5536) is at:
- http://www.loc.gov/rr/frd/Military_Law/pdf/09-1985.pdf

Off-duty employment – working for the U.S. Government during terminal leave

- [5 USC 5534a](#)
- JER 9-901a

Office of Legal Counsel (OLC) of the Department of Justice

Many of OLC’s opinions are on available the DOJ [website](#).

Official representation funds

- [DoD Instruction 7250.13](#), Use of Appropriated Funds for Official Representation Purposes, 30 Jun 09
- [AFI 65-603](#), Official Representation Funds, 24 Aug 11

Order of the Sword

[AFI 36-2824](#), Order of the Sword Programs, 14 Apr 09

Organizational conflicts of interest (OCI)

Proposed Rule: Organizational Conflicts of Interest, Federal Register, 26 Apr 11

Outside activities - general and flag officers

A DoD Standards of Conduct Office [memo](#) states:

“Consequently, as a prerequisite for confirmation and as a continuing requirement, military officers nominated for O-9 and O-10 positions may not participate in the management of or serve on the boards of directors of companies that do business with DoD or focus their business on military personnel. This applies to both compensated and uncompensated service. This requirement is in addition to the Deputy Secretary of Defense memorandum of July 23, 1996, which prohibits all military officers in grades O-7 through O-10 from accepting compensation for serving as an officer or member of the board of directors of any non-Federal entity other than professional associations and closely-held family entities.”

Permissive TDY

[AFI 36-3003](#), Military Leave Program, 26 Oct 09 (para. 11 & 12, Table 7)

Photographs

- GAO publication, Principles of Federal Appropriations Law, Third Edition, Volume I, January 2004, pages 4-261 to 4-262, discusses 18 Comptroller General decisions on use of appropriated funds to pay for photographs of Federal employees.
- 41 CFR 102-74.420 (taking photographs in GSA facilities for news, advertising or commercial purposes)
- AFI 35-109, Visual Information, 12 Mar 10 (para. 2.2 – use of VI resources is for official business only) (para. 3.3 - release of official images of military personnel)

Political activity – civilian personnel

- [5 USC 7321 - 7326](#) (the Hatch Act)
- [5 CFR Part 734](#) (Hatch Act implementing regulations)
- U.S. Office of Special Counsel (OSC) [website](#) (contains a lot of Hatch Act materials)
- Hatch Act two-page information [sheet](#) (on the OSC website)
- Hatch Act hotline (1-800-854-2824, free advice from an OSC attorney)
- Frequently Asked Questions ([FAQ](#)) concerning the Hatch Act (on the OSC website)
- Hatch Act sample advisory [opinions](#) (on the OSC website)
- OSC [memo](#) , April 5, 2011, “OSC’s Latest Guidance Regarding Pictures of President Obama in the Federal Workplace Now That He Is Officially a Candidate for Reelection”
- OGE [memo](#) LA-11-06, dated 7 Sep 11, “Ethics Issues Regarding an Employee Running for or Holding a Local Nonpartisan Elective Office”
- You can join the U.S. Office of Special Counsel’s Hatch Act list-serv mailing list by going to: <http://listserv.osc.gov>

Political activity – general

- The 19-page [chapter](#) on political activities in the 2010 DoD Ethics Counselor Deskbook
- A six-page, 28 Jan 08 [message](#) by SECDEF/PA entitled “DoD Public Affairs Policy Guidance Concerning Political Campaigns and Elections”

Political activity – military personnel

- [DoD Directive 1344.10](#), Political Activities by Members of the Armed Forces, 19 Feb 08
- [AFI 51-902](#), Political Activities by Members of the US Air Force, 12 Nov 10

Postage

[DoD 4525.8-M](#), DoD Official Mail Manual, 26 Dec 01 (para. C1.3 & C1.4)

Post-government employment – 18 USC 207 in general

- [5 CFR Part 2641](#) (OGE regulation that explains 18 USC 207)
- OGE memo DO-08-020, June 25, 2008, SUBJECT: Final Post-Employment Rule

Post-government employment – 18 USC 207(a)(1) (lifetime representation ban)

[18 USC 207\(a\)\(1\)](#) (the lifetime representation ban)

Post-government employment – 18 USC 207(a)(2) (two-year representation ban)

[18 USC 207\(a\)\(2\)](#) (the two-year representation ban)

Post-government employment – 18 USC 207(c) (one-year no contact rule)

- [18 USC 207\(c\)](#) (the one-year no contact rule)
- OGE Informal Advisory Opinion 07 X 15 (definition of “rate of basic pay” under 207(c))
- OGE Informal Advisory Opinion 07 X 12 (application of 18 USC 207(c) to performing training services under a contract with the person’s former agency)
- OGE [memo](#) LA-11-04, June 24, 2011, SUBJECT: Annual Update of 18 U.S.C. § 207(c) Component Designations
- OGE [memo](#) LA-11-01, February 8, 2011, SUBJECT: Effect of the Freeze on Pay Adjustments on Ethics Provisions for Calendar Year 2011
- OGE memo DO-08-037, November 6, 2008, SUBJECT: Recent legislative activity affecting the executive branch ethics program (application of 207(c) to SL and ST employees)

Post-government employment – 18 USC 207(f) (one-year ban re foreign entities)

- [18 USC 207\(f\)](#) (one-year ban re foreign entities)
- On 13 Aug 08, the Office of Legal Counsel (OLC) of the Department of Justice issued a 10-page [opinion](#) entitled “Applicability of 18 U.S.C. § 207(f) to Public Relations Activities Undertaken for a Foreign Corporation Controlled by a Foreign Government.” The opinion’s conclusions, which are stated on page 1 of the opinion, are as follows:

A foreign corporation is a “foreign entity” under 18 U.S.C. § 207(f) if it exercises sovereign authority or functions de jure or de facto.

A former official’s proposed activities are not prohibited by section 207(f)(1) if the former official does not provide those services on behalf of a “foreign entity,” regardless of whether the former official’s services incidentally benefit the foreign entity’s interests.

Where the former official does provide services on behalf of a “foreign entity,” the proposed public relations and media activities would fall within the scope of section 207(f)(1) if the former official acts with the requisite intent to influence a decision of an officer or employee of the United States Government.

- On 22 Jun 04, the Office of Legal Counsel (OLC) of the Department of Justice issued an [opinion](#) entitled “Application of 18 U.S.C. § 207(f) to a Former Senior Employee.” The opinion’s conclusion, which is stated on page 1 of the opinion, is as follows: “18 U.S.C. § 207(f) prohibits a former senior employee of an Executive Branch department from representing a foreign entity before Members of Congress within one year of the termination of his employment.” This OLC opinion is discussed in OGE Informal Advisory Opinion 04 X 15.

