

DoD 5500.7-R

AD-A275 132



Joint Ethics Regulation (JER)

August 1993

Secretary of Defense

94-03142



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THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA



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August 30, 1993

FOREWORD

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This Regulation is issued under the authority of DoD Directive 5500.7, "Standards of Conduct," August 30, 1993. It provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, enforcement, and training.

DoD Directive 5500.7, "Standards of Conduct," May 6, 1987; DoD Directive 5500.2, "Policies Governing Participation of Department of Defense Components and Personnel in Activities of Private Associations," August 4, 1972; and DoD Directive 5120.47, "DoD Ethics Council," September 5, 1989, have been cancelled. However, subsection A.3.b. of Enclosure 3 of DoD Directive 5500.7 of May 6, 1987 (32 C.F.R. 40.1) and corresponding implementing regulation sections will remain in effect. All DoD Component regulations implementing these cancelled DoD Directives, and all provisions of other DoD Component regulations, directives, instructions, or other policy documents that are not consistent with this Regulation, will be cancelled. DD Form 1357, "Statement of Employment-Regular Retired Officers," March 1987, and DD Form 1555, "Confidential Statement of Affiliations and Financial Interests," March 1987, have also been cancelled. The supersessions of this paragraph take effect immediately and will be announced by each DoD Component.

This Regulation applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General of the Department of Defense; the Uniformed Services University of the Health Sciences; the Defense Agencies; the DoD Field Activities; the Combined Commands and Agencies; and the Special Activities, including non-appropriated fund instrumentalities (hereafter referred to collectively as the "DoD Components"). Its provisions are applicable to all DoD employees, regardless of civilian or military grade. The Chapters entitled "Financial and Employment Disclosure," "Post-Government Service Employment," and "Seeking Other Employment" also apply as specified to certain former employees of DoD Components in accordance with specified statutes. The criminal statutes referenced in this Regulation, 18 U.S.C. 203, 205, 207, 208, 209, and 218, do not apply to enlisted members; however, provisions similar to those of 18 U.S.C. 208 and 209 apply administratively to enlisted members as noted in appropriate subsections of this Regulation.

This Regulation requires the collection and maintenance of information protected by the Privacy Act of 1974 (5 U.S.C. 552a). The authorities to collect and maintain the records prescribed in this Regulation are 10 U.S.C. 2397; 10 U.S.C. 2397b; 5 U.S.C. 5532; Reorganization Plans, reprinted in 5 U.S.C.A. app.; Executive Order

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12731; and Executive Order 9397. Each form required by this Regulation includes a Privacy Act statement in the body of the document or in a separate attachment to the form.

References cited within each Chapter are listed at the end of that Chapter in the order they appear.

This Regulation is effective immediately and is mandatory for use by all DoD Components. The Heads of DoD Components may issue supplementary instructions only with the approval of the General Counsel of the Department of Defense, when necessary, to provide for unique requirements.

Send recommended changes to the Regulation to:

Standards of Conduct Office
Office of General Counsel
1600 Defense Pentagon
Washington, D.C. 20301-1600

The DoD Components may obtain copies of this Regulation through their own publications channels. Other Federal agencies and the public may obtain copies from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

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CHAPTER 1

GENERAL INFORMATION

SECTION 1.	PURPOSE	1
1-100.	Single Source of Guidance.	1
1-101.	Disclaimer	1
SECTION 2.	DEFINITIONS	1
1-200.	Administrative Officer	1
1-201.	Agency	1
1-202.	Agency Designee	1
1-203.	Alternate Designated Agency Ethics Official (Alternate DAEO)	1
1-204.	Competing Defense Contractor	2
1-205.	Conduct of a Procurement	2
1-206.	DAEO or Designee	2
1-207.	Defense Contractor	2
1-208.	Deputy Designated Agency Ethics Official (Deputy DAEO)	2
1-209.	Designated Agency Ethics Official (DAEO)	2
1-210.	DoD Component	2
1-211.	DoD Employee	2
1-212.	DoD Supplement	3
1-213.	Employment	3
1-214.	Ethics Counselor	3
1-215.	Ethics Oversight Committee (EOC)	4
1-216.	Former DoD Employee	4
1-217.	Gratuity	4
1-218.	He, His, Him, Himself	4
1-219.	Head of DoD Component Command or Organization	4
1-220.	Major Defense Contractor	4
1-221.	Major Defense System	4
1-222.	Majority of Working Days	5
1-223.	Negotiation	5
1-224.	Non-Federal Entity	5
1-225.	Non-Public Information	5
1-226.	Office of Government Ethics	5
1-227.	Personal and Substantial	5
1-228.	Personal Commercial Solicitation	5
1-229.	Primary Government Representative	5
1-230.	Procurement Official	6
1-231.	Procurement Function	6
1-232.	Prohibited Source	6
1-233.	Qualified Individual	6

1-234.	Reserve Military Officer	6
1-235.	Retired Military Officer	6
1-236.	Senior DoD Official	6
1-237.	Special Government Employee	7
1-238.	Travel Benefits	7
SECTION 3.	GENERAL POLICY	7
1-300.	DoD Policy.	7
SECTION 4.	GENERAL RESPONSIBILITIES	9
1-400.	The Head of each DoD Component	9
1-401.	Each DoD Component Designated Agency Ethics Official (DAEO)	9
1-402.	Each DoD Component Alternate Designated Agency Ethics Official (Alternate DAEO)	10
1-403.	Each DoD Component Deputy Designated Agency Ethics Official (Deputy DAEO)	11
1-404.	The head of each DoD Component command or organization	11
1-405.	The General Counsel of each DoD Component	12
1-406.	The Judge Advocate General of each Military Department	12
1-407.	The General Counsel, DoD (GC, DoD)	12
1-408.	Each Agency Designee	12
1-409.	The DoD Standards of Conduct Office (SOCO)	13
1-410.	The DoD Ethics Oversight Committee (EOC)	14
1-411.	The Director, Washington Headquarters Services	14
1-412.	The Under Secretary of Defense for Acquisition	14
1-413.	Each Ethics Counselor	14
1-414.	The Inspector General of each DoD Component	15
1-415.	The Director of each DoD Component Personnel Office (or equivalent)	15
1-416.	The Administrative Officer (or equivalent) of each DoD Component command and organization	16
1-417.	Each DoD Employee	16
SECTION 5.	REFERENCES	17
1-500.	References	17

CHAPTER 2

STANDARDS OF ETHICAL CONDUCT

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	19
2-100.	5 C.F.R. Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch"	19

SECTION 2.	DoD SUPPLEMENT TO 5 C.F.R. PART 2635	21
2-200.	Purpose	21
2-201.	Designation of Separate Agency Components	21
2-202.	Additional Exceptions for Gifts from Outside Sources	22
2-203.	Additional Limitations on Gifts Between DoD Employees	23
2-204.	Standard for Accomplishing Disqualification	24
2-205.	Limitation on Solicited Sales	24
2-206.	Prior Approval for Outside Employment and Business Activities	25
2-207.	Disclaimer for Speeches and Writings Devoted to Agency Matters	25
SECTION 3.	DoD GUIDANCE	26
2-300.	Gifts	26
2-301.	Use of Federal Government Telephone Systems	27
2-302.	Gambling	28
2-303.	Outside Employment and Activity.	28
2-304.	Use of Military Title by Retirees or Reserves	29
SECTION 4.	REFERENCES	29
2-400.	References	29

CHAPTER 3

ACTIVITIES WITH NON-FEDERAL ENTITIES

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	31
3-100.	5 C.F.R. 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria"	31
SECTION 2.	OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES	33
3-200.	Attendance	33
3-201.	Membership	33
3-202.	Management	33
3-203.	Impartiality of Agency Designee and Travel-Approving Authority	33
3-204.	Impartiality of DoD Employees	34
3-205.	Endorsement	34
3-206.	Distributing Information	34
3-207.	Remuneration	34
3-208.	Co-sponsorship	34
3-209.	Participation in Conferences and Similar Events	35

3-210.	Fundraising and Membership Drives	35
3-211.	Support of Non-Federal Entity Events	36
3-212.	Relationships Governed by Other Authorities	37
SECTION 3.	PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES	38
3-300.	Participation	38
3-301.	Membership and Management	39
3-302.	Impartiality of DoD Employees	39
3-303.	Interference with Employment of Local Civilians.	39
3-304.	Competition with Civilian Musicians	39
3-305.	Use of Federal Government Resources	40
3-306.	Prior Approval of Outside Employment and Business Activities	41
3-307.	Teaching, Speaking and Writing	42
SECTION 4.	REFERENCES	43
3-400.	References	43

CHAPTER 4

TRAVEL BENEFITS

SECTION 1.	ACCEPTANCE OF OFFICIAL TRAVEL BENEFITS IN KIND OR PAYMENT FOR OFFICIAL TRAVEL EXPENSES	45
4-100.	Acceptance from Non-Federal Sources	45
4-101.	Acceptance of Travel and Related Expenses by a DoD Component From Non-Federal Sources	46
4-102.	Acceptance of Contributions, Awards and Other Payments by DoD Employees from Tax-Exempt Organizations (5 U.S.C. 4111)	47
4-103.	Receipt and Disposition of Foreign Gifts and Decorations (5 U.S.C. 7342)	48
SECTION 2.	DoD GUIDANCE	48
4-200.	Acceptance of Incidental Benefits	48
4-201.	Examples of Benefits Considered Federal Government Property	49
4-202.	Examples of Benefits Treated as Gifts to an Individual	50
SECTION 3.	PROCEDURES AND RESPONSIBILITIES	51
4-300.	The travel-approving authority	51
4-301.	Each DoD Component DAEO or Designee	52
4-302.	Each traveling DoD employee	52

SECTION 4.	REFERENCES	52
4-400.	References	52

CHAPTER 5

CONFLICTS OF INTEREST

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	55
5-100.	5 C.F.R. 2639, "Interpretation of 18 U.S.C. 209"	55
SECTION 2.	OFFICE OF GOVERNMENT ETHICS REGULATION	57
5-200.	5 C.F.R. 2640, "Interpretation of 18 U.S.C. 208"	57
SECTION 3.	GUIDANCE ON 18 U.S.C. 208	59
5-300.	Conflicts and Appearance of Conflicts Under 18 U.S.C. 208	59
5-301.	Applicability to Enlistees	59
5-302.	Waiver of 18 U.S.C. 208(a)	59
5-303.	Resolution of Conflicts	61
SECTION 4.	OTHER CONFLICT OF INTEREST LAWS	61
5-400.	Bribery and Graft	61
5-401.	Compensation Related to Matters Pending Government Decision	62
5-402.	Contracts with DoD Employees	63
5-403.	Representation of Others	63
5-404.	Compensation From Other Sources	64
5-405.	Additional Pay or Allowances	65
5-406.	Interference with Military Duties	65
5-407.	Civil Office Prohibition	65
5-408.	Assignment of Reserves for Training	65
5-409.	Commercial Dealings Involving DoD Employees	66
5-410.	Related Rules	67
SECTION 5.	REFERENCES	68
5-500.	References	68

CHAPTER 6

POLITICAL ACTIVITIES

SECTION 1.	OFFICE OF PERSONNEL MANAGEMENT REGULATION	69
------------	--	----

6-100.	5 C.F.R. 733, "Political Activities of Federal Employees" . . .	69
SECTION 2.	POLITICAL ACTIVITIES OF CIVILIAN DoD EMPLOYEES	71
6-200.	Policy	71
6-201.	Applicability	71
6-202.	Permissible Activities	71
6-203.	Limitations	73
6-204.	Prohibited Activities	73
6-205.	Exemptions	74
SECTION 3.	POLITICAL ACTIVITIES OF MILITARY MEMBERS	75
6-300.	DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990	75
SECTION 4.	REFERENCES	77
6-400.	References	77

CHAPTER 7

FINANCIAL AND EMPLOYMENT DISCLOSURE

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	79
7-100.	5 C.F.R. 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees"	79
SECTION 2.	PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278)	81
7-200.	Individuals Required to File	81
7-201.	Information on Covered Positions	82
7-202.	Notification of Requirement to File	82
7-203.	Time of Filing	82
7-204.	Content of Report	84
7-205.	Chain of Submission	85
7-206.	Review	86
7-207.	Disposition	91
7-208.	Public Availability of Reports	91
7-209.	Penalties	91
SECTION 3.	CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (SF 450)	92
7-300.	Individuals Required to File	92
7-301.	Information on Covered Positions	94
7-302.	Notification of Requirement to File	95
7-303.	Time of Filing	95
7-304.	Content of Report	96

7-305.	Chain of Submission	96
7-306.	Review	96
7-307.	Disposition	100
7-308.	Privacy Act	100
7-309.	Status Reports	101
7-310.	Penalties	101
SECTION 4.	REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT (DD FORM 1787)	101
7-400.	Individuals Required to File	101
7-401.	Time of Filing	102
7-402.	Review	102
7-403.	Disposition	103
7-404.	Public Availability of Reports	104
7-405.	Penalties	104
SECTION 5.	REFERENCES	104
7-500.	References	104

CHAPTER 8

SEEKING OTHER EMPLOYMENT

SECTION 1.	GENERAL RULES	105
8-100.	Office of Government Ethics Regulation	105
SECTION 2.	CONFLICT OF INTEREST - (18 U.S.C. 208)	105
8-200.	Negotiating for Employment	105
8-201.	Penalties	105
SECTION 3.	PROCUREMENT INTEGRITY - (41 U.S.C. 423(b))	105
8-300.	Soliciting, Accepting, or Discussing Employment	105
8-301.	Penalties	107
SECTION 4.	REPORTING EMPLOYMENT CONTACTS (10 U.S.C. 2397a)	107
8-400.	Individuals Required to File	107
8-401.	Content of Report	107
8-402.	Disqualification Statement	108
8-403.	Exception	109
8-404.	Penalties	109
SECTION 5.	DoD GUIDANCE	109
8-500.	Appearances	109

8-501.	Written Guidance	110
SECTION 6.	REFERENCES	110
8-600.	References	110

CHAPTER 9

POST-GOVERNMENT SERVICE EMPLOYMENT

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	111
9-100.	5 C.F.R. 2637, "Regulations Concerning Post-Employment Conflict of Interest"	111
SECTION 2.	OFFICE OF GOVERNMENT ETHICS REGULATION	113
9-200.	5 C.F.R. 2641, "Post-Employment Conflict of Interest Restrictions"	113
SECTION 3.	OGE GUIDANCE ON 18 U.S.C. 207	115
9-300.	Office of Government Ethics Memorandum, "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992	115
SECTION 4.	DoD GUIDANCE ON 18 U.S.C. 207	117
9-400.	Exceptions to Restrictions of 18 U.S.C. 207	117
SECTION 5.	POST-EMPLOYMENT COUNSELING AND ADVICE	117
9-500.	Written Advice	117
9-501.	Delegation of Authority	118
SECTION 6.	RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES	118
9-600.	10 U.S.C. 2397b	118
9-601.	41 U.S.C. 423	121
SECTION 7.	RESTRICTIONS ON RETIRED MILITARY MEMBERS	122
9-700.	18 U.S.C. 281(a) and 37 U.S.C. 801	122
9-701.	18 U.S.C. 281(b)	124
9-702.	Restrictions on Federal Government Employment	124
9-703.	Foreign Employment Restrictions	126
SECTION 8.	RESTRICTIONS ON FORMER SENIOR APPOINTEES	127
9-800.	Executive Order 12834	127
SECTION 9.	RESTRICTIONS ON DEALING WITH CURRENT OR FORMER DoD EMPLOYEES	127
9-900.	General Rule	127