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- OGE Informal Advisory [Opinion](#) 03 X 1, dated 2 Jan 03, 18 U.S.C. § 207(f) and Foreign Entity.

Post-government employment – 180-day waiting period for retired military to work as DoD civilian

- [5 USC 3326](#)
- JER 9-700b
- A 9 Sep 11 [document](#) by the President entitled “Continuation of the National Emergency With Respect to Certain Terrorist Attacks”

Post-government employment – 41 USC 2104 (one-year compensation ban)

41 USC 2104, the one-year compensation ban, is part of the Procurement Integrity Act (PIA), which is at 41 USC 2101 – 2107. The PIA is on pages 50-55 of this 186-page PDF [document](#).

Post-government employment – Ethics Pledge

OGE memo DO-10-004, February 22, 2010

Post-government employment (PGE) – general

- JER 9-500 (current & former DoD employees may obtain written advice on PGE laws)
- JER 9-502 (DoD Components shall provide PGE guidance to departing DoD employees)
- JER 9-900 (ban on dealing with current or former DoD employees in violation of ethics laws)
- The 57-page [chapter](#) on PGE in the 2010 DoD Ethics Counselor’s Deskbook
- On the website of the DoD Standards of Conduct Office, there is an eight-page [document](#) entitled “Post-Government Service Employment Restrictions - For civilian personnel whose rate of basic pay is at or above 86.5% of the rate for Executive Schedule Level II (\$155,440.50 in 2011) and Flag and General Officers.”
- On the website of the DoD Standards of Conduct Office, there is a six-page, 31 Dec 10 [document](#) entitled “Post-Government Service Employment Restrictions (Rules Affecting Your New Job After DoD) For Military Personnel E-1 through O-6 and Civilian Personnel whose rate of basic pay is less than 86.5% of the rate for Executive Schedule Level II (less than \$155,440.50 in 2011)”
- [DD Form 2945](#), Post-Government Employment Advice Opinion Request

Post-government employment – military members working for foreign government (or an entity owned, controlled or operated by a foreign government)

- U.S. Constitution, Article I, Section 9, Clause 8 (the Emoluments Clause)
- [37 USC 908](#)

- "[Applicability of Emoluments Clause to Employment of Government Employees by Foreign Public Universities](#)," Opinions of the Office of Legal Counsel of the Department of Justice, March 1, 1994 (current Federal civilian employees working for a university in a foreign country).
- “Application of Emoluments Clause to Part-Time Consultant for the Nuclear Regulatory Commission,” Opinions of the Office of Legal Counsel of the Department of Justice, Volume 10, page 127 (10 Op.O.L.C. 127), June 3, 1986 (a part-time consultant for a Federal agency working for a private domestic corporation and performing work on a contract with a foreign government).
- "Application of the Emoluments Clause of the Constitution and the Foreign Gifts and Decorations Act," Opinions of the Office of Legal Counsel of the Department of Justice, Volume 6, page 156 (6 Op.O.L.C. 156), February 24, 1982 (a current Federal civilian employee working for an American consulting firm and providing services to a foreign government).
- Opinions of the Attorneys General of the United States, Volume 40, page 513 (1947) (40 Op. Att’y. Gen. 513) (detail of Federal civilian employees to work for a foreign government where they would be paid by the foreign government).
- OGE Informal Advisory Opinion 90 X 8, April 25, 1990 (current and former Federal civilian employees working for a foreign government).
- Comp. Gen. Dec. B-231498, June 21, 1989 (retired military officer working for a corporation owned by a foreign government).
- Matter of: Major Stephen M. Hartnett, USMC, Retired, 65 Comp. Gen. 382, B-220860, 1986, affirmed on reconsideration, 69 Comp. Gen. 175 (1990) (retired military officer employed by a domestic corporation but working subject to the supervision & control of a foreign military service).
- Comp. Gen. Dec. B-217096, March 11, 1985 (retired military officers/attorneys providing legal services to a foreign government).
- 62 Comp. Gen. 432 (1983) (retired military officer working for a U.S. corporation that is controlled by a foreign corporation that is owned by a foreign government).
- 61 Comp. Gen. 306 (1982) (retired military officer working for an airline that is owned by a foreign government).
- 58 Comp. Gen. 487 (1979) (retired military officer working for an airline that is owned by a foreign government).
- Comp. Gen. Dec. B-178538, October 13, 1977 (determining the amount of retired pay to be withheld).

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- 53 Comp. Gen. 753 (1974) (retired military officer working for a company that is owned by a foreign government).
- 51 Comp. Gen. 780 (1972) (retired Public Health Service officer working for a foreign government).
- 49 Comp. Gen. 819 (1970) (active duty military officer accepting a reward for services provided to a foreign government).
- 44 Comp. Gen. 227 (1964) (retired enlisted member working for a foreign government).
- 44 Comp. Gen. 130 (1964) (retired enlisted member working for Department of Education of a foreign government).
- Comp. Gen. Dec. B-152844, 12 Dec 63 (retired military officer working for foreign university).
- JER 9-701
- [AFI 36-2913](#), Request for Approval of Foreign Government Employment of Air Force Members, 19 Nov 03

Post-government employment – Section 847 rules (applicable to DoD only)

- SOCO Advisory [08-03](#), issued by the DoD Standards of Conduct Office on 28 Apr 08
- Model Post-Government Employment Advice [letter](#) for Personnel Subject to Section 847 Restriction

Post-government employment – transition counseling

- DD Form 2648, Preseparation Counseling Checklist for Active Component Service Members
- DoD Instruction 1332.36, Preseparation Counseling For Military Personnel, 14 Feb 94
- AFI 36-3009, Airman and Family Readiness Centers, 18 Jan 08 (para. 3.7 – transition assistance counseling and completing the DD Form 2648)

Preferential treatment

- [5 CFR 2635.101\(b\)\(8\)](#)
- Federal Acquisition Regulation (FAR) para. 3.101-1 states:

“Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.”

Presidential inaugural events

OGE memo DO-09-001, dated 15 Jan 09

Private organizations (base-affiliated)

- [DoD Instruction 1000.15](#), Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations, 24 Oct 08
- [AFI 34-223](#), Private Organizations (PO) Program, 8 Mar 07

Procurement Integrity Act

- 41 USC 2101 – 2107. Note: The PIA is on pages 50-55 of this 186-page PDF document:

<http://www.gpo.gov/fdsys/pkg/BILLS-111hr1107enr/pdf/BILLS-111hr1107enr.pdf>

- FAR 3.104
- A 16-page, 12 Jul 11 [memo](#) by the DoD Standards of Conduct Office entitled “Updated Guidance on Application of the Procurement Integrity Act and Regulation”
- OGE [memo](#) LA-11-02, March 8, 2011, SUBJECT: Legislative Activity of the 111th Congress Affecting the Executive Branch Ethics Program
- Federal Acquisition Regulation (FAR) para. 3.101-1 states:

“Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.”

Program Reviews

- On the OGE website there are [materials](#) on Program Reviews.
- There is a [document](#) entitled “Guidelines for Conducting Reviews of Ethics Programs at Executive Branch Agencies.”
- There is a six-page [document](#) entitled “Tips on Preparing for an Ethics Program Review (and for Administering a Well-Run Program).”
- Reports of programs reviews completed by OGE are posted on the OGE [website](#).
- The 20-page [chapter](#) on OGE program reviews in the 2010 DoD Ethics Counselor’s Deskbook

Prohibited personnel practices (PPPs)

5 USC 2302

Promotion ceremonies

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- Religious content in promotion ceremony programs. On 9 Feb 06, the Air Force issued a one-page [document](#) entitled “Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force.” Here is an excerpt:

"Leaders at every level bear a special responsibility to ensure their words and actions cannot reasonably be construed to be officially endorsing nor disapproving any faith belief or absence of belief. In official circumstances or when superior/subordinate relationships are involved, superiors need to be sensitive to the potential that personal expressions may appear to be official, or have undue influence on their subordinates. Subject to these sensitivities, superiors enjoy the same free exercise rights as all other airmen."

- Prayer or moment of silence at a promotion ceremony. See pages 222-223 of the 2010 edition of [The Military Commander and the Law](#).
- Printing invitations and programs. AFI 65-601, Budget Guidance and Procedures, Volume I, 3 Mar 05, para. 4.54.3, states:

“Printing of Invitations and Programs for Military and Civilian Retirements and Promotions. In recognition of technology advances, OSD(DA&M) 28 Aug 98 Policy Memorandum authorized the printing of business cards using personal computers, existing software, and agency-purchased card stock for official communications. For the same reason, that authority is extended to the printing of invitations and programs for retirement ceremonies. APFs are not authorized for the commercial printing, including DAPS, of invitations and programs for military and civilian retirements.”

- Using government postage to mail the invitations. DoD 4525.8-M, DoD Official Mail Manual, 26 Dec 01, para. C1.3 & C1.3.10, state:

“Appropriated funds may be used to pay the postage for official mail relating solely to the business of the United States Government. Thus, appropriated funds may be used [to mail]: ...Official announcements of official retirement, promotion, award, change-of-command, and ship commissioning or decommissioning ceremonies. The location and time of a directly related reception may be noted if it does not result in any increase in cost to the Government, and the notation does not include advertisement for or endorsement of any enterprise.”

- Using appropriated funds for refreshments. AFI 65-601, Budget Guidance and Procedures, Volume I, 3 Mar 05, para. 4.31, states in relevant part:

“Refreshments at Awards Ceremonies. Commanders may hold awards ceremonies for military members and civilian employees, including their families, friends, work associates, and union representatives.... The award being presented must be substantial in nature to qualify for the serving of refreshments. ...PCS, promotion, school graduations, recurring quarterly recognitions, commanders' call, and retirement ceremonies **are not considered** award ceremonies for the serving of refreshments using appropriated funds. [Bold text in original.]”

- Using non-appropriated funds. AFI 34-201, Use of Nonappropriated Funds (NAFs), 17 Jun 02, Table 12.1, Rules 11-13, authorize the use of Special Morale and Welfare (SM&W) funds to pay for certain items in connection with a promotion ceremony. Rule 11 authorizes the use of SM&W funds to pay for “insignia, stripes, and similar items.” Rule 12 permits the use of SM&W funds to pay for light refreshments (as defined in para. 12.4). And Rule 13 allows the use of SM&W funds to pay for a “corsage / boutonniere or memento for spouse of promoted individual.” AFI 34-201, Attachment 6, suggests that a promotion plaque is an appropriate item on which to spend SM&W funds.

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- Using government postage to mail a congratulatory letter. DoD 4525.8-M, DoD Official Mail Manual, 26 Dec 01, para. C1.4 & C1.4.7, state:

“Appropriated funds may be used only for official mail relating solely to the business of the United States Government. Thus appropriated funds may not be used to pay postage for: ...Personal congratulatory letters from one individual to another in a private capacity. This does not prohibit the use of appropriated fund postage by heads of staff agencies or commanders to fulfill their official morale and esprit de corps obligations to members of their organization or persons in their areas of technical responsibility. For example, sending congratulatory letters to people selected for advanced schooling, promotions, and letters of condolence are authorized.”

- When to have the ceremony (for officers). [AFI 36-2501](#), Officer Promotions and Selective Continuation, 16 Jul 04, para. 3.13.
- When to have the ceremony (for enlisted personnel). [AFI 36-2502](#) Airman Promotion/Demotions Program, 31 Dec 09, para. 1.9.

Property, government

- [5 CFR 2635.704](#)
- The 10-page [chapter](#) on Use of Government Resources in 2010 DoD Ethics Counselor’s Deskbook
- OGE Informal Advisory Opinion 97 X 3 (use by civilian Federal employees who are also in the Reserves or the National Guard of official time and government equipment for Reserve or Guard purposes)
- DoD 4160.21-M, Defense Materiel Disposition Manual, August 1997 (Chap. 1, para. C – Objectives) (Chap. 3, page 3-2 & 3-3 – types of property DRMO will not accept)
- AF Manual 23-110, USAF Supply Manual, 1 Apr 09 (Chapter 1 & 2 – turning property in to the Defense Reutilization and Marketing Office (DRMO)) (Chapter 8 – the Air Force Donation/Loan Program)
- 10 USC 2572 (donation or loan of property to be used for historical or display purposes)
- [AFI 35-109](#) , Visual Information, 12 Mar 10, para. 2.2 (proper use of visual information resources)

Protocol

- [AFI 34-1201](#), Protocol, 4 Oct 06
- [Air Force Pamphlet 34-1202](#), Guide to Protocol, 4 Oct 06

Religion

- DoD 5400.18, Public Affairs Community Relations Policy, 20 Nov 01 (para. 4.2.3.5 – community relations support to events sponsored by religious organizations)
- On 9 Feb 06, the Air Force issued a one-page [document](#) entitled “Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force.”

Reporting suspected violations

- 5 CFR 2635.101(b)(11) states: “Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.”
- JER 10-200
- JER 10-201
- JER 1-416c (duty to report suspected violations of ethics regulations)
- [AF Policy Directive 90-3](#), Inspector General - The Complaints Resolution Program, 18 Aug 09, para. 3, states:

“Subject to the right against self-incrimination and other Constitutional rights, Air Force military and civilian members have a duty to promptly report all allegations of wrongdoing to an appropriate supervisor or commander, the IG, an inspector, or through an established grievance channel upon becoming aware of the matter.”