9-901.	Terminal Leave	128
SECTION 10.	REPORTS OF DoD AND DEFENSE-RELATED EMPLOYMENT (DD FORM 1787)	128
9-1000.	Individuals Required to File	128
9-1001.	Time of Filing	128
9-1002.	Review	129
9-1003.	Disposition	130
9-1004.	Public Availability of Reports	130
9-1005.	Penalties	130
SECTION 11.	REFERENCES	131
9-1100.	References	131

CHAPTER 10

ENFORCEMENT

SECTION 1.	ENFORCEMENT OF THE PROVISIONS OF THE JOINT ETHICS REGULATION	133
10-100.	Penalties	133
SECTION 2.	REPORTING PROCEDURES	133
10-200.	Reporting Suspected Violations	133
10-201.	Receipt of Report	133
10-202.	Violations of 41 U.S.C. 423	136
SECTION 3.	ADMINISTRATIVE ENFORCEMENT PROCEDURES	137
10-300.	Statutory Authority	137
10-301.	Procedures for Pursuing Administrative Action	137
10-302.	Hearing Examiners	137
10-303.	Administrative Sanctions	137
10-304.	Judicial Review	137
SECTION 4.	REFERENCES	138
10-400.	References	138

CHAPTER 11

TRAINING

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	139
11-100.	5 C.F.R. Part 2638, "Office of Government Ethics and	

	Executive Agency Ethics Training Program Responsibilities"	139
SECTION 2.	DoD GUIDANCE	141
11-200.	Initial and Annual Ethics Training	141
11-201.	Procurement Integrity Training	141
SECTION 3.	PROCEDURES	142
11-300.	Combined Initial and Annual Ethics Training (CIAET) for Calendar Year 1993	142
11-301.	Initial Ethics Training (IET) for New DoD Employees (IET)	143
11-302.	Annual Ethics Training (AET)	144
11-303.	Annual Ethics Training Plans	144
11-304.	Ethics Training Assistance	145
SECTION 4.	RESPONSIBILITIES	145
11-400.	The Head of Each DoD Component	145
11-401.	Each DoD Component DAEO	146
11-402.	The head of each DoD Component command or organization	146
11-403.	The DoD SOCO	146
11-404.	The Director of each DoD Component Personnel Office	146
11-405.	The Administrative Officer (or equivalent) of each DoD Component command and organization	147
11-406.	The DoD Employees	147
SECTION 5.	REFERENCES	147
11-500.	References	147

CHAPTER 12

ETHICAL CONDUCT

SECTION 1.	EXECUTIVE ORDER 12674	149
12-100.	E.O. 12674	149
SECTION 2.	EXECUTIVE ORDER 12834	151
12-200.	E.O. 12834	151
SECTION 3.	CODE OF ETHICS FOR GOVERNMENT SERVICE	153
12-300.	Display of Code	153
SECTION 4.	DoD HUMAN GOALS	154
12-400.	DoD Human Goals	154

SECTION 5.	ETHICAL VALUES	155
12-500.	General	155
12-501.	Primary Ethical Values	155
SECTION 6.	ETHICAL DECISION-MAKING	157
12-600.	General	157
12-601.	Ethical Decision-Making Plan	157
SECTION 7.	REFERENCES	158
12-700.	References	158

APPENDIX A

DIGEST OF LAWS

SECTION 1.	DoD-SPECIFIC STATUTES	161
A-100.	Synopsis of Laws	161
A-101.	10 U.S.C. 2397a, "Requirements Relating to Private Employment Contacts Between Certain DoD Procurement Officials and Defense Contractors"	161
A-102.	10 U.S.C. 2397, "Employees or Former Employees of Defense Contractors: Reports."	161
A-103.	10 U.S.C. 2397b, "Certain Former DoD Procurement Officials: Limitations on Employment by Contractors"	162
A-104.	18 U.S.C. 281, "Restriction on Retired Military Officers Regarding Certain Matters Affecting the Government"	162
A-105.	37 U.S.C. 801, "Restriction on Payment to Certain Officers"	163
SECTION 2.	OTHER LAWS RELATED TO STANDARDS OF ETHICAL CONDUCT	163
A-200.	OGE Digest	163
A-201.	Related Statutes	163

APPENDIX B

PROCUREMENT INTEGRITY

SECTION 1.	PROCUREMENT INTEGRITY	165
B-100.	FAR 3.104, "Procurement Integrity"	165

APPENDIX C

FORMS

SECTION 1.	PUBLIC FINANCIAL DISCLOSURE REPORT	167
C-100.	Standard Form 278	167
SECTION 2.	CONFIDENTIAL FINANCIAL DISCLOSURE REPORT	169
C-200.	Standard Form 450	169
SECTION 3.	REQUEST TO INSPECT OR RECEIVE COPIES OF SF 278, FINANCIAL DISCLOSURE REPORT	171
C-300.	Office of Government Ethics Form 201	171
SECTION 4.	NOTIFICATION OF CONFLICT OF INTEREST REFERRAL	173
C-400.	Office of Government Ethics Form 202	173
SECTION 5.	SENIOR APPOINTEE PLEDGE	175
C-500.	Office of Government Ethics Form 203	175
SECTION 6.	TRADE NEGOTIATOR PLEDGE	177
C-600.	Office of Government Ethics Form 204	177
SECTION 7.	PROCUREMENT INTEGRITY TRAINING CERTIFICATE FOR PROCUREMENT OFFICIALS	179
C-700.	Optional Form 333	179
SECTION 8.	REPORT OF DoD AND DEFENSE-RELATED EMPLOYMENT	181
C-800.	Department of Defense Form 1787	181

APPENDIX D

18 U.S.C. 208 WAIVERS

SECTION 1.	DEPARTMENT OF DEFENSE 18 U.S.C. 208(b) WAIVER	183
D-100.	32 C.F.R. 40.1	183
SECTION 2.	DEPARTMENT OF THE ARMY 18 U.S.C. 208(b) WAIVER	183
D-200.	AR 600-50	183
SECTION 3.	DEPARTMENT OF THE NAVY 18 U.S.C. 208(b) WAIVER	183
D-300.	SECNAVINST 5370.2J	183

SECTION 4.

DEPARTMENT OF THE AIR FORCE 18 U.S.C. 208(b)

D-400.

WAIVER	185
AFR 30-30	185

CHAPTER 1

GENERAL INFORMATION

SECTION 1. PURPOSE

1-100. Single Source of Guidance. This Regulation provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training.

1-101. Disclaimer. A violation of this Regulation does not create any right or benefit, substantive or procedural, enforceable at law by any person against the U.S., its agencies, its officers or employees, or any other person.

SECTION 2. DEFINITIONS

1-200. Administrative Officer. The individual responsible for the administrative control of personnel within a unit or office, including assistance with training, travel, or personnel actions for individuals of the unit or office.

1-201. Agency. A DoD Component as follows: Department of the Army; Department of the Navy; Department of the Air Force; Defense Commissary Agency; Defense Contract Audit Agency; Defense Finance and Accounting Service; Defense Intelligence Agency; Defense Investigative Service; Defense Logistics Agency; Defense Mapping Agency; Defense Nuclear Agency; Defense Information Systems Agency; National Security Agency; Office of the Inspector General of the Department of Defense (IG, DoD); and the Uniformed Services University of the Health Sciences. Employees of DoD Components not designated as separate Agencies, including employees of the Office of the Secretary of Defense (OSD), shall be treated as employees of DoD, which shall be treated as a separate Agency.

1-202. Agency Designee. The first supervisor who is a commissioned military officer or a civilian above GS/GM-11 in the chain of command or supervision of the DoD employee concerned. Except in remote locations, the Agency Designee may act only after consultation with his local Ethics Counselor. For any military officer in grade 0-7 or above who is in command and any civilian Presidential appointee confirmed by the Senate, the Agency Designee is his Ethics Counselor.

1-203. Alternate Designated Agency Ethics Official (Alternate DAEO). An employee of a DoD Agency who has been appointed by the DoD Component Head to serve in the absence of the DoD Component Designated Agency Ethics Official (DAEO).

1-204. Competing Defense Contractor. See Federal Acquisition Regulation (FAR) 3.104-4(b) (reference (a)) in Appendix B of this Regulation or 41 U.S.C. 423(p)(2) (reference (b)).

1-205. Conduct of a Procurement. See FAR 3.104-4(c) (reference (a)) in Appendix B of this Regulation or 41 U.S.C. 423(p)(1) (reference (b)).

1-206. DAEO or Designee. This phrase refers to the Designated Agency Ethics Official, or to the Alternate Designated Agency Ethics Official, Deputy Designated Agency Ethics Official, or Ethics Counselor who has been delegated specific written authority by the DoD Component DAEO to perform specific functions on behalf of the DoD Component DAEO.

1-207. Defense Contractor. For purposes of 10 U.S.C. 2397, 2397a, and 2397b (reference (c)), any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with DoD or a DoD Component to furnish services, supplies, or both, including construction. Subcontractors are excluded unless they are separate legal non-Federal entities that contract directly with DoD or a DoD Component in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to DoD or a DoD Component are defense contractors when acting in that context.

1-208. Deputy Designated Agency Ethics Official (Deputy DAEO). An employee of a DoD Agency who has been appointed, in writing, by the DoD Component DAEO and who has been delegated written authority by that DoD Component DAEO to act on his behalf.

1-209. Designated Agency Ethics Official (DAEO). A DoD employee appointed, in writing, by the Head of the DoD Agency to administer the provisions of Pub. L. 95-521 (reference (d)) and this Regulation.

1-210. DoD Component. OSD; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; IG, DoD; the Uniformed Services University of the Health Sciences; the Defense Agencies; the DoD Field Activities; the Combined Commands and Agencies; and the Special Activities, including non-appropriated fund instrumentalities. See subsection 1-201 of this Regulation, above, for those DoD Components that are Agencies.

1-211. DoD Employee

a. Any DoD civilian officer or employee (including special Government employees) of any DoD Component (including any non-appropriated fund activity).

b. Any active duty Regular or Reserve military officer, including warrant officers.

c. Any active duty enlisted member of the Army, Navy, Air Force, or Marine Corps.

d. Any Reserve or National Guard member on active duty under orders issued pursuant to title 10, United States Code.

e. Any Reserve or National Guard member performing official duties, including while on inactive duty for training or while earning retirement points, pursuant to title 10, United States Code, or while engaged in any activity related to the performance of a Federal duty or function.

f. Any faculty member in a civil service position or hired pursuant to title 10, United States Code, and any student (including a cadet or midshipman) of an academy, college, university, or school of DoD.

g. Consistent with labor agreements and international treaties and agreements, and host country laws, any foreign national working for a DoD Component except those hired pursuant to a defense contract.

1-212. DoD Supplement. Subsections 2-200 through 2-207 of this Regulation contain the DoD Supplement of 5 C.F.R. 2635 (reference (e)), which is reproduced in subsection 2-100 of this Regulation.

1-213. Employment. See 5 C.F.R. 2635.603(a) (reference (e)) in subsection 2-100 of this Regulation.

1-214. Ethics Counselor. The DoD Component DAEO, Alternate DAEO, Deputy DAEO, or a DoD employee appointed in writing by the DoD Component DAEO or designee to generally assist in implementing and administering the DoD Component command's or organization's ethics program and to provide ethics advice to DoD employees of the DoD Component command or organization in accordance with this Regulation. Except for a DoD Component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall only serve as a "DAEO or designee" when he has been delegated specific written authority by the DoD Component DAEO to perform specific functions on behalf of the DoD Component DAEO. Except for a DoD Component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall be an attorney. 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. The term "Ethics Counselor" includes "agency ethics official" as used by the Office of Government Ethics (OGE). See 5 C.F.R. 2635.102.(c) (reference (e)) in subsection 2-100 of this Regulation.

1-215. Ethics Oversight Committee (EOC). A working group composed of the DoD Component DAEOs, or their representatives, and representatives of the CJCS, and the Judge Advocates General of the Military Departments.

1-216. Former DoD Employee. Any individual defined in subsection 1-211 of this Regulation, above, after termination of active duty or termination of on DoD service, including Reserve military officers who served on active duty for more than 130 days and who are no longer on active duty, or who are in an inactive or retired status.

1-217. Gratuity. Gifts as defined in 5 C.F.R. 2635.203(b) (reference (e)) in subsection 2-100 of this Regulation.

1-218. He, His, Him, Himself. These pronouns include she, hers, her and herself.

1-219. Head of DoD Component Command or Organization. A commander, commanding officer, or other military or civilian DoD employee who exercises command authority within a DoD Component.

1-220. Major Defense Contractor. Any non-Federal entity which, during the preceding fiscal year, received defense contracts in a total amount equal to or greater than \$10 million.

1-221. Major Defense System. For purposes of 10 U.S.C. 2397b (reference (c)), a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A list is published in the Federal Register. See 10 U.S.C. 2302 (reference (c)). A system shall be considered a major defense system if:

a. DoD is responsible for the system and the total expenditures, for research, development, test, and evaluation for the system, are estimated to exceed \$75 million (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds \$300 million (based on fiscal year 1980 constant dollars); or

b. The system is designated a "major system" by the Head of the DoD Agency responsible for the system.

1-222. Majority of Working Days. More than 50% of days actually worked, excluding holidays, weekends, sick days, and leave days of the two-year period in question.

1-223. Negotiation. For purposes of 10 U.S.C. 2397b (reference (c)) only, the exchange of views between Federal Government and defense contractor representatives regarding respective entitlements, liabilities and responsibilities on a particular defense contract, modification, or claim over \$10 million, including deliberations regarding contract specifications, terms of delivery, allowability of costs, and pricing of change orders. Other statutes using this term may define it differently.

1-224. Non-Federal Entity. A non-Federal entity is generally a self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government. A non-Federal entity may operate on DoD installations if approved by the installation commander or higher authority under applicable regulations. See DoD Directive 1000.15 (reference (f)).

1-225. Non-Public Information. Information generally not available to the public, obtained in the course of one's official DoD duties or position which would normally not be releasable under the Freedom of Information Act, 5 U.S.C. 552 (reference (g)). The term "non-public information" includes "inside information," "proprietary information," and "source selection information." See 5 C.F.R. 2635.703 (reference (e)) in subsection 2-100 of this Regulation, DoD Directive 5400.7 (reference (h)), and FAR 3.104-4(j) and (k) and 3.104-5 (reference (a)) in Appendix B of this Regulation.

1-226. Office of Government Ethics. The Federal Government agency responsible for overall direction and leadership concerning Executive Branch policies related to ethics in the Federal Government. See 5 C.F.R. 2638 (reference (i)) in subsection 11-100 of this Regulation.

1-227. Personal and Substantial. See 5 C.F.R. 2635.402(b)(4) (reference (e)) in subsection 2-100 of this Regulation.

1-228. Personal Commercial Solicitation. Any effort to contact an individual to conduct or transact matters involving unofficial business, finance, or commerce. This does not include off-duty employment of DoD employees employed in retail establishments. See DoD Directive 1344.7 (reference (j)).

1-229. Primary Government Representative. For purposes of 10 U.S.C. 2397b (reference (c)), acting as a "representative" requires personal and

substantial participation in the matter by personal presence, telephone conversation, or similar involvement with representatives of a defense contractor. At any time, more than one individual may act as a primary representative for a single matter.

1-230. Procurement Official. See FAR 3.104-4(h) (reference (a)) in Appendix B of this Regulation.