Representation by Executive Branch employees before Federal agencies

- [18 USC 205](#) states, in relevant part:

“Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties... acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest; shall be subject to the penalties set forth in section 216 of this title.”

- The term “covered matter” is defined at 18 USC 205(h) as follows:

“For the purpose of this section, the term "covered matter" means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.”

- 18 USC 205 applies to military officers and Federal civilian employees, but not to enlisted military personnel. [18 USC 202; JER 5-403a]
- There is an exception for representation of certain non-profit organizations at 18 USC 205(d). There is an exception for representation of certain relatives at 18 USC 205(e).
- Exception for ministerial communications. There is a Department of Justice (DOJ) memorandum that discusses an exception to the representation ban for "ministerial communications." [DOJ Memorandum, Application of Federal Conflict-of-Interest Statutes to Federal Employees Working With or For Non-Federal Entities That Do Business with the United States , January 27, 1994] The DOJ memo gives examples of actions that would and would not violate the representation ban. The memo reads, in relevant part, as follows.

Examples of prohibited "representational-type activities" include: (1) signing agreements with the Department or any other federal agency; (2) signing reports, memoranda, grant or other applications, letters, or other materials (beyond the mere exchange of purely factual information or the expression of a wholly-routine request not involving a potential controversy) intended for submission to any federal agency or tribunal; (3) signing tax returns for submission to the Internal Revenue Service; and (4) arguing or speaking (in the sense of urging, advocating, or intending to influence) to any other federal employee who is acting in his official capacity or before any federal agency or tribunal for or against

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the taking or non-taking of any action by the United States in connection with any matter involving the non-federal entity and the United States. [DOJ Memo, page 10, footnote 56, italics in original.]

Section 205(a)(2) does not proscribe communications on behalf of a non-federal entity that are entirely ministerial in nature. Some examples of such communications might be: (1) conveying purely factual information; (2) merely delivering or receiving materials or documents; (3) answering (without advocating for a particular position) direct requests for information; (4) making wholly-routine requests that do not involve any potential for any controversy, dispute, or divergence of views between the agency and the non-federal entity (such as a request to use a meeting room); or (5) signing a document that attests to the existence or non-existence of a given fact (such as a corporate secretary's attestation that a given signature is valid or that a given person is authorized to bind or sign for the non-federal entity). [DOJ Memo, page 10, footnote 58, italics in original.]

- Exception for self-representation. OGE Informal Advisory Opinion 98 X 18, 16 Nov 98, page 1, states: “It is well settled that section 205 does not cover self-representation; rather, it is aimed at prohibiting representational activity on behalf of another.” OGE Informal Advisory Opinion 94 X 15, 28 Sep 94, page 1, states:

“Because section 205 does not prohibit self-representation, an employee may represent his own views before the Government in connection with a particular matter even if those views are the same as those held by an organization in which the employee happens to be a member. However, the employee could not communicate those views to the Government as the organization's representative without running afoul of the prohibition in section 205.”

- OGE Informal Advisory Opinion 07 X 7 (letters by Executive Branch employees in support of aliens applying for change in immigration status)
- OGE Informal Advisory Opinion 06 X 12 (whether a Federal employee may file an amicus curiae brief representing the views of an association in which he holds a position)
- JER 5-403 (discussion of 18 USC 205)
- SOCO Advisory 06-13, 22 Dec 06, by the DoD Standards of Conduct Office, para. 1, entitled “Application of 18 U.S.C. 205 and 203 to Federal Personnel Working As Contractors in the Federal Workplace (Usually on Terminal Leave or Moonlighting).”

Representation (compensated) by Executive Branch employees before Federal agencies

- [18 USC 203](#)
- JER 5-401 (discussion of 18 USC 203)
- SOCO Advisory 06-13, 22 Dec 06, by the DoD Standards of Conduct Office, para. 1, entitled “Application of 18 U.S.C. 205 and 203 to Federal Personnel Working As Contractors in the Federal Workplace (Usually on Terminal Leave or Moonlighting).”

Reservists

- JER 2-304 (use of military title)
- JER 5-408 (assignment of Reservists)
- The 16-page [chapter](#) on Reserve ethics issues in the 2010 DoD Ethics Counselor’s Deskbook
- OGE Informal Advisory Opinion 97 X 3 (use by civilian Federal employees who are also in the Reserves or the National Guard of official time and government equipment for Reserve or Guard purposes)

Retirement ceremonies

- DoD 4525.8-M, DoD Official Mail Manual, 26 Dec 01, paragraphs C1.3.10 & C1.4.9 (use of appropriated fund postage to mail "official announcements of official retirement ceremonies" and "unofficial retirement announcements").
- AFI 65-601, Budget Guidance and Procedures, Volume I, 3 Mar 05, para. 4.27.4.1 (use of government vehicles in support of a retirement ceremony)
- AFI 65-601, Volume I, para. 4.27.4.2 and 4.54.3 (use of the government computer to print invitations, announcements and programs for the retirement ceremony)
- AFI 65-601, Volume I, 3 Mar 05, para. 4.27.4.3 (use of non-protocol Air Force employees to prepare for and conduct a retirement ceremony)
- AFI 65-601, Volume I, 3 Mar 05, para. 4.27.4.4 (use of government postage to mail official announcements of official retirement ceremonies)
- AFI 65-601, Volume I, 3 Mar 05, para. 4.31 (prohibition against using appropriated funds to pay for refreshments at a retirement ceremony)
- AFI 65-601, Volume I, 3 Mar 05, para. 4.54, 4.54.1 & 4.54.2 (use of appropriated funds to buy a flag for the retiring individual)
- AFI 65-601, Volume I, 3 Mar 05, para. 10.2.10 (going TDY to preside or participate in a retirement ceremony)
- AFI 35-109, Visual Information, 12 Mar 10, para. 2.2 (what visual information resources may and may not be used for), para. 4.4.8 (videographer support to a retirement ceremony), para. 4.5 (self-help services)
- AFI 36-3003, Military Leave Program, 26 Oct 09, para. 12.3.2 and 12.8.10 (traveling permissive TDY to attend a retirement ceremony)
- AFI 34-201, Use of Nonappropriated Funds (NAFs), 17 Jun 02, para. 12.4.1.3, and Table 1, Rules 15-17 (use of Special Morale & Welfare funds for a retirement memento, light refreshments, and a corsage/boutonniere)
- AFI 65-603, Official Representation Funds - Guidance and Procedures, 17 Feb 04, paragraphs 7.2 & 7.2.7 (prohibition against using official representation funds to pay for the costs of a retirement ceremony)
- AFI 24-301, Vehicle Operations, 1 Nov 08, paragraphs 3.8 & 3.33, and Rule 22 of Atch 8 (use of government vehicles in support of a retirement ceremony)
- AFI 64-117, Air Force Government-Wide Purchase Card (GPC) Program, 31 Jan 06, para. 2.4.9 (prohibition against use of a GPC card to purchase a retirement gift)
- AFI 11-209, Aerial Event Policy and Procedures, 4 May 06, para. 3.6.2.2 (flyer support for a retirement ceremony)
- AFI 11-209, Aerial Event Policy and Procedures, 4 May 06, para. 3.6.2.2.7 (static display support for a retirement ceremony)
- AFI 36-3203, Service Retirements, 8 Sep 06, Chapter 6 (which is entitled "Recognition on Retirement")

ROTC

- DoD Instruction 1215.08, Senior Reserve Officers' Training Corps (ROTC) Programs, 26 Jun 06
- AFI 36-2010, Junior Reserve Officers' Training Corps (JROTC) Program, 9 Jun 06

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- AFI 36-2011, Air Force Reserve Officer Training Corps (AFROTC) Program, 10 Dec 06
- AF Form 1056 (ROTC contract)

Salary supplementation

- [18 USC 209](#)
- JER 3-205
- JER 5-404
- OGE memo DO-02-016 dated 1 Jul 02 (cover letter to 27-page summary of 18 USC 209)
- 27-page OGE memo discussing 18 USC 209
- OGE memo DO-08-037, November 6, 2008, SUBJECT: Recent legislative activity affecting the executive branch ethics program
- Elements. “Section 209 prohibits (1) an officer or employee of the executive branch or an independent agency of the United States government from (2) receiving salary or contribution to or supplementation of salary from (3) any source other than the United States (4) as compensation for services as an employee of the United States.” [United States v. Raborn, 575 F.2d 688, 691-692 (9th Cir. 1978).]
- Six factors for the fourth element. OGE Memo DO-00-032, 7 Sep 00, states in relevant part:

“As OLC and OGE have noted on several occasions, section 209 can be viewed as having four elements: (1) employee status; (2) receipt of salary or any contribution to or supplementation of salary; (3) receipt of such salary, contribution or supplementation from a non-Federal source; (4) receipt of such salary, contribution or supplementation as compensation for services as a Federal employee. OLC states that the fourth element requires an “intentional, direct link” between the outside compensation and the employee’s Government service. In some situations, however, intent to compensate for Government services may not be obvious. In cases where it is not otherwise clear that a particular payment is actually intended as compensation for an employee’s services to the Government, the Memorandum articulates six factors that should be considered: (1) whether there is a substantial relationship or pattern of dealings between the agency and the payor; (2) whether the employee is in a position to influence the Government on behalf of the payor; (3) whether the expressed intent of the payor is to compensate for Government service; (4) whether circumstances indicate that the payment was motivated by a desire other than to compensate the employee for her Government service; (5) whether payments would also be made to non-Government employees; and (6) whether payments would be distributed on a basis unrelated to Government service. OGE advises that agency ethics officials should consider these factors, none of which alone is necessarily dispositive, when there is a question as to the presence of the fourth element of section 209.”

- Gifts.

“Section 209 does not prohibit gifts to government officers or employees. It may be debatable in a particular case whether a transfer of an item of value to the government employee was a gift or was a supplementation of the employee’s salary ‘for’ his services. But to make out an offense under Section 209, it is essential to establish the linkage between the transfer of the thing of value and the services rendered.” [Citation omitted].

- Gifts. OGE Informal Advisory Opinion 81 X 31, 2 Oct 81, states:

“It is always an issue under the facts of a particular case whether a transfer of an item of value to a Government employee is a permitted gift or a disguised prohibited supplementation of the employee’s salary as consideration for his services. But to make out an offense under section 209, it is essential to establish the linkage between the transfer of the thing of value and the services rendered.” [Footnote omitted.]

- Totality of the circumstances. The totality of the circumstances must be examined in each case to determine whether a violation of section 209 has occurred. “No one factor is determinative. There need not be a connection between the payor and the payee's agency to make out a violation. Nor need the employee be in a position to influence the Government on behalf of the payor. All that the statute requires is that a Government employee receive outside compensation for his or her Government work, not that there be actual or apparent influence.” [OGE Informal Advisory Opinion 83 X 15, October 19, 1983]
- United States v. Project on Gov’t Oversight, 616 F.3d 544 (D.C. Cir. 2010) (former Department of Interior employee accepts monetary award from the Project on Government Oversight (POGO) for work related to a *qui tam* action involving oil extracted on public lands and underpaid oil royalties owed to the Government)
- United States v. Jackson, 850 F. Supp. 1481 (D.Kan. 1994). Defendant Jackson worked as the administrator for Parkview Hospital in Topeka, Kansas. The hospital is a psychiatric facility. Jackson, with the help of marketing assistant Robert Martinez, bribed postal service employee Louis Garcia to refer patients to Parkview. Garcia was an employee assistance counselor with the Postal Service. Numerous counts of the indictment alleged violation of 18 USC 209 due to Jackson and Martinez aiding and abetting Garcia in supplementing his federal salary. HELD: The indictment was sufficient for alleging aiding and abetting despite the lack of specificity regarding mens rea elements.
- Crandon v. United States, 494 U.S. 152, 110 S.Ct. 997, 108 L.E.2d 132 (1990). Boeing Company, Inc. provided severance payments to five executives who terminated their employment in order to enter government service. The severance pay was calculated on the pay and benefits reduction that the individuals would sustain as a result of their prospective government employment. All payments were received prior to entering government service and there was no agreement that the employees would later seek reemployment with Boeing or that Boeing would rehire them. The government brought a civil action against Boeing and the individuals alleging violations of 18 USC 209. HELD: The provisions of 18 USC 209 do not apply to a severance payment that is made to encourage the payee to accept government employment, where the payment is made before the payee becomes a government employee.
- United States v. Oberhardt, 887 F.2d 790 (7th Cir. 1989). Appellate Court affirmed the conviction of a section 209 violation. Defendant was a partner in a defense industry consulting firm who paid \$200 to an Army clerk in order to obtain an advanced copy of the Federal Supply Code for Manufacturers list. The Court determined that the defendant believed that the clerk was acting within the scope of his employment at the time the payment was made.
- United States v. Martel, 792 F.2d 630 (7th Cir. 1986). Appellate Court affirmed the conviction under 18 USC 209. Defense contractor paid airfare and accommodations for an Army employee to attend seminar.
- United States v. Raborn, 575 F.2d 688 (9th Cir. 1978). Defendant was an employee of the Postal Service who received gifts from corporations doing business with the Postal Service. On appeal, the defendant alleged that his Fifth Amendment rights were violated and the court had provided erroneous instructions to the jury. HELD: No error was shown either pre or post trial.