1-231. Procurement Function. For purposes of 10 U.S.C. 2397b (reference (c)), any function relating to:

- a. The negotiation, award, administration, or approval of a contract;
- b. The selection of a defense contractor;
- c. The approval of a change in a contract;
- d. The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or
- e. The management of a procurement program.

1-232. Prohibited Source. See 5 C.F.R. 2635.203(d) (reference (e)) in subsection 2-100 of this Regulation.

1-233. Qualified Individual. See 5 C.F.R. 2638.702(a)(2) (reference (i)) in subsection 11-100 of this Regulation.

1-234. Reserve Military Officer. An individual who currently holds an appointment in the Reserve of a Military Department, or is a military officer of the National Guard with Federal Government recognition.

1-235. Retired Military Officer. Any military officer entitled to receive military retired pay, even though such pay may be waived or pending.

1-236. Senior DoD Official. For purposes of 18 U.S.C. 207 (reference (k)), a DoD employee:

(i) [E]mployed at a rate of pay specified in or fixed according to subchapter 11 of chapter 53 of [United States Code,] title 5 [(reference (g))];

(ii) [E]mployed in a position which is not referred to in clause a. and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5305 of [United States Code,] title 5

[(reference (g))] (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule;

(iii) [A]ppointed by the President to a position under section 105(a)(2)(B) of [United States Code,] title 3 [(reference (l))] or by the Vice President to a position under section 106(a)(1)(B) of [United States Code,] title 3 [(reference (l))]; or

(iv) [E]mployed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of [United States Code,] title 37 [(reference (m))] is pay grade 0-7 or above.

See 18 U.S.C. 207(c)(2) (reference (k)).

1-237. Special Government Employee. An individual who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve military officer who is serving on active duty involuntarily or for training for any length of time, and one who is serving voluntarily on active duty for training for 130 days or less. It does not include enlisted members; however, for the purposes of this Regulation, enlisted members shall be considered special Government employees to the same extent that military officers are included in the meaning of the term.

1-238. Travel Benefits. Travel related gifts, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources.

SECTION 3. GENERAL POLICY

1-300. DoD Policy. It is DoD policy that:

a. A single, uniform source of standards of ethical conduct and ethics guidance shall be maintained within DoD, and each DoD Agency shall implement and administer a comprehensive ethics program to ensure compliance with such standards and guidance;

b. Although OGE regulations, reprinted in this Regulation, do not apply to enlisted members of DoD, the provisions of 5 C.F.R. 2634 (reference (n)) in subsection 7-100 of this Regulation, 5 C.F.R. 2635 (reference (e)) in subsection 2-100 of this Regulation, 5 C.F.R. 2638 (reference (i)) in subsection 11-100 of this Regulation, 5 C.F.R. 2639 (reference (o)) in subsection 5-100 of this Regulation, 5 C.F.R. 2640 (reference (p)) in subsection 5-200 of this Regulation, 5 C.F.R. 2641 (reference (q)) in subsection 9-200 of this Regulation, are determined to be appropriate for enlisted members and are hereby made applicable to enlisted members as if the terms "employee," and "special Government employee," as used in those OGE regulations, include enlisted members to the same extent that military officers are included within the meaning of those terms. The following exception applies:

(1) Certain criminal statutes, 18 U.S.C. 203, 205, 207, 208, 209, and 218 (reference (k)), and related provisions of OGE regulations, do not apply to enlisted members. Provisions similar to those of 18 U.S.C. 208 and 209 (reference (k)) apply to enlisted members as follows:

(a) Except as approved by the DoD Component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner, or employee, or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest;

(b) An enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government.

c. DoD employees shall become familiar with all ethics provisions, including the standards set out in E.O. 12674 (reference (r)) in subsection 12-100 of this Regulation, and comply with them;

d. DoD employees shall become familiar with the scope of and authority for the official activities for which they are responsible. Sound judgment must be exercised. All DoD employees must be prepared to account fully for the manner in which that judgment has been exercised;

e. If the propriety of a proposed action or decision is in question for any reason, DoD employees shall seek guidance from a DoD Component legal counsel, the DoD Component DAEO or designee, or Ethics Counselor, as appropriate;

f. Individual conduct, official programs and daily activities within DoD shall be accomplished lawfully and ethically;

g. DoD employees shall adhere strictly to DoD policy of equal opportunity, regardless of race, color, religion, gender, age, national origin, or handicap, in accordance with applicable laws and regulations.

SECTION 4. GENERAL RESPONSIBILITIES

1-400. The Head of each DoD Component shall:

a. Exercise personal leadership and take personal responsibility through the DoD Component DAEO for establishing and maintaining the DoD Component's ethics program and be personally accountable for the DoD Component's compliance with every requirement of this Regulation, including the ethics and procurement integrity training requirements;

b. When authorized, appoint a DoD Component DAEO, through a formal written delegation of authority, who is qualified to oversee and supervise the DoD Component's ethics programs for DoD employees, both civilian and military. (The GC, DoD, may serve as the DAEO for several DoD Components);

c. When authorized, appoint a DoD Component Alternate DAEO who shall serve in the absence of the DoD Component DAEO;

d. Provide sufficient resources (including funding and investigative, audit, legal, training and administrative staff) to enable the DoD Component DAEO to implement and administer the DoD Component's ethics programs in a positive and effective manner.

1-401. Each DoD Component Designated Agency Ethics Official (DAEO) shall:

a. Be responsible for the implementation and administration of all aspects of the DoD Component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this Regulation.

b. Appoint DoD Component Deputy DAEOs and Ethics Counselors and delegate to them written authority to act on behalf of the DoD Component DAEO;

c. Ensure that ethics advice (and facts relied upon for such advice) is in writing, when practicable;

d. Ensure that written opinions regarding the applicability of 10 U.S.C. 2397b (reference (c)) and 41 U.S.C. 423 (reference (b)) are provided within 30 days of request by any DoD employee provided that the request is accompanied by complete and full information necessary to render an opinion;

e. Ensure the proper collection, review, and handling of the DoD Component's financial and employment disclosure reports, including those submitted by Presidential appointees for confirmation purposes;

f. Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

g. Provide periodic ethics and procurement integrity training for Ethics Counselors;

h. Certify Qualified Individuals to conduct ethics training;

i. Assist Agency Designees, through the chain of command or supervision, in initiating prompt, effective action to evaluate and process violations, potential violations, and appearances of violations of ethics laws or regulations, in accordance with applicable procedures as discussed in Chapter 10 of this Regulation;

j. Provide advice and assistance to DoD employees of the DoD Component not otherwise served by a local Ethics Counselor;

k. Oversee and coordinate local ethics programs through a system for periodic evaluation and ensure that the DoD Component provides and maintains sufficient funding, staff, space and resources to administer the DoD Component's ethics programs;

l. Maintain liaison with the DoD EOC, OGE, and the DoD Standards of Conduct Office (SOCO), and provide to SOCO and OGE all information required by law or regulation;

m. Represent the DoD Component to OGE, Congress, the Executive Branch and the public on matters relating to ethics and standards of conduct.

1-402. Each DoD Component Alternate Designated Agency Ethics Official (Alternate DAEO) shall serve in the absence of the DoD Component DAEO and, when so serving, is authorized to take any action this Regulation indicates may be taken only by the DoD Component DAEO.

1-403. Each DoD Component Deputy Designated Agency Ethics Official (Deputy DAEO) shall serve on behalf of the DoD Component DAEO consistent with written delegation of authority from the DoD Component DAEO.

1-404. The head of each DoD Component command or organization shall:

a. Exercise personal leadership and take personal responsibility for establishing and maintaining the command's or organization's ethics program in coordination with the command's or organization's Ethics Counselors;

b. Be personally accountable for the command's or organization's ethics program, including its ethics and procurement integrity training program, and the command's or organization's compliance with every requirement of this Regulation;

c. Provide sufficient resources to enable the command's or organization's Ethics Counselors to implement and administer the local aspects of the command's or organization's ethics program in a positive and effective manner;

d. Ensure the prompt resolution of any actual or apparent conflict of interest involving a DoD employee of the command or organization;

e. Direct Administrative Officers (or equivalent) of the command or organization to ensure that the position descriptions of the DoD Component command or organization indicate if financial disclosure report filing, annual ethics training or procurement integrity training is required and ensure the accuracy of personnel data provided by the Director of the DoD Component personnel office on DoD employees of the command or organization;

f. Direct Administrative Officers (or equivalent) of the command or organization to coordinate with the DoD Component DAEO or designee to develop lists of all DoD employees of the command or organization who are required to receive ethics and procurement integrity training, schedule such training, annotate such lists to indicate when required training was accomplished and retain annotated lists for three years;

g. Ensure that DoD employees of the command or organization who are in positions requiring the filing of SF 450, "Confidential Financial Disclosure Reports," July 1992, Appendix C of this Regulation, do so in a timely manner;

h. Ensure that DoD employees of the command or organization attend required ethics and procurement integrity training.

1-405. The General Counsel of each DoD Component shall:

a. Serve as the DAEO for the DoD Component unless otherwise delegated;

b. Support all aspects of the ethics program of the DoD Component;

c. Provide legal guidance and assistance to the DoD Component DAEO or designee.

1-406. The Judge Advocate General of each Military Department shall:

a. Provide legal guidance and assistance to Ethics Counselors under his supervision;

b. Support all aspects of the ethics program of the Military Department.

1-407. The General Counsel, DoD (GC, DoD) shall:

a. Maintain the DoD SOCO and provide sufficient resources to enable SOCO to oversee and coordinate DoD Component ethics programs, to produce reports required by Congress and maintain report data, and to manage the DoD EOC;

b. Represent DoD as a whole to OGE, Congress, the Executive Branch, and the public when called upon to do so on matters relating to ethics policy;

c. Have the authority to incorporate changes to Government-wide regulations that are reprinted in this Regulation without formal coordination.

1-408. Each Agency Designee shall:

a. In accordance with subsection 3-306 of this Regulation, provide prior approval or disapproval of outside activities by DoD employees under his responsibility;

- b. Receive and appropriately process reports of suspected violations of ethics statutes or regulations and possible conflicts of interest;
- c. Receive and appropriately process reports of non-compliance with the filing requirements of Chapter 7 of this Regulation;
- d. Perform all the other duties of an Agency Designee established in this Regulation and in 5 C.F.R. 2635 (reference (e)) in subsection 2-100 of this Regulation;
- e. Annually determine those positions under his responsibility that require the filing of SF 450s, Appendix C of this Regulation, and annual ethics and procurement integrity training.

1-409. The DoD Standards of Conduct Office (SOCO) shall:

- a. Manage the DoD EOC and call periodic meetings to consider current issues in ethics and standards of conduct;
- b. Coordinate DoD Component ethics programs, including providing uniform guidance and training material;
- c. Collect and publish important written opinions from DoD Components, when practicable, to promote uniformity of ethics opinions throughout DoD;
- d. Monitor and assist DoD Component DAEOs in ensuring effective corrective action is taken to remedy violations, potential violations and the appearance of violations of ethics laws or this Regulation;
- e. Certify Qualified Individuals to conduct ethics training who may be used by DoD Components;
- f. Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;
- g. Distribute ethics and procurement integrity training material to all DoD Component DAEOs for use in all types of ethics and procurement integrity training;
- h. In the interest of Federal Government efficiency and economy, establish and maintain a resource center of ethics and procurement integrity materials (including training materials) developed by DoD Components.

1-410. The DoD Ethics Oversight Committee (EOC) shall:

- a. Meet periodically, as necessary;
- b. Consider general ethics issues or current issues and make recommendations to promote uniformity of ethics opinions throughout DoD;
- c. Provide recommendations to DoD Component DAEOs on particular ethics matters in accordance with this Regulation;
- d. Provide recommendations for DoD input on proposed ethics legislation and regulations.

1-411. The Director, Washington Headquarters Services shall:

- a. Prepare an annual report listing all the defense contractors that have been awarded \$10 million or more in defense contracts during the fiscal year and publish the report in the Federal Register not later than December 15 following the end of the fiscal year;
- b. Prepare an annual report listing all the defense contractors that have been awarded \$25,000 or more in defense contracts during the fiscal year and distribute to the DoD Component DAEOs not later than December 31 following the end of the fiscal year.

1-412. The Under Secretary of Defense for Acquisition shall prepare an annual report listing all the major defense systems as defined by 10 U.S.C. 2302(5) (reference (c)), and the prime defense contractors responsible for each, that were in progress during the fiscal year and provide the report to the DoD SOCO for publication in the Federal Register not later than December 31 following the end of the fiscal year;

1-413. Each Ethics Counselor shall:

- a. Provide written and oral advice, counseling, and assistance to his DoD Component command or organization and to the DoD employees of his DoD Component command or organization, on all ethics matters, particularly areas covered by this Regulation and related statutes and regulations;
- b. Request assistance, through appropriate channels, from the DoD Component DAEO or designee on any matter that cannot be resolved locally;
- c. Maintain a current copy of this Regulation, and all changes, for review by any DoD employee;

d. Maintain a thorough understanding of current DoD ethics policy through contact with the DoD Component DAEO, attendance at periodic ethics training courses, and other appropriate methods;

e. Promptly provide a copy to the DoD Component DAEO of precedental written decisions to assist uniformity throughout the DoD Components;

f. Perform other duties as assigned by written delegation from the DoD Component DAEO;

g. Review financial disclosure reports in accordance with Chapter 7 of this Regulation.

1-414. The Inspector General of each DoD Component shall:

a. Investigate ethics matters arising in the DoD Component, and refer any such matters that involve suspected criminal violations to the appropriate criminal investigative office of the DoD Component;

b. Report to the DoD Component DAEO or designee on investigations that result in referrals to the Department of Justice (DoJ) and on disciplinary actions that must be reported in response to the OGC annual ethics survey;

c. Ensure inspectors and agents are educated in ethics matters to ensure appropriate handling of ethics related cases and calls;

1-415. The Director of each DoD Component Personnel Office (or equivalent) shall:

a. Provide the DoD Component DAEO or designee such personnel data on DoD employees, both civilian and military, as may be required by the DoD Component DAEO or designee;

b. Assign personnel action officers the responsibility of providing the required information at local levels;

c. In coordination with the DoD Component DAEO or designee, establish procedures to inform new DoD employees of their obligation to receive ethics and procurement integrity training as required;

d. In coordination with the DoD Component DAEO or designee, establish out-processing procedures and records to advise DoD

employees of available counseling regarding post-employment and procurement integrity restrictions prior to departure from DoD;

e. In coordination with the DoD Component DAEO or designee, establish procedures to advise incoming and outgoing DoD employees of their financial and employment disclosure reporting obligations.

1-416. The Administrative Officer (or equivalent) of each DoD Component command and organization shall:

a. Ensure that each position description of the DoD Component command or organization indicates if an SF 278, "Public Financial Disclosure Report," January 1991, or SF 450, Appendix C of this Regulation, and annual ethics and procurement integrity training are required so prospective or new DoD employees are on notice of such requirements prior to employment;

b. Upon the request of the DAEO or designee, ensure the accuracy of personnel data provided by the Director of the DoD Component personnel office on DoD employees of the DoD Component command or organization;

c. In coordination with the DoD Component DAEO or designee, develop a list of all DoD employees within the DoD Component command or organization who are required to receive ethics and procurement integrity training;

d. In coordination with the DoD Component DAEO or designee, ensure that DoD employees of the DoD Component command or organization are scheduled to receive required ethics and procurement integrity training;

e. Annotate such list to indicate when required training was accomplished and retain annotated list for three years.