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- Jordan v. Axicom Systems, Inc., 351 F. Supp.1134 (D.D.C. 1972). Former chief of the Tire Branch, National Safety Bureau of DOT agreed to an employment contract with a private company while still employed by the government. The defendant agreed to use his knowledge regarding pending tire legislation to assist his private employer in securing business from tire manufacturers. The defendant worked for Axicom for 20 months and was fired. He then sued Axicom in order to enforce his employment contract. HELD: An arrangement of this kind is not only unethical but also a clear violation of 18 USC sections 208 and 209.
- Exchange National Bank of Chicago v. Abramson, 295 F.Supp. 87 (D. Minn. 1969). Court denied Bank's petition to bar State court-appointed receiver from prosecuting civil suit. Bank alleged that the receiver, who had been hired as a "special employee" by the Department of Justice in connection with the prior criminal prosecution, had violated the provisions of 18 USC 209. Court held that the receiver qualified for the exception of section 209 as a "special employee" since he actually worked and was compensated for only 90 days.
- OGE Informal Advisory Opinion 06 X 3 (whether a letter carrier can accept a bequest from a customer)
- OGE Informal Advisory Opinion 05 X 8 (Federal employee accepting payment for participating, during non-duty hours, in a survey about insurance)
- OGE Informal Advisory Opinion 00 X 9 (Federal Technology Transfer Act and royalties for Federal employees)
- OGE Informal Advisory Opinion 93 X 21 (legal defense funds and 18 USC 209)
- OGE Informal Advisory Opinion 92 X 22 (possible contribution by private company to charitable organization to make amends for libel against Federal employee)
- OGE Informal Advisory Opinion 92 X 6 (accepting compensation from a union for services provided to the union during duty hours)

Seasonal greeting cards

[AFI 65-601, Volume I](#), Budget Guidance and Procedures, 3 Mar 05 (para. 4.36.2)

Bullet Background Paper on Seasonal Greeting Cards

Comptroller General (Comp. Gen.) guidance

- Comp. Gen. Decision B-247563.8, dated 11 Dec 96, states: “Christmas greetings. During the period covered by the IG's review, the Medical Center used its appropriation to purchase Christmas cards and stamps. According to the Medical Center Director, VA sent Christmas cards to service organizations, other VA medical centers, state medical facilities, and others for the purpose of

enhancing the relationship between the Medical Center and these organizations. We have long held that the cost of holiday greeting cards is a personal expense of the officer who authorizes their use, even where the agency's name rather than the officer's name appears on the card. See, e.g., 64 Comp.Gen. 382 (1985); 37 Comp. Gen. 360 (1957). Both cases specifically rejected the argument that objectives such as engendering goodwill or ensuring the recipients' cooperation justified using appropriated funds for this purpose. Therefore, the cost of Christmas cards and stamps was not properly charged to VA's medical care appropriation.”

DoD guidance

- On 29 Nov 99, the DoD Standards of Conduct Office issued SOCO Advisory 99-08. Para. 3 states: “Seasonal Greeting Cards. Every year at this time a few hard-charging DoD employees determine that it would benefit their organization to send out seasonal greeting cards to its employees, contractors, suppliers, Congressional supporters, and others. Please don't! Seasonal greeting cards may not be purchased, printed, or mailed with appropriated funds, official representation funds (ORF Funds), or nonappropriated funds.” [Underlining in original.]
- DoD 4525.8-M, DoD Official Mail Manual, 26 Dec 01, paragraphs C1.4 & C1.4.9, state: “Appropriated funds may be used only for official mail relating solely to the business of the United States Government. Thus appropriated funds may not be used to pay postage for... Personal mail, holiday and birthday greetings, unofficial retirement announcements, and similar material. However, activities may use appropriated fund postage for holiday greetings when international diplomacy dictates.”
- DoD Instruction 7250.13, Use of Appropriated Funds for Official Representation Purposes, 30 Jun 09, Enclosure 3, paragraph 4a(2)(d), states that official representation funds (ORFs) shall not be used to pay for “holiday or greeting cards.”

Air Force guidance

- Air Force Instruction (AFI) 65-601, Budget Guidance and Procedures, Vol. I, 3 Mar 05, para. 4.26.2, states: “...[D]o not use APFs [appropriated funds] to purchase or mail seasonal greeting cards.” Para. 4.36.2 of this AFI states: “Seasonal greeting cards... are a personal expense to be borne by the persons who ordered and sent them; do not charge their cost to public funds.”
- AFI 65-603, Official Representation Funds, 24 Aug 11, paragraphs 7.2 & 7.2.10, state that ORFs may not be used for “seasonal greetings and calling cards.”
- AFI 34-201, Use of Nonappropriated Funds (NAFS), 17 Jun 02, paragraphs 4.2 & 4.2.17, state that nonappropriated funds may not be used for “[p]rinted personal or organizational greeting cards, business cards, or holiday cards, or stamps to mail such cards.”

Mark Stone, Ethics Attorney / HQ AFMC/JAA / Wright-Patterson Air Force Base OH / 17 Sep 11

Signs

- 41 CFR 102-74.410 (general ban on displaying commercial advertising)

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- 41 CFR 102-74.415 (general ban on posting or affixing materials, such as pamphlets, handbills or flyers)
- AFI 32-9003, Granting Temporary Use of Air Force Real Property, 19 Aug 97, para. 1.16, states: “Commercial Advertising. Users may not post or put up private billboards or signs on Air Force real property.”
- Air Force Handbook 32-9007, Managing Air Force Real Property, 1 May 99, para. 3.7, states: “Commercial Advertising. Do not post notices, erect billboards or signs for private purposes on Air Force real estate.”
- AFI 34-407, Air Force Commercial Sponsorship Program, 19 July 2005, para. 6.4.2 (commercial signs are permitted on an Air Force base as part of a commercial sponsorship agreement for an MWR event)

Speaking fees

- A one-page, 3 Apr 07 [memo](#) by the Deputy Secretary of Defense entitled “Payment of Fees for Guest Speakers, Lecturers, and Panelists”
- [AFI 65-601, Volume I](#), Budget Guidance and Procedures, 3 Mar 05 (para. 4.9)

Special government employees

- OGE Informal Advisory Opinion 07 X 3 (guidance on counting days of service)
- OGE Informal Advisory Opinion 07 X 1 (guidance on counting days of service)