1-417. Each DoD Employee shall:

a. Abide by the ethical principles established by E.O. 12674 (reference (r)), in subsection 12-100 of this Regulation, ethics statutes, and the ethics regulations promulgated by OGE and DoD thereunder;

b. Set a personal example for fellow DoD employees in performing official duties within the highest ethical standards;

c. Report suspected violations of ethics regulations in accordance with subsection 10-200 of this Regulation;

- d. Perform all official duties so as to facilitate Federal Government efficiency and economy;
- e. Attend ethics and procurement integrity training as required;
- f. File financial and employment disclosure reports as required.

SECTION 5. REFERENCES

1-500. References

- (a) Federal Acquisition Regulation, Part 3.104, current edition
- (b) Title 41, United States Code, Section 423
- (c) Title 10, United States Code, Sections 2302, 2397, 2397a, and 2397b
- (d) Public Law 95-521, "Ethics in Government Act of 1978," October 26, 1978, as amended
- (e) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (f) DoD Directive 1000.15, "Private Organizations on DoD Installations," September 22, 1978
- (g) Title 5, United States Code, Chapter 53, Subchapter 11, and Sections 552 and 5305
- (h) DoD Directive 5400.7, "DoD Freedom of Information Act Program," May 13, 1988
- (i) Title 5, Code of Federal Regulations, Part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities," current edition
- (j) DoD Directive 1344.7, "Personal Commercial Solicitation on DoD Installations," February 13, 1986
- (k) Title 18, United States Code, Sections 203, 205, 207, 208, 209 and 218
- (l) Title 3, United States Code, Sections 105 and 106
- (m) Title 37, United States Code, Section 201
- (n) Title 5, Code of Federal Regulations, Part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition

- (o) Title 5, Code of Federal Regulations, Part 2639, "Interpretation of 18 U.S.C. 209," current edition
- (p) Title 5, Code of Federal Regulations, Part 2640, "Interpretation of 18 U.S.C. 208," current edition
- (q) Title 5, Code of Federal Regulations, Part 2641, "Post-Employment Conflict of Interest Restrictions," current edition
- (r) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989, as amended

CHAPTER 2

STANDARDS OF ETHICAL CONDUCT

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

2-100. 5 C.F.R. Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch" (reference (a))

STANDARDS OF ETHICAL CONDUCT FOR THE EXECUTIVE BRANCH

5 CFR Part 2635¹

Table of Contents

SUBPART A: GENERAL PROVISIONS 3

 Sec. 2635.101 Basic obligation of public service 3
 Public service is a public trust (3); General principles (3); Related statutes (3)

 Sec. 2635.102 Definitions 4
 Agency (4); Agency designee (4); Agency ethics official (4); Agency programs or operations (4); Corrective action (4); Designated agency official (4); Disciplinary action (4); Employee (4); Head of an agency (4); He, his, and him (4); she, hers and her (4); Person (4); Special Government employee (4); Supplemental agency regulation (4)

 Sec. 2635.103 Applicability to members of the uniformed services 4

 Sec. 2635.104 Applicability to employees on detail 5
 Details to other agencies (5); Details to the legislative or judicial branch (5); Details to non-Federal entities (5); Applicability of special agency statutes (5)

 Sec. 2635.105 Supplemental agency regulations 5

 Sec. 2635.106 Disciplinary and corrective action 6

 Sec. 2635.107 Ethics advice 6

SUBPART B: GIFTS FROM OUTSIDE SOURCES 6

 Sec. 2635.201 Overview 6

 Sec. 2635.202 General standards 6
 General prohibitions (6); Relationship to illegal gratuities statute (6); Limitations on use of exceptions (6)

 Sec. 2635.203 Definitions 7
 Agency (7); Gift (7); Market value (8); Prohibited source (8); Solicited or accepted because of the employee's official position (8); solicited or accepted indirectly (8); Vendor promotional training (8)

 Sec. 2635.204 Exceptions 9
 Gifts of \$20 or less (9); Gifts based on a personal relationship (9); Discounts and similar benefits (10); Awards and honorary degrees (10); Gifts based on outside business or employment (11); Gifts from a political organization (11); Widely attended gatherings and other events (12); Social invitations from persons other than prohibited sources (13); Meals, refreshments and entertainment in foreign areas (13); Gifts to the President or Vice President (13); Gifts authorized by supplemental agency regulation (13); Gifts accepted under specific statutory authority (14)

 Sec. 2635.205 Proper disposition of prohibited gifts 14

SUBPART C: GIFTS BETWEEN EMPLOYEES 14

 Sec. 2635.301 Overview 14

 Sec. 2635.302 General standards 15
 Gifts to superiors (15); Gifts from employees receiving less pay (15); Limitation on use of exceptions (15)

 Sec. 2635.303 Definitions 15
 Gift (15); Indirectly (15); market value (15); Official superior (15); Solicit (15); Voluntary contribution (15)

 Sec. 2635.304 Exceptions 15
 General exceptions (16); Special, infrequent occasions (16); Voluntary contributions (16)

SUBPART D: CONFLICTING FINANCIAL INTERESTS 17

 Sec. 2635.401 Overview 17

 Sec. 2635.402 Disqualifying financial interests 17
 Statutory prohibition (17); Definitions (17); Disqualification (19); Waiver of disqualification (19); Divestiture of a disqualifying financial interest (20); Official duties that give rise to potential conflicts (20)

 Sec. 2635.403 Prohibited financial interests 20
 Agency regulation prohibiting certain financial interests (20); Agency determination of substantial conflict (20); Definition of financial interest (21); Reasonable period to divest or terminate (21); Eligibility for special tax treatment (21)

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule, published at 5 CFR Part 2635, as amended, is authoritative. The prohibitions and requirements printed in bold italics are general orders and apply to all military members without further implementation as per DoD Directive 5500.7, "Standards of Conduct," August 30, 1993. The sections printed in bold italics include parts of the following: 2635.202 (a) and (b); 2635.302 (a), (b) and (c); 2635.402 (a); 2635.502 (a); 2635.503 (a); 2635.604 (a); 2635.606 (a); 2635.702 and 2635.702 (a), (b) and (c); 2635.703 (a); 2635.704 (a) and (b); 2635.802 and 2635.802 (a) and (b); 2635.805 (a); 2635.807 (a); and 2635.808 and 2735.808 (b) and (c).

SUBPART E: IMPARTIALITY IN PERFORMING OFFICIAL DUTIES	21
Sec. 2635.501 Overview	21
Sec. 2635.502 Personal and business relationships	22
Consideration of appearances by the employee (22); Definitions (22); Determination by agency designee (23); Authorization by agency designee (23); Disqualification (24); Relevant considerations (24)	
Sec. 2635.503 Extraordinary payments from former employers	25
Disqualification requirement (25); Definitions (25); Waiver of disqualification (25)	
SUBPART F: SEEKING OTHER EMPLOYMENT	25
Sec. 2635.601 Overview	25
Sec. 2635.602 Applicability and related considerations	25
Related employment restrictions (26); Interview trips and entertainment (26)	
Sec. 2635.603 Definitions	26
Employment (26); seeking employment (26); begun seeking employment (26); negotiations (26); no longer seeking employment (27); Prospective employer (27); Direct and predictable effect (28); particular matter (28)	
Sec. 2635.604 Disqualification while seeking employment	28
Obligation to disqualify (28); Notification (28); Documentation (28); Agency determination of substantial conflict (29)	
Sec. 2635.605 Waiver or authorization permitting participation while seeking employment	29
Waiver (29); Authorization by agency designee (29)	
Sec. 2635.606 Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations	29
Employment or arrangement concerning employment (29); Offer rejected or not made (29)	
SUBPART G: MISUSE OF POSITION	30
Sec. 2635.701 Overview	30
Sec. 2635.702 Use of public office for private gain	30
Inducement or coercion of benefits (30); Appearance of governmental sanction (30); Endorsements (30); Performance of official duties affecting a private interest (31); Use of terms of address and ranks (31)	
Sec. 2635.703 Use of nonpublic information	31
Prohibition (31); Definition of nonpublic information (31)	
Sec. 2635.704 Use of Government property	32
Standard (32); Definitions (32)	
Sec. 2635.705 Use of official time	32
Use of an employee's own time (32); Use of a subordinate's time (32)	
SUBPART H: OUTSIDE ACTIVITIES	33
Sec. 2635.801 Overview	33
Sec. 2635.802 Conflicting outside employment and activities	34
Sec. 2635.803 Prior approval for outside employment and activities	34
Sec. 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees	34
Presidential appointees to full-time noncareer positions (34); Covered noncareer employees (35); Definition (35)	
Sec. 2635.805 Service as an expert witness	35
Restriction (35); Additional restriction (35); Authorization to serve as an expert witness (35); when subpoenaed (36)	
Sec. 2635.806 Participation in professional associations. [Reserved]	36
Sec. 2635.807 Teaching, speaking and writing	36
Compensation for teaching, speaking or writing (36); Reference to official position (39)	
Sec. 2635.808 Fundraising activities	39
Definitions (40); Fundraising in an official capacity (40); Fundraising in a personal capacity (41)	
Sec. 2635.809 Just financial obligations	41
SUBPART I: RELATED STATUTORY AUTHORITIES	41
Sec. 2635.901 General	41
Sec. 2635.902 Related statutes	41
Index	45

SUBPART A: GENERAL PROVISIONS

Sec. 2635.101 Basic obligation of public service

(a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

(c) Related statutes. In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

Sec. 2635.102 Definitions

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) Agency means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

(b) Agency designee refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted by this part with respect to another employee. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.

(c) Agency ethics official refers to the designated agency ethics official or to the alternate designated agency ethics official, referred to in Sec. 2638.202(b) of this chapter, and to any deputy ethics official, described in Sec. 2638.204 of this chapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.

(d) Agency programs or operations refers to any program or function carried out or performed by an agency, whether pursuant to statute, Executive order, or regulation.

(e) Corrective action includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

(f) Designated agency official refers to the official designated under Sec. 2638.201 of this chapter.

(g) Disciplinary action includes those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal. In the case of a military officer, comparable provisions may include those in the Uniform Code of Military Justice.

(h) Employee means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

(i) Head of an agency means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(j) He, his, and him include she, hers and her.

(k) Person means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(l) Special Government employee means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(m) Supplemental agency regulation means a regulation issued pursuant to Sec. 2635.105.

Sec. 2635.103 Applicability to members of the uniformed services

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. Those regulations shall be consistent with

Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions, including those available under the Uniform Code of Military Justice, for failure to comply with such regulations.

Sec. 2635.104 Applicability to employees on detail

(a) Details to other agencies. Except as provided in paragraph (d) of this section, an employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 calendar days shall be subject to any supplemental agency regulations of the agency to which he is detailed rather than to any supplemental agency regulations of his employing agency.

(b) Details to the legislative or judicial branch. An employee on detail, including a uniformed officer on assignment, from his employing agency to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the provisions of this part, except this section, or, except as provided in paragraph (d) of this section, to any supplemental agency regulations of his employing agency, but shall remain subject to the conflict of interest prohibitions in title 18 of the United States Code.

(c) Details to non-Federal entities. Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethics official may grant a written exemption from subpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(d) Applicability of special agency statutes. Notwithstanding paragraphs (a) and (b) of this section, an employee who is subject to an agency statute which restricts his activities or financial holdings specifically because of his status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his employing agency that implement that statute.

Sec. 2635.105 Supplemental agency regulations

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section.

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:

- (1) In the form of a supplement to the regulations in this part; and
- (2) In addition to the substantive provisions of this part.

(b) After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the Federal Register for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the Federal Register.

(c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:

- (1) A handbook or other issuance intended merely as an explanation of the standards contained in this part or in supplemental agency regulations;
- (2) An instruction or other issuance the purpose of which is to:
 - (i) Delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or
 - (ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or

(3) Regulations or instructions that an agency has authority, independent of this part, to issue, such as regulations implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standards for use of Government vehicles. Where the content of any such regulations or instructions

was included in the agency's standards of conduct regulations issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

Sec. 2635.106 Disciplinary and corrective action

(a) Except as provided in Sec. 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Government-wide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

Sec. 2635.107 Ethics advice

(a) As required by Sec. 2638.201 and 2638.202(b) of this chapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program, as well as an alternate. The designated agency ethics official has authority under Sec. 2638.204 of this chapter to delegate certain responsibilities, including that of providing ethics counseling regarding the application of this part, to one or more deputy ethics officials.

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

SUBPART B: GIFTS FROM OUTSIDE SOURCES

Sec. 2635.201 Overview

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

Sec. 2635.202 General standards

(a) 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.*

(b) Relationship to illegal gratuities statute. Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) Limitations on use of exceptions. *Notwithstanding any exception provided in this subpart, other than Sec. 2635.204(j), an employee shall not:*

- (1) Accept a gift in return for being influenced in the performance of an official act;*

(2) Solicit or coerce the offering of a gift;

(3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in Sec. 2635.204(a) on de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials;

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; and

(iii) 41 U.S.C. 423(b)(2), which prohibits a procurement official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a Federal agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in the Federal Acquisition Regulation, 48 CFR 3.104;

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to Sec. 2635.204(i).

Sec. 2635.203 Definitions

For purposes of this subpart, the following definitions shall apply:

(a) Agency has the meaning set forth in Sec. 2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

(1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-1.6(b).

(8) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(9) Anything for which market value is paid by the employee.

(c) Market value means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

(d) Prohibited source means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

(e) A gift is Solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held his position as a Federal employee.

Note: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by Sec. 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under Sec. 2636.204 of this chapter.

Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) Vendor promotional training means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

Sec. 2635.204 Exceptions

The prohibitions set forth in Sec. 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section and a gift accepted in accordance with one of those paragraphs will not be deemed to violate the principles set forth in Sec. 2635.101(b). Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) Gifts of \$20 or less. An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at Sec. 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at Sec. 2635.204(b) for gifts based on a personal relationship.

Example 4: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of \$20 or less accepted under Sec. 2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: A Navy contracting officer is participating in a procurement for environmental cleanup services at a Navy installation that has recently been closed. She is presently involved in negotiations with three competing contractors, one of whom has offered her a fancy ballpoint pen embossed with its corporate logo. Even though the pen has a market value of \$18 and could be accepted under the \$20 de minimis exception at Sec. 2635.204(a), the contracting officer cannot accept the competing contractor's gift. Under the procurement integrity provisions at 41 U.S.C. 423, she is a "procurement official" for that contract and, except as specifically permitted by the regulations implementing that statute, she is prohibited prior to award from accepting a gift from a competing contractor for that contract. The Federal Acquisition Regulation at 48 CFR 3.104 contains an exception for gifts with a market value of \$10 or less.

(b) Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is \$500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) Discounts and similar benefits. In addition to those opportunities and benefits excluded from the definition of a gift by Sec. 2635.203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: An employee of the Consumer Product Safety Commission may accept a discount of \$50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.

Example 2: An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) Awards and honorary degrees

(1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in Sec. 2635.204(d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth \$200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(e) Gifts based on outside business or employment relationships. An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under Sec. 2635.502, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.

(4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in Sec. 2635.603(a).

(f) Gifts from a political organization. An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active

participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an exempt employee to a political event may accept meals, free attendance and entertainment provided at the event by such a political organization.

Example 1: The Secretary of the Department of Health and Human Services is exempt from the noted Hatch Act restrictions. He may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) Widely attended gatherings and other events

(1) Speaking and similar engagements. When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) Widely attended gatherings. When there has been a determination that his attendance is in the interest of the agency because it will further agency programs or operations, an employee may accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) Determination of agency interest. The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the monetary value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom a finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the sponsor or its members.