Special Morale & Welfare (SM&W) funds

[AFI 34-201](#), Use of Nonappropriated Funds (NAFS), 17 Jun 02, Chapter 12

Stock ownership

[5 CFR 2640.202](#) (the \$15,000 rule)

Subordinates

- 5 CFR 2635.702(a) (coercing or inducing a subordinate to provide a benefit to another)
- [5 CFR 2635.705\(b\)](#) (use of a subordinate’s official time)
- 5 CFR 2635.808(c) (ban on soliciting funds from a subordinate when fundraising in a personal capacity)
- JER 2-205 (soliciting sales to a subordinate)
- JER 3-305b (use of subordinates to support unofficial activities)
- JER 5-409 (soliciting sales to a subordinates or junior ranking personnel)

Support agreements

- [DoD Instruction 4000.19](#), Interservice and Intragovernmental Support, 9 Aug 95
- [AF Policy Directive 25-2](#), Support Agreements, 1 Nov 01
- [AFI 25-201](#), Support Agreements Procedures, 1 May 05

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- [DD Form 1144](#)

Surveys

- [DoD Instruction 1100.13](#), Surveys of DoD Personnel, 21 Nov 96
- [AFI 38-501](#), Air Force Survey Program, 12 May 10
- OGE Informal Advisory Opinion 05 X 8 (Federal employee accepting payment for participating, during non-duty hours, in a survey about insurance)
- Comp. Gen. Dec. B-310981, Matter of: National Telecommunications and Information Administration—Gift Cards for Respondents to the Converter Box Coupon Program Survey, January 25, 2008

Technology transfer

OGE Informal Advisory Opinion 00 X 9 (Federal Technology Transfer Act and royalties for Federal employees)

Time, official

- [5 CFR 2635.705](#)
- OGE Informal Advisory Opinion 97 X 3 (use by civilian Federal employees who are also in the Reserves or the National Guard of official time and government equipment for Reserve or Guard purposes)

Title, official

- [5 CFR 2635.702\(b\)](#) states, in relevant part:

“Appearance of governmental sanction. Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by Sec. 2635.807(b).”

- 5 CFR 2635.702(e) states:

Use of terms of address and ranks. Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as “The Honorable”, or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

- JER 3-209 states, in relevant part:

“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.”

- JER 3-300a states, in relevant part:

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“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.”

- [5 CFR 2635.807\(b\)](#)
- OGE Informal Advisory Opinion 10 X 1
- OGE Informal Advisory Opinion 02 X 9 (use by an Administrative Law Judge of the title “Judge” or “ALJ” on private stationery or in connection with personal activities)
- OGE Informal Advisory Opinion 01 X 6 (use of official title and position)
- OGE Informal Advisory Opinion 01 X 4 (use of official title in personal correspondence)
- JER 2-304 (use of military title by reservists)

Training – annual

- [5 CFR 2638.704](#) (annual ethics training for OGE Form 278 filers)
- [5 CFR 2638.705](#) (annual ethics training for OGE Form 450 filers)
- JER 11-301

Training – initial

- [5 CFR 2638.703](#) (initial agency ethics orientation for all employees)
- JER 11-300

Training – innovative readiness training

- [10 USC 2012](#)
- [DoD Directive 1100.20](#), Support and Services for Eligible Organizations and Activities Outside the Department of Defense, 12 Apr 04
- [AFI 36-2250](#), Civil-Military Innovative Readiness Training (IRT), 1 Mar 99
- A DoD IRT [website](#)

Travel – City-Pairs

Appendix P (in the 256-page [Appendices](#) document) of Joint Federal Travel Regulation / Joint Travel Regulation

Travel – general

- The 55-page [chapter](#) on travel and transportation in the 2010 DoD Ethics Counselor’s Deskbook
- OGE memo DO-10-002, Jan. 28, 2010, Subject: Federal Travel Benefits and 18 U.S.C. § 208

Travel – invitational travel orders

- [5 USC 5703](#)
- Matter of: DoD Section 6 School Board Members – Invitational Travel Orders, Comp. Gen. Dec. B-260896, October 17, 1996
- In the Matter of Funding of Conferences, 55 Comp. Gen. 750 (1976) (B-166506)
- Government Accountability Office (GAO) [publication](#) Principles of Federal Appropriations Law, Third Edition, Volume I, Jan. 2004, pages 4-47 to 4-50 (& Comp. Gen. cases cited therein)
- [Appendix E](#) of DoD’s Joint Federal Travel Regulation (JFTR) and Joint Travel Regulation (JTR)

Travel – frequent flyer benefits (including voluntary & involuntary bump)

- [DoD's Joint Federal Travel Regulation](#) (762 pages, applies to military members, see para. U1200)
- [DoD's Joint Travel Regulation](#) (576 pages, applies to DoD civilian employees, see para. C1200)
- [AFI 24-101](#), Passenger Movement, 27 Oct 04 (para. 3.30)

Travel – military aircraft (MILAIR)

- DoD Directive 4500.56, DoD Policy on the Use of Government Aircraft and Air Travel, 14 Apr 09
- DoD 4515.13-R, Air Transportation Eligibility, Nov 1994
- AFI 24-101, Passenger Movement, 27 Oct 04. The paragraphs that address MILAIR include the following: 1.1 (SECAF responsibilities), 1.2 (CSAF responsibilities), 1.3 (AF/CV responsibilities), 1.5 (HQ USAF/ILT responsibilities), 2.8 (family member / spouse travel), 3.26 (contractor travel), 3.34 (MILAIR in general), 3.35 (MILAIR payment), 3.36 (Opportune Airlift) and 3.37 (Operational Support Airlift)

Travel – propriety of official travel

- [DoD's Joint Federal Travel Regulation](#) (762 pages, applies to military members, see para. U4000)
- [DoD's Joint Travel Regulation](#) (576 pages, applies to DoD civilians, para. C4405, C4410, C4415)
- [AFI 65-103](#), Temporary Duty Orders, 5 Aug 05 (para. 2.1.2)

Propriety of Official Travel

- This paper provides guidance for DoD/AF personnel on when TDY travel is authorized.