(4) Free attendance. For purposes of paragraphs (g)(1) and (2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

Note: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) Cost provided by sponsor of event. The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) Accompanying spouse. When others in attendance will generally be accompanied by spouses, the agency designee may authorize an employee to accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsors a seminar for which it charges a fee of \$100. An Air Force contractor pays \$500 to the association so that the association can extend free

invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$500 to the association in order that it might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency.

Example 2: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of Sec. 2635.204(a), he may accept a token of appreciation for his speech having a market value of \$20 or less.

Example 3: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$20 de minimis exception at Sec. 2635.204(a).

Example 4: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

(h) Social invitations from persons other than prohibited sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

- (1) The invitation is from a person who is not a prohibited source; and
- (2) No fee is charged to any person in attendance.

Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his official position.

(i) Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

- (1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;
- (2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;
- (3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(j) Gifts to the President or Vice President. Because of considerations relating to the conduct of their offices,

including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate Sec. 2635.202(c)(1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(k) Gifts authorized by supplemental agency regulation. An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(l) Gifts accepted under specific statutory authority. The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with Sec. 410.701 through Sec. 410.706 of this title; or

Note: 23 U.S.C. 501(c)(3) is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

Sec. 2635.205 Proper disposition of prohibited gifts

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See Sec. 2635.203(c).

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor \$200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under Sec. 2635.204(g), he may attend if he reimburses the donor the \$300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101-49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101-25.103.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

SUBPART C: GIFTS BETWEEN EMPLOYEES

Sec. 2635.301 Overview

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

Sec. 2635.302 General standards

(a) Gifts to superiors. Except as provided in this subpart, an employee may not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) Gifts from employees receiving less pay. Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

(c) Limitation on use of exceptions. Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

Sec. 2635.303 Definitions

For purposes of this subpart, the following definitions shall apply:

(a) Gift has the meaning set forth in Sec. 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) Indirectly, for purposes of Sec. 2635.302(b), has the meaning set forth in Sec. 2635.203(f). For purposes of Sec. 2635.302(a), it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in Sec. 2635.203(c).

(d) Official superior means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) Solicit means to request contributions by personal communication or by general announcement.

(f) Voluntary contribution means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not

determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.

Sec. 2635.304 Exceptions

The prohibitions set forth in Sec. 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in Sec. 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) **General exceptions.** On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) Items, other than cash, with an aggregate market value of \$10 or less per occasion;
- (2) Items such as food and refreshments to be shared in the office among several employees;
- (3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
- (4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and
- (5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of Sec. 630.912 of this title.

Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for \$8.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than \$5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a \$15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of \$10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for \$10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) **Special, infrequent occasions.** A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
- (2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Example 1: The administrative assistant to the personnel director of the Tennessee Valley Authority may send a \$30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

Example 2: A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for \$70.

Example 3: Upon the occasion of the supervisor's retirement from Federal service, an employee of the Fish and Wildlife Service may give her supervisor a book of wildlife photographs which she purchased for \$19. The retiring supervisor may accept the book.

(c) **Voluntary contributions.** An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

- (1) On a special, infrequent occasion as described in paragraph (b) of this section; or
- (2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Example 1: To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

Example 2: The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Christmas occurs annually and is not an occasion of personal significance.

Example 3: Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of Sec. 2635.304(b). However, subordinates may take up a collection and employees may contribute \$3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

Example 4: Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

Example 5: An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute \$5 for the gift. Her method of collection is improper. Although she may recommend a \$5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

SUBPART D: CONFLICTING FINANCIAL INTERESTS

Sec. 2635.401 Overview

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by Sec. 2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with Sec. 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

Sec. 2635.402 Disqualifying financial interests

(a) Statutory prohibition. *An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.*

Note: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver, as described in paragraph (d) of this section.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Direct and predictable effect.

(i) A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Note: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

Example 1: An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the technical evaluation panel to review proposals for a new library computer search system. DEF Computer Corporation, a closely held company in which he and his wife own a majority of the stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee cannot participate on the technical evaluation team unless his disqualification has been waived.

Example 2: Upon assignment to the technical evaluation panel, the employee in the preceding example finds that DEF Computer Corporation has not submitted a proposal. Rather, LMN Corp., with which DEF competes for private sector business, is one of the six offerors. The employee is not disqualified from serving on the technical evaluation panel. Any effect on the employee's financial interests as a result of the agency's decision to award or not award the systems contract to LMN would be at most indirect and speculative.

(2) Imputed interests. For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:

(i) The employee's spouse;

(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

Example 1: An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation that engages in good works. Even though her personal financial interests will not be affected, the employee must disqualify herself from participating in the review of a grant application submitted by Kinder World. Award or denial of the grant will affect the financial interests of Kinder World and its financial interests are imputed to her as a member of its board of directors.

Example 2: The spouse of an employee of the Food and Drug Administration has obtained a position with a well established biomedical research company. The company has developed an artificial limb for which it is seeking FDA approval and the employee would ordinarily be asked to participate in the FDA's review and approval process. The spouse is a salaried employee of the company and has no direct ownership interest in the company. Nor does she have an indirect ownership interest, as would be the case, for example, if she were participating in a pension plan that held stock in the company. Her position with the company is such that the granting or withholding of FDA approval will not have a direct and predictable effect on her salary or on her continued employment with the company. Since the FDA approval process will not affect his spouse's financial interests, the employee is not disqualified under Sec. 2635.402 from participating in that process. Nevertheless, the financial interests of the spouse's employer may be disqualifying under the impartiality principle, as implemented at Sec. 2635.502.

(3) Particular matter. The term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or

other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Internal Revenue Service's amendment of its regulations to change the manner in which depreciation is calculated is not a particular matter, nor is the Social Security Administration's consideration of changes to its appeal procedures for disability claimants.

Example 2: Consideration by the Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways involves a particular matter.

(4) **Personal and substantial.** To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

(c) **Disqualification.** Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) **Notification.** An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) **Documentation.** An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would directly and predictably increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary might be wise to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

(d) **Waiver of disqualification.** An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) **Regulatory waivers.** Under 18 U.S.C. 208(b)(2), regulatory waivers of general applicability may be issued by the Office of Government Ethics based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of the employees to whom the waivers apply. Pending issuance of superseding regulatory waivers under this authority, agency regulatory waivers issued under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989 continue to apply.

(2) **Individual waivers.** An individual waiver enabling the employee to participate in one or more particular matters may be issued under 18 U.S.C. 208(b)(1) if, in advance of the employee's participation:

(i) **The employee:**

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the

nature and circumstances of the particular matter or matters; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

(3) Federal advisory committee member waivers. An individual waiver may be issued under 18 U.S.C. 208(b)(3) to a special Government employee serving on, or under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

(i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and

(ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest.

(4) Consultation and notification regarding waivers. When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

(e) Divestiture of a disqualifying financial interest. Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.

(1) Voluntary divestiture. An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) Directed divestiture. An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with Sec. 2635.403(a), or if the agency determines in accordance with Sec. 2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) Eligibility for special tax treatment. An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) Official duties that give rise to potential conflicts. Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

Sec. 2635.403 Prohibited financial interests

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

Note: There is no statute of Government-wide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes which, in some cases, may be implemented by agency regulations issued independent of this part.

(a) Agency regulation prohibiting certain financial interests. An agency may, by supplemental agency regulation, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, and the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Where the agency restricts or prohibits the holding of certain financial interests by its employees' spouses or minor children, any such prohibition or restriction shall be based on a determination that there is a direct and appropriate nexus between the prohibition or restriction as applied to spouses and minor children and the efficiency of the service.

Note: Any prohibition on acquiring or holding a specific financial interest contained in an agency regulation, instruction or other issuance in effect prior to the effective date of this part shall, for employees of that agency, constitute a prohibited financial interest for purposes of this paragraph for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

(b) Agency determination of substantial conflict. An agency may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest or interests will:

(1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. If the agency determined that engineering and other decisions about the Air Force's requirements for the fighter would directly and predictably affect his financial interests, the employee could not, by virtue of 18 U.S.C. 208(a), perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position rather than allowing him to disqualify himself in particular matters.

(c) Definition of financial interest. For purposes of this section:

(1) Except as provided in paragraph (c)(2) of this section, the term financial interest is limited to financial interests that are owned by the employee or by the employee's spouse or minor children. However, the term is not limited to only those financial interests that would be disqualifying under 18 U.S.C. 208(a) and Sec. 2635.402. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

Example 1: A regulatory agency has concluded that ownership by its employees of stock in entities regulated by the agency would significantly diminish public confidence in the agency's performance of its regulatory functions and thereby interfere with the accomplishment of its mission. In its supplemental agency regulations, the agency may prohibit its employees from acquiring or continuing to hold stock in regulated entities.

Example 2: An agency that insures bank deposits may, by supplemental agency regulation, prohibit its employees who are bank examiners from obtaining loans from banks they examine. Examination of a member bank could have no effect on an employee's fixed obligation to repay a loan from that bank and, thus, would not affect an employee's financial interests so as to require disqualification under Sec. 2635.402. Nevertheless, a loan from a member bank is a discrete financial interest within the meaning of Sec. 2635.403(c) that may, when appropriate, be prohibited by supplemental agency regulation.

(2) The term financial interest includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under Sec. 2635.402(b)(2)(iii) or (iv).

Example 1: The Foundation for the Preservation of Wild Horses maintains herds of horses that graze on public and private lands. Because its costs are affected by Federal policies regarding grazing permits, the Foundation routinely comments on all proposed rules governing use of Federal grasslands issued by the Bureau of Land Management. BLM may require an employee to resign his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position within the Bureau rather than allowing him to rely on disqualification in particular cases.

(d) Reasonable period to divest or terminate. Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

(e) Eligibility for special tax treatment. An employee required to sell or otherwise divest a financial interest may be

eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter.

SUBPART E: IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

Sec. 2635.501 Overview

(a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Sec. 2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in Sec. 2635.502 to determine whether he should or should not participate in a particular matter.

(b) Under Sec. 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

Note: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver, as described respectively in Sec. 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in Sec. 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

Sec. 2635.502 Personal and business relationships

(a) Consideration of appearances by the employee. *Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.*

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) Definitions. For purposes of this section:

(1) An employee has a covered relationship with:

(i) A person, other than a prospective employer described in Sec. 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

Note: An employee who is seeking employment within the meaning of Sec. 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's

knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

Note: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) Direct and predictable effect has the meaning set forth in Sec. 2635.402(b)(1).

(3) Particular matter involving specific parties has the meaning set forth in Sec. 2637.102(a)(7) of this chapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) Determination by agency designee. Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be

authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) Authorization by agency designee. Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) 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;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) 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.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See Sec. 2635.402.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) Disqualification. Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or

written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) Documentation. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) Relevant considerations. An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

Sec. 2635.503 Extraordinary payments from former employers

(a) Disqualification requirement. Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2: An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. For two years thereafter, she may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Extraordinary payment means any item, including cash or an investment interest, with a value in excess of \$10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him \$50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of \$50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) Former employer includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) Waiver of disqualification. The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

SUBPART F: SEEKING OTHER EMPLOYMENT**Sec. 2635.601 Overview**

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons who otherwise would be affected by the performance or nonperformance of the employees' official duties. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

Sec. 2635.602 Applicability and related considerations

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in Sec. 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of Sec. 2635.604 and 2635.606 if the employee's official duties would affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

Note: An employee who is seeking employment with a person whose financial interests are not affected by the performance or nonperformance of his official duties has no obligation under this subpart. An employee may, however, be subject to other statutes which impose restrictions on employment contacts or discussions, such as 41 U.S.C. 423(b)(1), applicable to procurement officials, and 10 U.S.C. 2397a, applicable to certain employees of the Department of Defense.

(a) Related employment restrictions

(1) Outside employment while a Federal employee. An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D or E of this part as a result of his outside employment activities.

(2) Post-employment restrictions. An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Government-wide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory restrictions on their post-employment activities, such as 41 U.S.C. 423(f) applicable to procurement officials, 10 U.S.C. 2397b applicable to certain Department of Defense personnel and special statutes applicable to certain retired officers.

(b) Interview trips and entertainment. Where a prospective employer who is a prohibited source as defined in Sec. 2635.203(d) offers to reimburse an employee's travel expenses, or provide other reasonable amenities incident to employment discussions, the employee may accept such amenities in accordance with Sec. 2635.204(e)(3).

Sec. 2635.603 Definitions

For purposes of this subpart:

(a) Employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

(b) An employee is seeking employment once he has begun seeking employment within the meaning of paragraph

(b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if he has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a), the term negotiations means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(A) For the sole purpose of requesting a job application; or

(B) For the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(iii) Made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 3: An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not discuss salary. The head of the division explains that he has not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.

Example 4: An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has not begun seeking employment with any of the twenty-five. If he receives a response from one of the resume recipients indicating an interest in employment discussions, the employee will have begun seeking employment with the respondent at that time.

Example 5: A special Government employee of the Federal Deposit Insurance Corporation is serving on an advisory committee formed for the purpose of reviewing rules applicable to all member banks. She mails an

unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

Example 6: A geologist employed by the U.S. Geological Survey has been working as a member of a team preparing the Government's case in an action brought by the Government against six oil companies. The geologist sends her resume to an oil company that is a named defendant in the action. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.

(c) Prospective employer means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) Direct and predictable effect and particular matter have the respective meanings set forth in Sec. 2635.402(b)(1) and (3).

Sec. 2635.604 Disqualification while seeking employment

(a) Obligation to disqualify. *Unless the employee's participation is authorized in accordance with Sec. 2635.605, the employee shall not participate in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment within the meaning of Sec. 2635.603(b).* Disqualification is accomplished by not participating in the particular matter.

(b) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(c) Documentation. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in his work assignments can be made.

Example 2: An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is involved in testing a drug for which the company is seeking FDA approval. Before making a response that is not a rejection, the employee should disqualify himself from further participation in the testing. Where he has authority to ask his colleague to assume his testing responsibilities, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise

those individuals of his disqualification.

Example 3: The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he would be wise to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official or the Commissioners to file a written disqualification statement.

Example 4: A scientist is employed by the National Science Foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.

(d) Agency determination of substantial conflict. Where the agency determines that the employee's action in seeking employment with a particular person will require his disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

Sec. 2635.605 Waiver or authorization permitting participation while seeking employment

(a) Waiver. Where, as defined in Sec. 2635.603(b)(1)(i), an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in Sec. 2635.402(d).

Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and Sec. 2635.603(b)(1)(i). In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) Authorization by agency designee. Where an employee is seeking employment within the meaning of Sec. 2635.603(b)(1)(ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in Sec. 2635.502(d).

Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of Section 2635.603(b)(1)(ii), even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with Sec. 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

Sec. 2635.606 Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations

(a) Employment or arrangement concerning employment. *An employee shall be disqualified from taking official action in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3).* These waivers are described in Sec. 2635.402(d).

Example 1: A military officer has accepted a job with a defense contractor to begin in six months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

Example 2: An accountant has just been offered a job with the Comptroller of the Currency which involves a two-year limited appointment. Her private employer, a large corporation, believes the job will enhance her skills and has agreed to give her a two-year unpaid leave of absence at the end of which she has agreed to return to work for the corporation. During the two-year period she is to be a COC employee, the accountant will have an arrangement concerning future employment with the corporation that will require her disqualification from participation in any particular matter that will have a direct and predictable effect on the corporation's financial interests.