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- The Joint Federal Travel Regulation (JFTR) applies to DoD military personnel. JFTR paragraph U2000B states: “Each Service must: 1. Authorize only travel necessary to accomplish the GOV’T’s mission effectively and economically. 2. Establish internal controls to ensure that only travel essential to the GOV’T’s needs are authorized.”
- The Joint Travel Regulation (JTR) applies to DoD civilian employees. JTR paragraph C4405, which is entitled “Justification,” states:
 1. A TDY assignment may be authorized/approved only when necessary ICW [in conjunction with] official DoD activity or GOV’T business.
 2. Travel must be planned and scheduled to accomplish multiple objectives whenever possible.
 3. Procedures must be in place to evaluate TDY requests to ensure that the:
 - a. Purpose is essential official business;
 - b. Objective cannot be satisfactorily accomplished less expensively by correspondence, teleconferencing or other appropriate means;
 - c. Duration is no longer than required; and
 - d. Number of persons assigned is held to the minimum.
 4. TDY travel should not be authorized for secretaries, or clerical personnel when such services are available at the TDY site, unless essential for mission accomplishment.
- JTR paragraph C4415, which is entitled “TDY Assignment Selections,” states: “Employee selection for a TDY assignment must be based on official necessity and qualifications of the individual to best perform the service required.”
- Air Force Instruction 65-103, Temporary Duty Orders, 5 Aug 05, paragraph 2.1.2, states:

Determine the need for TDY. Temporary duty is conducted to meet mission requirements only. Do not permit travel when a letter, telephone, message, or less expensive means will do. Keep the number of people who must travel to a minimum; for example, never allow two or more persons to travel when one person can do the job. Determine if personnel near the temporary duty station can do the job. Combine missions to carry out multipurpose results, thereby cutting unnecessary trips, number of persons traveling, places to be visited, variations in itineraries, and length of trips. Keep personnel participation at conferences, meetings, and seminars to a minimum when travel is at government expense (including nonappropriated funds) and does not relate directly to the accomplishment of the mission.... Review and reauthorize, if needed, blanket and repeated travel orders. Ensure travel is kept to the minimum necessary to carry out command or unit mission. Screen requests for foreign travel to keep U.S. attendance at foreign conferences to minimum....
- Note: Although the JFTR and the JTR use slightly different language when discussing the justification of official travel, I interpret the regulations as having the same standard.

Mr. Mark Stone / Ethics Attorney / HQ AFMC/JAA / Wright-Patterson AFB / 8 Mar 10

Travel – rental cars

The guidance on where it is permissible to drive a rental car when you are TDY is at Joint Federal Travel Regulation (JFTR) para. U3415G, which states:

"Limited to Official Purposes. Special conveyance use is limited to official purposes, including transportation to and from (65 Comp. Gen. 253 (1986)):

1. Duty sites,
2. Lodging,
3. Dining facilities,
4. Drugstores,
5. Barber shops,
6. Places of worship,
7. Cleaning establishments, and
8. Similar places required for the traveler's subsistence, health or comfort."

Note: The JFTR applies to military members. The Joint Travel Regulation (JTR), which applies to DoD civilian employees, contains a similar provision.

Travel – spouses

[AFI 24-101](#), Passenger Movement, 27 Oct 04 (para. 2.8 & 2.9 – travel at Air Force expense)

Travel – text messaging while driving

- Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, 1 Oct 09 (published in the 6 Oct 09 Federal Register)
- DoD/GSA/NASA notice in the 5 Jul 11 Federal Register (implementation in the FAR)

Travel – travel at government expense to an award ceremony

- 5 USC 4503 (awards by Federal agencies to Federal employees)
- 70 Comp. Gen. 440, B-241987, April 25, 1991 (spouse travel to attend an award ceremony)
- 69 Comp. Gen. 38, B-233607, Oct. 26, 1989 (spouse travel to attend an award ceremony)
- 55 Comp. Gen. 1332 (1976) (travel to accept an award from a non-Federal organization)
- GAO guide, Principles of Federal Appropriations Law, Third Edition, Jan. 2004, Volume I, page 4-167. [The March 2009 update to the guide does not have guidance on this issue.]
- Joint Federal Travel Regulation (JFTR) paragraphs U7325, U7326, U7327 & U7328 (travel by a military member to accept an award from a non-Federal organization) [Note: The JFTR applies to military members and the JTR applies to DoD civilian employees.]

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- Joint Travel Regulation (JTR) para. C7925, C7926, C7927 & C7928 (travel by a DoD civilian employee to accept an award from a non-Federal organization)
- Part 1 of Appendix E to the JFTR / JTR, para. A2d (invitational travel authorization (a.k.a., invitational travel orders) for a non-Federal employee to attend incentive award ceremony)
- Part 1 of Appendix E to the JFTR / JTR, para. C5 (invitational travel authorization for the spouse or other family member of a military member or DoD civilian employee to attend a major award ceremony) [Part 1 of Appendix E to the JFTR / JTR was revised on 1 Apr 09.]
- AFI 24-101, Passenger Movement, 27 Oct 04, para. 2.9 (spouse / family member travel to award ceremonies)
- AFI 36-2805, Special Trophies and Awards, 29 Jun 01, para. 1.5 (travel by Air Force members and civilian employees to award ceremonies)
- AFI 36-2805, Special Trophies and Awards, 29 Jun 01, para. 1.6 (travel by spouses to award ceremonies)
- AFI 36-2805, Special Trophies and Awards, 29 Jun 01, para. 3.4.11 (travel by the 12 Outstanding Airmen of the Year & spouses to national AFA convention)

Travel – with contractor employees

- A four-page, November 2003 [memo](#) by the DoD Standards of Conduct Office entitled “Travel Alternatives When Visiting Contractor Facilities”

Uniform, wearing the

- [DoD Instruction 1334.01](#), Wearing of the Uniform, 26 Oct 05
- [AFI 36-2903](#), Dress and Personal Appearance of Air Force Personnel, 18 Jul 11 (para. 1.2, 1.3, 1.4)

U.S. Code

[Online US Code](#) (Cornell University Law School Legal Information Institute)

Vehicles, government

- [31 USC 1344](#)
- [DoD Directive 4500.36](#), Management, Acquisition and Use of Motor Vehicles, 3 Aug 04 (Enclosure E2 lists DoD employees authorized to use GOVs for travel between home & work)
- [DoD 4500.36-R](#), Management, Acquisition and Use of Motor Vehicles, 16 Mar 07 (para. C2.5)
- [AFI 24-301](#), Vehicle Operations, 1 Nov 08

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Violations of the ethics rules

- A 159-page, August 2011 [document](#) by the DoD Standards of Conduct Office called “Encyclopedia of Ethical Failure”
- OGE [memo](#) DO-10-017, November 9, 2010, SUBJECT: 2009 Conflict of Interest Prosecution Survey
- OGE memo DO-09-029, dated 23 Oct 09 (2008 Conflict of Interest Prosecution Survey)
- OGE memo DO-08-036, dated 6 Nov 08 (2007 Conflict of Interest Prosecution Survey)

Volunteers

- 10 USC 1588
- DoD Instruction 1100.21, Voluntary Services in the Department of Defense, 11 Mar 02