(b) Offer rejected or not made. The agency designee for the purpose of Sec. 2635.502(c) may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors, including those listed in Sec. 2635.502(d), and a determination that the concern that a reasonable person may question the integrity of the agency's decision-making process outweighs the Government's interest in the employee's participation in the particular matter.

Example 1: An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Government's interest in her participation.

SUBPART G: MISUSE OF POSITION

Sec. 2635.701 Overview

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

- (a) Use of public office for private gain;
- (b) Use of nonpublic information;
- (c) Use of Government property; and
- (d) Use of official time.

Sec. 2635.702 Use of public office for private gain

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) Inducement or coercion of benefits. 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 is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated 18 U.S.C. 205.

(b) 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). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

(c) Endorsements. *An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:*

(1) In furtherance of statutory authority to promote products, services or enterprises; or

(2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procurement from the United States company.

Example 3: The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed letters of this type in television commercials portraying it as a "trustee of the environment for future generations."

Example 4: An Assistant Attorney General may not use his official title or refer to his Government position in a book jacket endorsement of a novel about organized crime written by an author whose work he admires. Nor may he do so in a book review published in a newspaper.

(d) 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.

(e) 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.

Sec. 2635.703 Use of nonpublic information

(a) Prohibition. *An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.*

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;

(2) is designated as confidential by an agency; or

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Example 1: A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate Federal securities statutes as well as this section.

Example 2: A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.

Example 3: An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. The Federal Acquisition Regulation in 48 CFR parts 3, 14 and 15 restricts the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905 and 41 U.S.C. 423.

Example 4: An employee of the Nuclear Regulatory Commission inadvertently includes a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee's disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.

Example 5: An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

Sec. 2635.704 Use of Government property

(a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) Definitions. For purposes of this section:

(1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Example 1: Under regulations of the General Services Administration at 41 CFR 201-21.601, an employee may make a personal long distance call charged to her personal calling card.

Example 2: An employee of the Commodity Futures Trading Commission whose office computer gives him access to a commercial service providing information for investors may not use that service for personal investment research.

Example 3: In accordance with chapter 252 of the Federal Personnel Manual, an attorney employed by the Department of Justice may be permitted to use her office word processor and agency photocopy equipment to prepare a paper to be presented at a conference sponsored by a professional association of which she is a member.

Sec. 2635.705 Use of official time

(a) Use of an employee's own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

Example 1: An employee of the Social Security Administration may use official time to engage in certain representational activities on behalf of the employee union of which she is a member. Under 5 U.S.C. 7131, this

is a proper use of her official time even though it does not involve performance of her assigned duties as a disability claims examiner.

Example 2: A pharmacist employed by the Department of Veterans Affairs has been granted excused absence to participate as a speaker in a conference on drug abuse sponsored by the professional association to which he belongs. Although excused absence granted by an agency in accordance with guidance in chapter 630 of the Federal Personnel Manual allows an employee to be absent from his official duties without charge to his annual leave account, such absence is not on official time.

(b) Use of a subordinate's time. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Example 1: An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during non-duty hours constitutes an improper use of public office for private gain in violation of Sec. 2635.702(a). Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time. Where the compensation is not adequate, however, the arrangement would involve a gift to the superior in violation of the standards in subpart C of this part.

SUBPART H: OUTSIDE ACTIVITIES

Sec. 2635.801 Overview

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of this part. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

(1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;

(2) Any agency-specific requirement for prior approval of outside employment or activities;

(3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;

(4) The limitations on paid and unpaid service as an expert witness;

(5) The limitations on participation in professional organizations;

(6) The limitations on paid and unpaid teaching, speaking, and writing; and

(7) The limitations on fundraising activities.

(c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee's private gain or for the private gain of any person with whom he has employment or business relations or is otherwise affiliated in a nongovernmental capacity.

(d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty;

(2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act;

(3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. This statute contains several exceptions, as well as standards for

special Government employees that limit the scope of the restriction;

(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions;

(5) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability;

(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits anyone holding an office of profit or trust under the United States from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any public official from being or acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 et seq.;

(7) The Hatch Act, 5 U.S.C. 7321 through 7328, which prohibits most employees from engaging in certain partisan political activities and prohibits all employees from interfering with elections and conducting political activities in the Federal workplace;

(8) The honorarium prohibition, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibits an employee, other than a special Government employee, from receiving any compensation for an appearance, speech or article. Implementing regulations are contained in Sec. 2636.201 through 2636.205 of this chapter; and

(9) The limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in Sec. 2636.305 through 2636.307 of this chapter.

Sec. 2635.802 Conflicting outside employment and activities

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(a) if it is prohibited by statute or by an agency supplemental regulation; or

(b) if, under the standards set forth in Sec. 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of Sec. 2635.802, it would create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.

Sec. 2635.803 Prior approval for outside employment and activities

When required by agency supplemental regulation, an employee shall obtain prior approval before engaging in

outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

Note: Any requirement for prior approval of employment or activities contained in any agency regulation, instruction, or other issuance in effect prior to the effective date of this part shall constitute a requirement for prior approval for purposes of this section for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

Sec. 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees

(a) Presidential appointees to full-time noncareer positions. A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) Covered noncareer employees. Covered noncareer employees, as defined in Sec. 2636.303(a) of this chapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in Sec. 2636.301 through 2636.304 of this chapter.

Note: In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other entity; or teaching without prior approval. Implementing regulations are contained in Sec. 2636.305 through 2636.307 of this chapter.

(c) Definitions. For purposes of this section:

(1) Outside earned income has the meaning set forth in Sec. 2636.303(b) of this chapter, except that Sec. 2636.303(b)(8) shall not apply.

(2) Presidential appointee to a full-time noncareer position means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:

(i) A position filled under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is less than that for GS-9, step 1 of the General Schedule;

(ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;

(iii) A position within the uniformed services; or

(iv) A position in which a member of the foreign service is serving that does not require advice and consent of the Senate.

Example 1: A career Department of Justice employee who is detailed to a policy-making position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.

Example 2: A Department of Energy employee appointed under Sec. 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a Presidential appointee to a full-time noncareer position.

Sec. 2635.805 Service as an expert witness

(a) Restriction. *An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section. Except as provided in paragraph (b) of this section, this restriction shall apply to a special Government employee only if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.*

(b) Additional restriction applicable to certain special Government employees

(1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which his employing agency is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section.

(2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:

(i) Is appointed by the President;

(ii) Serves on a commission established by statute; or

(iii) Has served or is expected to serve for more than 50 days in a period of 365 consecutive days.

(c) Authorization to serve as an expert witness. Provided that the employee's testimony will not result in compensation for an appearance in violation of Sec. 2636.201 of this chapter or violate any of the principles or standards set forth in this part, authorization to provide expert witness service otherwise prohibited by paragraphs (a) and (b) of this section may be given by the designated agency ethics official of the agency in which the employee serves when:

(1) After consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter, the designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government; or

(2) The designated agency ethics official determines that the subject matter of the testimony does not relate to the employee's official duties within the meaning of Sec. 2635.807(a)(2)(i).

(d) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

Sec. 2635.806 Participation in professional associations. [Reserved]**Sec. 2635.807 Teaching, speaking and writing**

(a) Compensation for teaching, speaking or writing. Except as permitted by paragraph (a)(3) of this section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.

(1) Relationship to other limitations on receipt of compensation. The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this chapter, including:

(i) The honorarium prohibition on receipt of compensation for an appearance, speech or article, which is implemented in Sec. 2636.201 through 2636.205 of this chapter;

(ii) The requirement contained in Sec. 2636.307 of this chapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

(iii) The prohibitions and limitations in Sec. 2635.804 and in Sec. 2636.304 of this chapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

Example 1: A personnel specialist employed by the Department of Labor has been asked by the publisher of a magazine to write an article on his hobby of collecting arrowheads. Even though the subject matter is unrelated to his official duties, he may not accept the publisher's offer of \$200 for the article. Because the compensation offered is for an article, its receipt would violate the honorarium prohibition contained in Section 2636.201 through 2636.205 of this chapter.

(2) Definitions. For purposes of this paragraph:

(i) Teaching, speaking or writing relates to the employee's official duties if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;

(C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in Sec. 2635.703(b); or

(E) Except as provided in paragraph (a)(2)(i)(E)(4) of this section, the subject of the activity deals in significant part with:

(1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;

(2) Any ongoing or announced policy, program or operation of the agency; or

(3) In the case of a noncareer employee as defined in Sec. 2636.303(a) of this chapter, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.

(4) The restrictions in paragraphs (a)(2)(i)(E)(2) and (3) of this section do not apply to a special Government employee. The restriction in paragraph (a)(2)(i)(E)(1) of this section applies only during the current appointment of a special Government employee; except that if the special Government employee has not served or is not expected to serve for more than 60 days during the first year or any subsequent one year period of that appointment, the restriction applies only to particular matters involving specific parties in which the special Government employee has participated or is participating personally and substantially.

Note: Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

Example 1: The Director of the Division of Enforcement at the Commodity Futures Trading Commission has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to give a series of four lectures on how to assess the value of American stamps. Because the subject does not relate to his official duties, the Director may accept compensation for the lecture series. He could not, however, accept a similar invitation from a commodities broker.

Example 2: A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.

Example 3: On his own time, a National Highway Traffic Safety Administration employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide deals in significant part with the programs or operations of NHTSA and, therefore, relates to the employee's official duties. On the other hand, the employee could receive royalties from the sale of a consumer's guide to values in used automobiles even though it contains a brief, incidental discussion of automobile safety standards developed by NHTSA.

Example 4: An employee of the Securities and Exchange Commission may not receive compensation for a book which focuses specifically on the regulation of the securities industry in the United States, since that subject concerns the regulatory programs or operations of the SEC. The employee may, however, write a book about the advantages of investing in various types of securities as long as the book contains only an incidental discussion of any program or operation of the SEC.

Example 5: An employee of the Department of Commerce who works in the Department's employee relations office is an acknowledged expert in the field of Federal employee labor relations, and participates in Department

negotiations with employee unions. The employee may receive compensation from a private training institute for a series of lectures which describe the decisions of the Federal Labor Relations Authority concerning unfair labor practices, provided that her lectures do not contain any significant discussion of labor relations cases handled at the Department of Commerce, or the Department's labor relations policies. Federal Labor Relations Authority decisions concerning Federal employee unfair labor practices are not a specific program or operation of the Department of Commerce and thus do not relate to the employee's official duties. However, an employee of the FLRA could not give the same presentations for compensation.

Example 6: A program analyst employed at the Environmental Protection Agency may receive royalties and other compensation for a book about the history of the environmental movement in the United States even though it contains brief references to the creation and responsibilities of the EPA. A covered noncareer employee of the EPA, however, could not receive compensation for writing the same book because it deals with the general subject matter area affected by EPA programs and operations. Neither employee could receive compensation for writing a book that focuses on specific EPA regulations or otherwise on its programs and operations.

Example 7: An attorney in private practice has been given a one year appointment as a special Government employee to serve on an advisory committee convened for the purpose of surveying and recommending modification of procurement regulations that deter small businesses from competing for Government contracts. Because his service under that appointment is not expected to exceed 60 days, the attorney may accept compensation for an article about the anticompetitive effects of certain regulatory certification requirements even though those regulations are being reviewed by the advisory committee. The regulations which are the focus of the advisory committee deliberations are not a particular matter involving specific parties. Because the information is nonpublic, he could not, however, accept compensation for an article which recounts advisory committee deliberations that took place in a meeting closed to the public in order to discuss proprietary information provided by a small business.

Example 8: A biologist who is an expert in marine life is employed for more than 60 days in a year as a special Government employee by the National Science Foundation to assist in developing a program of grants by the Foundation for the study of coral reefs. The biologist may continue to receive compensation for speaking, teaching and writing about marine life generally and coral reefs specifically. However, during the term of her appointment as a special Government employee, she may not receive compensation for an article about the NSF program she is participating in developing. Only the latter would concern a matter to which the special Government employee is assigned.

Example 9: An expert on international banking transactions has been given a one-year appointment as a special Government employee to assist in analyzing evidence in the Government's fraud prosecution of owners of a failed savings and loan association. It is anticipated that she will serve fewer than 60 days under that appointment. Nevertheless, during her appointment, the expert may not accept compensation for an article about the fraud prosecution, even though the article does not reveal nonpublic information. The prosecution is a particular matter that involves specific parties.

(ii) Agency has the meaning set forth in Sec. 2635.102(a), except that any component of a department designated as a separate agency under Sec. 2635.203(a) shall be considered a separate agency.

(iii) Compensation includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:

(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this part;

(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place; or

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking or writing activity.

(iv) Receive means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(v) Particular matter involving specific parties has the meaning set forth in Sec. 2637.102(a)(7) of this chapter.

(vi) Personal and substantial participation has the meaning set forth in Sec. 2635.402(b)(4).

(3) Exception for teaching certain courses. Notwithstanding that the activity would relate to his official duties under paragraphs (a)(2)(i)(B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentations by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or

(ii) A program of education or training sponsored and funded by the Federal Government or by a State or local government which is not offered by an entity described in paragraph (a)(3)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though a substantial portion of the course deals with cost accounting principles applicable to contracts with the Government. Moreover, his receipt of a salary or other compensation for teaching this course does not violate the honorarium prohibition on receipt of compensation for any speech, which is implemented in Sec. 2636.201 through 2636.205 of this chapter.

Example 2: An attorney employed by the Equal Employment Opportunity Commission may accept compensation for teaching a course at a state college on the subject of Federal employment discrimination law. The attorney could not accept compensation for teaching the same seminar as part of a continuing education program sponsored by her bar association because the subject of the course is focused on the operations or programs of the EEOC and the sponsor of the course is not an accredited educational institution.

Example 3: An employee of the National Endowment for the Humanities is invited by a private university to teach a course that is a survey of Government policies in support of artists, poets and writers. As part of his official duties, the employee administers a grant that the university has received from the NEH. The employee may not accept compensation for teaching the course because the university has interests that may be substantially affected by the performance or nonperformance of the employee's duties. Likewise, an employee may not receive compensation for any teaching that is undertaken as part of his official duties or that involves the use of nonpublic information.

(b) Reference to official position. An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that:

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) An employee may use, or permit the use of, his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(3) 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, may use or permit the use of that term of address or rank in connection with his teaching, speaking or writing.

Note: Some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches, books, articles or similar products to determine whether the product contains an appropriate disclaimer, discloses nonpublic information, or otherwise complies with this section.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data on all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government

title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor just employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the article also contains a disclaimer, concurred in by the CDC, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the CDC.

Example 3: An employee of the Federal Deposit Insurance Corporation has been asked to give a speech in his private capacity, without compensation, to the annual meeting of a committee of the American Bankers Association on the need for banking reform. The employee may be described in his introduction at the meeting as an employee of the Federal Deposit Insurance Corporation provided that other pertinent biographical details are mentioned as well.

Sec. 2635.808 Fundraising activities

An employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace and in accordance with paragraphs (b) and (c) of this section.

(a) Definitions. For purposes of this section:

(1) Fundraising means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) Participation in the conduct of an event means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

Note: This section does not prohibit fundraising for political parties. However, there are statutory restrictions that apply to political fundraising. Employees, other than those exempt under 5 U.S.C. 7324(d), are prohibited by the Hatch Act, 5 U.S.C. 7321 through 7328, from soliciting or collecting contributions or other funds for a partisan political purpose or in connection with a partisan election. In addition, all employees are prohibited by 18 U.S.C. 602 from knowingly soliciting contributions for any political purpose from other employees and by 18 U.S.C. 607 from soliciting such contributions in the Federal workplace.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost \$150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

(3) Official speech means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in Sec. 2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a nonprofit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light initiative, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.

Example 2: A charitable organization is sponsoring a two-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has

invited the Secretary of Education to give a speech on federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under Sec. 2635.204(g)(1), he may partake of the meal provided to him at the dinner.

(4) Personally solicit means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of Sec. 2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of the Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) Fundraising in an official capacity. An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.

Example 1: Because participation in his official capacity is authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

(c) 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:

(i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of Sec. 2635.203(d); or

(ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of Sec. 2635.203(d)(4) that is a person whose interests may be substantially affected by performance or nonperformance of his official duties.

(2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that 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, may use or permit the use of that term of address or rank for such purposes; or

(3) Engage in any action that would otherwise violate this part.

Example 1: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy.

Example 2: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at Sec. 2635.704 regarding use of Government property.

Example 3: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

Sec. 2635.809 Just financial obligations

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a

dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

SUBPART I: RELATED STATUTORY AUTHORITIES

Sec. 2635.901 General

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in Sec. 2635.902 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic conflict of interest statutes whose standards are explained in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

Sec. 2635.902 Related statutes

- (a) The prohibition against solicitation or receipt of Bribes (18 U.S.C. 201(b)).
- (b) The prohibition against solicitation or receipt of illegal gratuities (18 U.S.C. 201(c)).
- (c) The prohibition against seeking or receiving Compensation for certain representational services before the Government (18 U.S.C. 203).
- (d) The prohibition against assisting in the prosecution of Claims against the Government or acting as agent or attorney before the Government (18 U.S.C. 205).
- (e) The Post-employment restrictions applicable to former employees (18 U.S.C. 207, with implementing regulations at parts 2637 and 2641 of this chapter).
- (f) The Post-employment restrictions applicable to former procurement officials (41 U.S.C. 423(f)).
- (g) The prohibition against Participating in matters affecting an employee's own financial interests or the financial interests of other specified persons or organizations (18 U.S.C. 208).
- (h) The prohibition on a Procurement official's negotiating for employment with competing contractors (41 U.S.C. 423(b)(1)).
- (i) The prohibition against receiving salary or any contribution to or supplementation of Salary as compensation for Government service from a source other than the United States (18 U.S.C. 209).
- (j) The prohibition against Gifts to superiors (5 U.S.C. 7351).
- (k) The prohibition against solicitation or receipt of Gifts from specified prohibited sources (5 U.S.C. 7353).
- (l) The prohibition against solicitation or receipt of Gifts from competing contractors (41 U.S.C. 423(b)(2)).
- (m) The provisions governing receipt and disposition of Foreign gifts and decorations (5 U.S.C. 7342).
- (n) The Code of Ethics for Government Service (Pub. L. 96-303, 94 Stat. 855).
- (o) The prohibitions against certain Political activities (5 U.S.C. 7321 et seq. and 18 U.S.C. 602, 603, 606 and 607).
- (p) The prohibitions against Disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).
- (q) The general prohibition against Acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (18 U.S.C. 219).
- (r) The prohibition against Employment of a person convicted of participating in or promoting a riot or civil disorder (5 U.S.C. 7313).
- (s) The prohibition against Employment of an individual who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).
- (t) The prohibition against Misuse of a Government vehicle (31 U.S.C. 1344).
- (u) The prohibition against Misuse of the franking privilege (18 U.S.C. 1719).

- (v) The prohibition against Fraud or false statements in a Government matter (18 U.S.C. 1001).
- (w) The prohibition against Concealing, mutilating or destroying a public record (18 U.S.C. 2071).
- (x) The prohibition against Counterfeiting or forging transportation requests (18 U.S.C. 508).
- (y) The restrictions on Disclosure of certain sensitive Government information under the Freedom of Information Act and the Privacy Act (5 U.S.C. 552 and 552a).
- (z) The prohibitions against Disclosure of classified information (18 U.S.C. 798 and 50 U.S.C. 783(b)).
- (aa) The prohibition against Disclosure of proprietary information and certain other information of a confidential nature (18 U.S.C. 1905).
- (bb) The prohibition against unauthorized Disclosure of certain procurement sensitive information, including proprietary or source selection information (41 U.S.C. 423(b) (3) and (d)).
- (cc) The prohibition against Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).
- (dd) The prohibition against Certain personnel practices (5 U.S.C. 2302).
- (ee) The prohibition against Interference with civil service examinations (18 U.S.C. 1917).
- (ff) The restrictions on Use of public funds for lobbying (18 U.S.C. 1913).
- (gg) The prohibition against participation in the Appointment or promotion of relatives (5 U.S.C. 3110).
- (hh) The prohibition against solicitation or Acceptance of anything of value to obtain public office for another (18 U.S.C. 211).
- (ii) The prohibition against Conspiracy to commit an offense against or to defraud the United States (18 U.S.C. 371).
- (jj) The prohibition against Embezzlement or conversion of Government money or property (18 U.S.C. 641).
- (kk) The prohibition against Failing to account for public money (18 U.S.C. 643).
- (ll) The prohibition against Embezzlement of the money or property of another person that is in the possession of an employee by reason of his employment (18 U.S.C. 654).

INDEX

Abuse	3	Donation	15, 22, 40, 41
Agency head		Employees on detail	5
conduct of	4	Entertainment	7, 9-14, 26
delegation of authority to grant waiver	25	Equal opportunity	3, 6
Appearance	3, 30	Ethical principles	3
and agency designees	24	Ethics advice	6
of conflicts	23	Expert witness	13, 33, 35
of governmental sanction	30	Extraordinary payments from former employers	25
of violations	21, 22, 31, 33, 34	Federal Acquisition Regulation	7, 9, 31
Appearance of violating the law	3, 31	Federal Advisory Committee	20
Applicability		Financial interest	21
general	3	Financial interests	3, 17, 18, 20, 21, 24, 28, 42
of special agency statutes	5	of relatives	18, 21, 31
related considerations	25	Financial obligations	41
to employees on detail	5	Food and refreshments	7
to uniformed services	4	in foreign countries	13
Awards & decorations	10, 14, 42	to a superior	16
Basic obligation of public service	3	Fraud	3, 38, 42
Blanket determination of agency interest	12	Free attendance	
Carpool	15	by accompanying spouse	12
Charity		from tax-free org	14
disposition of gifts	14	Fundraising	22, 23, 33, 38-41
Fundraising	39	in a personal capacity	41
Conference	9, 12, 13, 32	in an official capacity	40
Conflicting Financial Interests	17	Fundraising activities	39
Conflicting outside employment and activities	34	General Provisions	3
Corruption	3	Gift	18
Covered noncareer employees	35	\$10 or less	9, 16
Definitions		\$20 or less	7-9, 13
Agency	4, 7, 38	\$200 or less	10
Agency designee	4	\$200 or more	11
Agency ethics official	4	\$50 or less	7, 9
Agency programs or operations	4	appropriate	16
Authorized purposes	32	as compensation	38
began seeking employment	26	as contribution	15
Compensation	38	as illegal gratuity	6
Compensation received by an employee	38	based on outside employment	11
Corrective action	4	based on person's relationship	9
covered relationship	22	because of official position	8
Designated agency official	4	between employees	8, 14
Direct and predictable effect	17, 23, 28	birthdays	9
direct effect	17	carpool	15
Disciplinary action	4	Conferences	12
Employee	4	Definition	7, 15
Employment	26	Discounts	10
Extraordinary payment	25	Disposition of	14
Financial interest	21	Exceptions	6-8, 10, 12, 13, 15
Former employer	25	fair proportion of the expense	15
Fundraising	40	Federal Acquisition Regulation	9
Gift	7, 15	food and refreshments	7, 16
Government property	32	free attendance	12
He, his, and him	4	from a foreign government	14, 33, 42
Head of an agency	4	from outside sources	6
Imputed interests	18	from political organization	11
Indirectly	15	from prohibited sources	6, 42
Market value	8, 15	from subordinate	15
negotiations	26	General principles	3
no longer seeking employment	27	Hostess gifts	16
nonpublic information	31	Indirect	15
Official speech	40	Infrequent occasions	16
Official superior	15	Market value	8
Outside earned income	35	Meals, refreshments, or entertainment	13
Participation in the conduct of an event	40	nominal amount	17
Particular matter	18, 28	nominal amounts	16
Particular matter involving specific parties	23, 38	Occasional	15
Person	4	Office refreshments	16
Personal and substantial	18	perishable	8, 14
Personal and substantial participation	38	reciprocity	14
Personality solicit	40	reimbursement	7, 14, 15, 38
predictable effect	17	Retirement	17
Presidential appointee to a full-time noncareer position	35	Solicited	8
Prohibited source	8	Speaking engagements	12
Prospective employer	27	Special occasions	16
Receptive	38	Supplemental regulations	5
relates to the employee's official duties	38	to employees on detail	5
seeking employment	26	to President or Vice-President	13
she, hers and her	4	to relatives	12
Solicit	15	to superior	14, 16, 17, 42
Solicited or accepted	8	travel	7, 14
solicited or accepted indirectly	8	Unsolicited	8, 12, 14
Special Government employee	4	Voluntary contributions	16
substantially	19	Widely attended gatherings	12
Supplemental agency regulation	4	Government property	3, 10, 30, 32
Vendor promotional training	8	Gratuity	6, 7, 33, 41
Voluntary contribution	15	Hatch Act	11, 34, 40
Details to other agencies	5, 35	Honoraria	8, 34, 38, 39
Disciplinary and corrective action	6	Honorary degree	11
Discount	7, 10	Impartiality	18
Disqualification based on an arrangement	29	Impartiality in Performing Official Duties	21
Disqualification while seeking employment	29	Imputed interest	17, 18, 21
Disqualifying financial interests	17	Interview trips	28
		Meals	7, 11, 13, 38

STANDARDS OF ETHICAL CONDUCT FOR THE EXECUTIVE BRANCH, 5 CFR 2635

Misuse of Position	30
Noncareer employees	35
Outside activities	26, 33
Outside earned income limitations	34
Outside employment	3, 26, 33, 34, 39
Personal and business relationships	22
Political organization	11, 22, 34, 40
fundraising	40
Political activities	42
Prior approval for outside employment and activities	34
Professional associations	36
Prohibited financial interests	20
Proper disposition of prohibited gifts	14
Reciprocity	14
Reimbursement	7, 14, 15, 26, 38
Related Statutory Authorities	41
Relatives	18, 30, 31, 43
Seeking Other Employment	25
Speaking	12, 36, 37, 39
Special Government employee	4, 7, 11, 20, 27, 28, 33-35, 37, 38, 41
Supplemental agency regulations	5
Teaching	30, 33, 35, 36, 38, 39
Teaching, speaking and writing	36
Teaching, speaking, and writing	30
by covered noncareer employees	37
compensation	38
related to duties	36
Use of title or position	39
Telephone use	32
Ticket	7-9, 11, 12, 14, 38, 40
Market value	8
Travel	7-9, 12-14, 26
Uniformed services	4
Use of Government property	32
Use of nonpublic information	31
Use of official time	32
Use of public office for private gain	30
Voluntary contributions	16
Waiver	4, 17, 19, 22, 25, 29, 38
Widely attended gatherings	12, 13
Witness	13, 33, 35
Writing	30, 33, 36-39

SECTION 2. DoD SUPPLEMENT TO 5 C.F.R. PART 2635 (reference (a))

2-200. Purpose. In accordance with 5 C.F.R. 2635.105 (reference (a)) in subsection 2-100 of this Regulation, the provisions in this Regulation apply to employees of the Department of Defense (DoD) and supplement the "Standards of Ethical Conduct for Employees of the Executive Branch" contained in 5 C.F.R. 2635 (reference (a)) in subsection 2-100 of this Regulation. DoD employees are required to comply with 5 C.F.R. 2635 (reference (a)) in subsection 2-100 of this Regulation, this Regulation, and implementing guidance and procedures.

2-201. Designation of Separate Agency Components

a. Pursuant to 5 C.F.R. 2635.203(a) (reference (a)) in subsection 2-100 of this Regulation, each of the following Components of DoD is designated as a separate Agency for purposes of the provisions in 5 C.F.R. 2635 Subpart B (reference (a)) in subsection 2-100 of this Regulation, governing gifts from outside sources and 5 C.F.R. 2635.807 (reference (a)) in subsection 2-100 of this Regulation, governing teaching, speaking and writing:

- (1) Department of the Army;
- (2) Department of the Navy;
- (3) Department of the Air Force;
- (4) Defense Commissary Agency;
- (5) Defense Contract Audit Agency;
- (6) Defense Finance and Accounting Service;
- (7) Defense Information Systems Agency;
- (8) Defense Intelligence Agency;
- (9) Defense Investigative Service;
- (10) Defense Logistics Agency;
- (11) Defense Mapping Agency;
- (12) Defense Nuclear Agency;
- (13) National Security Agency;

(14) Office of the Inspector General;

(15) Uniformed Services University of the Health Sciences.

b. Employees of DoD Components not designated as separate Agencies, including employees of OSD, will be treated as employees of DoD which shall be treated as a single Agency that is separate from the above listed agencies for purposes of determining whether the donor of a gift is a prohibited source under 5 C.F.R. 2635.203(d) (reference (a)) in subsection 2-100 of this Regulation, and for identifying the DoD employee's Agency under 5 C.F.R. 2635.807 (reference (a)) in subsection 2-100 of this Regulation, governing teaching, speaking and writing.

2-202. Additional Exceptions for Gifts from Outside Sources. In addition to the gifts which come within the exceptions set forth in 5 C.F.R. 2635.204 (reference (a)) in subsection 2-100 of this Regulation, and subject to all provisions of 5 C.F.R. 2635.201 through 2635.205 (reference (a)) in subsection 2-100 of this Regulation, a DoD employee may accept gifts from outside sources otherwise prohibited by 5 C.F.R. 2635.202(a) (reference (a)) in subsection 2-100 of this Regulation, as follows:

a. Events Sponsored by States, Local Governments or Civic Organizations. A DoD employee may accept a sponsor's unsolicited gift of free attendance for himself and an accompanying spouse at an event sponsored by a State or local government or by a civic organization exempt from taxation under 26 U.S.C. 501(c)(4) (reference (b)), when:

(1) The Agency Designee has determined that the community relations interests of the Agency will be served by the DoD employee's attendance;

(2) The cost of the DoD employee's and the spouse's attendance is provided by the sponsor in accordance with 5 C.F.R. 2635.204(g)(5) (reference (a)) in subsection 2-100 of this Regulation; and

(3) The gift of free attendance meets the definition in 5 C.F.R. 2635.204(g)(4) (reference (a)) in subsection 2-100 of this Regulation.

b. Scholarships and Grants. A DoD employee, or the dependent of a DoD employee, may accept an educational scholarship or grant from an entity that does not have interests that may be substantially affected by the performance or non-performance of the involved DoD employee's official duties, or from an association or similar entity that does not have a majority of

members with such interests, if the DoD Component DAEO or designee determines that:

(1) The scholarship or grant is made as part of an established program of grants or awards that is funded, wholly or in part, to ensure its continuation on a regular basis and under which recipients are selected pursuant to written standards; or

(2) The scholarship or grant is established for the benefit of DoD employees, or the dependents of DoD employees, and recipients are selected pursuant to written standards approved by the Secretary of Defense or, where the scholarship or grant is available only to military members or their dependents, by the Secretary of the Military Department concerned.

2-203. Additional Limitations on Gifts Between DoD Employees.

The following limitations shall apply to gifts from groups of DoD employees that include a subordinate and to voluntary contributions to gifts for superiors permitted under 5 C.F.R. 2635.304(c)(1) (reference (a)) in subsection 2-100 of this Regulation:

a. Gifts From a Group That Includes a Subordinate.

Regardless of the number of DoD employees contributing to a gift or gifts on a special, infrequent occasion as permitted by 5 C.F.R. 2635.304(c)(1) (reference (a)) in subsection 2-100 of this Regulation, a DoD employee may not accept a gift or gifts from a donating group if the market value exceeds an aggregate of \$300 and if the DoD employee knows or has reason to know that any member of the donating group is his subordinate.

(1) The cost of items excluded from the definition of a gift by 5 C.F.R. 2635.203(b), (reference (a)) in subsection 2-100 of this Regulation, and the cost of food, refreshments and entertainment provided to the DoD employee and his 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 aggregate limit.

(2) The value of a gift or gifts from two or more donating groups shall be aggregated and shall be considered to be from a single donating group if the DoD employee offered the gift knows or has reason to know that an individual who is his subordinate is a member of more than one of the donating groups.

b. Voluntary Contribution. ***For purposes of 5 C.F.R. 2635.304(c)(1), (reference (a)) in subsection 2-100 of this Regulation, the nominal amount of a voluntary contribution that a DoD employee may solicit from another DoD employee for a group gift to the contributing DoD employee's***

superior for any special, infrequent occasion shall not exceed \$10. A voluntary contribution of a nominal amount for food, refreshments and entertainment for the superior, the personal guests of the superior and other attendees at an event to mark the occasion for which a group gift is given may be solicited as a separate, voluntary contribution not subject to the \$10 limit.

2-204. Standard for Accomplishing Disqualification

a. Disqualifying Financial Interests. A DoD employee who is required, in accordance with 5 C.F.R. 2635.402(c) (reference (a)) in subsection 2-100 of this Regulation, to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 C.F.R. 2635.402(c)(1) and (2) (reference (a)) in subsection 2-100 of this Regulation, provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

b. Disqualification to Ensure Impartiality. A DoD employee who is required, in accordance with 5 C.F.R. 2635.502(e) (reference (a)) in subsection 2-100 of this Regulation, to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 C.F.R. 2635.502(e)(1) and (2) (reference (a)) in subsection 2-100 of this Regulation, provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

c. Disqualification From Matter Effecting Prospective Employers. A DoD employee who is required, in accordance with 5 C.F.R. 2635.604(a) (reference (a)) in subsection 2-100 of this Regulation, to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 C.F.R. 2635.604(b) and (c) (reference (a)) in subsection 2-100 of this Regulation, provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

d. Withdrawal of Notification. A DoD employee may withdraw written notice under subsections 2-204(a), (b) or (c) of this Regulation, above, upon deciding that disqualification from participation in the matter is no longer required.

2-205. Limitation on Solicited Sales. A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this section.

2-206. Prior Approval for Outside Employment and Business

Activities

a. A DoD employee, other than a special Government employee, who is required to file a financial disclosure report, SF 450 or SF 278, Appendix C of this Regulation, shall obtain written approval from the Agency Designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with subsection 2-206(b) of this Regulation, below. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation.

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

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

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

b. The DoD Component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of subsection 2-206(a) of this Regulation, above, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

2-207. Disclaimer for Speeches and Writings Devoted to Agency Matters. *A DoD employee who uses or permits the use of his military grade or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 C.F.R. 2635.807(b) (reference (a)) in subsection 2-100 of this Regulation, shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's Agency, as defined*

in subsection 2-201 of this Regulation, above, and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency's position. The disclaimer shall be made as follows:

a. The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components;

b. Where a disclaimer is required for an article, book or other writing, the disclaimer shall be printed in a reasonably prominent position in the writing itself;

c. Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

SECTION 3. DoD GUIDANCE

2-300. Gifts

a. Procurement Officials. In addition to the restrictions on gifts in 5 C.F.R. 2635, Subpart B (reference (a)) in subsections 2-100 and 2-202 of this Regulation, procurement officials are subject to the gift acceptance restrictions of the procurement integrity statute. See 41 U.S.C. 423 (reference (c)) and FAR 3.104 (reference (d)) in Appendix B of this Regulation.

b. Gifts from Foreign Governments. There are special DoD rules governing gifts from foreign governments. See 5 U.S.C. 7342 (reference (e)) and DoD Directive 1005.13 (reference (f)).

c. Ship Launch and Similar Ceremonies. A DoD employee may not accept gifts in connection with a ceremony to mark the completion of a milestone in shipbuilding, aircraft completion, or similar vehicle launch or roll-out unless attendance is official and is approved by the head of the DoD Component command or organization and the gifts are limited to the following (see 5 U.S.C. 7301 note (reference (e))):

(1) Attendance at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and reception following it, and related food, hospitality and entertainment, as long as the function and related benefits are not lavish, excessive, or extravagant;

(2) Tangible gifts or mementos in connection with the ceremony to DoD employees, their spouses, and their dependent children, who are official participants in the ceremony, as long as the aggregate retail value does not exceed \$100 per family and the cost is not borne by the Federal

Government. When such gifts exceed the \$100 limit, the recipient shall pursue one of the following alternatives:

- (a) Return the gift to the donor;
- (b) Retain the gift after reimbursing the donor the full value of the gift; or
- (c) Forward the gift to the appropriate DoD Component official for disposition as a gift to the Federal Government in accordance with statute. See 10 U.S.C. 2601 (reference (g)).

2-301. Use of Federal Government Telephone Systems. See GSA regulation 41 C.F.R. Subpart 201-21.6 (reference (h)), on management of Federal Government telecommunications resources.

a. The use of Federal Government telephone systems (including calls over commercial systems which will be paid for by the Federal Government), except as provided in subsection 2-301.b. of this Regulation, below, shall be limited to the conduct of official business. Such official business calls may include emergency calls and calls that the DoD Components determine are necessary in the interest of the Federal Government.

b. Personal calls (such as calls to speak to spouse/minor children or to arrange for emergency repairs to residence or automobile) that must be made during working hours over the commercial local/long distance network may properly be authorized as being in the best interest of the Federal Government if the call is consistent with the following criteria:

- (1) It does not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;
- (2) It is of reasonable duration and frequency; and
- (3) It could not reasonably have been made at another time;
- (4) And, in the case of long distance calls, is:

- (a) Charged to the employee's home telephone number or other non-Federal Government number (third number call);
- (b) Made to an 800 toll-free number;
- (c) Charged to the called party if a non-Federal Government number (collect call);
- (d) Charged to a personal telephone credit card; or
- (e) When traveling for more than one night on Federal Government business in the United States, a brief call to his residence to notify family of a schedule change.

2-302. Gambling

a. ***A DoD employee shall not participate while on Federally-owned or leased property or while on duty (for military members, this means, in this context, present for duty) for the Federal Government in any gambling activity prohibited by 5 C.F.R. 735.208 (reference (i)) except:***

(1) ***Activities necessitated by a DoD employee's law enforcement duties;***

(2) ***Activities by organizations composed of DoD employees or their dependents when transacted entirely among their own members and approved by the Head of the DoD Component or designee; or***

(3) ***Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned Federal Government living quarters and within the limitations of local laws.***

b. Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice (UCMJ) (reference (g)).

c. Gambling may be prohibited by Federal Government building and grounds regulations, such as 32 C.F.R. Part 406 (reference (j)) which prohibits gambling in the Pentagon.

2-303. Outside Employment and Activity. In addition to subsection 2-206 of this Regulation, above, except to the extent that when procedures have been established by higher authority for any class of DoD employee (e.g., DoD Directive 6025.7 (reference (k))), Agency Designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity. See subsection 3-306 of this Regulation.

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

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

2-304. Use of Military Title by Retirees or Reserves. Retired military members and members of Reserve Components, not on active duty, may use military titles in connection with commercial enterprises, provided they clearly indicate their retired or inactive Reserve status. However, any use of military titles is prohibited if it in any way casts discredit on DoD or gives the appearance of sponsorship, sanction, endorsement, or approval by DoD. In addition, in overseas areas, commanders may further restrict the use of titles by retired military members and members of Reserve Components.

SECTION 4. REFERENCES

2-400. References

- (a) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (b) Title 26, United States Code, Section 501
- (c) Title 41, United States Code, Section 423
- (d) Federal Acquisition Regulation, Part 3.104, current edition
- (e) Title 5, United States Code, Sections 7301 and 7342
- (f) DoD Directive 1005.13, "Gifts from Foreign Governments," October 13, 1988
- (g) Title 10, United States Code, Sections 801 through 940 (Uniform Code of Military Justice), 2397a and 2601
- (h) Title 41, Code of Federal Regulations, 201-21.6, "Use of Government Telephone Systems," current edition

- (i) Title 5, Code of Federal Regulations, 735.208, "Gambling, Betting and Lotteries," current edition
- (j) Title 32, Code of Federal Regulations, Part 406, "Conduct on the Pentagon Reservation," current edition
- (k) DoD Directive 6025.7, "Off-Duty Employment by DoD Health Care Providers," October 21, 1985

CHAPTER 3

ACTIVITIES WITH NON-FEDERAL ENTITIES

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

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

**LIMITATIONS ON OUTSIDE EMPLOYMENT AND PROHIBITION OF HONORARIA;
CONFIDENTIAL REPORTING OF PAYMENTS TO CHARITIES IN LIEU OF HONORARIA**

5 CFR 2636¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	3
Sec. 2636.101 Purpose.	3
The prohibition at 5 U.S.C. app. 501(b) (3); The confidential reporting requirement at 5 U.S.C. app. 102(a)(1)(A) (3); limitation at 5 U.S.C. app. 501(a) and the limitations at 5 U.S.C. app. 502 (3)	
Sec. 2636.102 Definitions.	3
Agency ethics official (3); Designated agency ethics official (3); Employee (3); Executive branch (3); he, his, and him (3)	
Sec. 2636.103 Advisory opinions.	3
Request for an advisory opinion (3); Issuance of advisory opinion (3); Good faith reliance (4); Revision of an ethics opinion (4)	
Sec. 2636.104 Civil, disciplinary and other action.	4
Civil action (4); Disciplinary and corrective action (4); Late Filing Fee (4); Criminal penalties (4)	
 SUBPART B: THE HONORARIUM PROHIBITION; CONFIDENTIAL REPORTING OF PAYMENTS TO CHARITIES IN LIEU OF HONORARIA	 4
Sec. 2636.201 General standard.	4
Sec. 2636.202 Relationship to other laws and regulations.	4
accepting compensation (4); receiving compensation, including travel expenses (5); compensated teaching activities (5)	
Sec. 2636.203 Definitions.	5
Honorarium (5); Appearance (6); Speech (6); Article (7); Receive (7); Charitable organization (7); Travel expenses (7)	
Sec. 2636.204 Payment to charitable organizations in lieu of honoraria.	8
Effect of payment to a charitable organization (8); Nonqualifying payments to charitable organizations (8)	
Sec. 2636.205 Reporting payments to charitable organizations in lieu of honoraria.	8
Who must file (8); Where and when to file (8); Reporting period (9); What to report (9); Effect of signing the form (9); Review of reports (9); Filing of reports with the Office of Government Ethics (10); Review of reports by the Office of Government Ethic (10); Retention of reports (10); Confidentiality of reports (10)	
 SUBPART C: OUTSIDE EARNED INCOME LIMITATION AND EMPLOYMENT AND AFFILIATION RESTRICTIONS AVAILABLE TO CERTAIN NONCAREER EMPLOYEES	 10
Sec. 2636.301 General standards.	10
outside earned income (10); professions involving a fiduciary relationship (10); serving as an officer or board member (10); teaching (10)	
Sec. 2636.302 Relationship to other laws and regulations.	10
Sec. 2636.303 Definitions.	10
Covered noncareer employee (10); Outside earned income and compensation (11); Receive (12)	
Sec. 2636.304 The 15 percent limitation on outside earned income.	12
covered noncareer employees on January 1 (12); covered noncareer employees after January 1 (12); Computation principle (13); Year to which outside earned income is attributable (13)	
Sec. 2636.305 Compensation and other restrictions relating to professions involving a fiduciary relationship.	13
Applicable restrictions (13); Definitions (13)	
Sec. 2636.306 Compensation restriction applicable to service as an officer or member of a board.	13
Applicable restriction (13); Definition (14)	
Sec. 2636.307 Requirement for advance authorization to engage in teaching for compensation. ..	14
Authorization requirement (14); Definition (14); Request for authorization (14); Standard for authorization (14); Determination and authorization (14)	

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

SUBPART A: GENERAL PROVISIONS**Sec. 2636.101 Purpose.**

This part is issued under authority contained in titles II and VI of the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended), amending the Ethics in Government Act of 1978, and contains regulations that implement the following:

- (a) The prohibition at 5 U.S.C. app. 501(b) against receipt of honoraria and the provisions of 5 U.S.C. app. 501(c) whereby payments may be made to charitable organizations in lieu of honoraria;
- (b) The confidential reporting requirement at 5 U.S.C. app. 102(a)(1)(A) applicable to payments made to charitable organizations in lieu of honoraria; and
- (c) The 15 percent outside earned income limitation at 5 U.S.C. app. 501(a) and the limitations at 5 U.S.C. app. 502 on outside employment and affiliation applicable to certain noncareer employees.

Sec. 2636.102 Definitions.

The definitions listed below are of general applicability to this part. Additional definitions of narrower applicability appear in the subparts or sections of subparts to which they apply. For purposes of this part:

- (a) Agency ethics official refers to the designated agency ethics official and to any deputy ethics official described in Sec. 2638.204 of this subchapter to whom authority to issue advisory opinions under Sec. 2636.103 of this part or to receive and review reports of honoraria recipients under Sec. 2636.204 of this part has been delegated by the designated agency ethics official.
- (b) Designated agency ethics official refers to the official described in Sec. 2638.201 of this subchapter.
- (c) Employee means any officer or employee of the executive branch, other than a special Government employee as defined in 18 U.S.C. 202. It includes officers but not enlisted members of the uniformed services as defined in 5 U.S.C. 2101(3). It does not include the President or Vice President.
- (d) Executive branch includes each executive agency as defined in 5 U.S.C. 105 and any other entity or administrative unit in the executive branch. However, it does not include any agency that is defined by 5 U.S.C. app. 109(11) as within the legislative branch.
- (e) The terms he, his, and him include "she," "hers" and "her."

Sec. 2636.103 Advisory opinions.

- (a) Request for an advisory opinion.

(1) An employee may request an advisory opinion from an agency ethics official as to whether specific conduct which has not yet occurred would violate any provision contained in this part.

- (2) An advisory opinion may not be obtained for the purpose of establishing:

(i) Whether a particular entity qualifies as a charitable organization to which an honorarium may be paid pursuant to Sec. 2636.204 of this part; or

(ii) Whether a noncareer employee who is subject to the restrictions in subpart C of this part may receive compensation for teaching. An advisory opinion issued under this section may not be substituted for the advance written approval required by Sec. 2636.307 of this part.

(3) The employee's request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the employee that is relevant to the inquiry. Where, in the opinion of the agency ethics official, complete information has not been provided, that official may request the employee to furnish additional information necessary to issue an opinion.

(b) Issuance of advisory opinion. As soon as practicable after receipt of all necessary information, the agency ethics official shall issue a written opinion as to whether the conduct in issue would violate any provision contained in this part. Where conduct which would not violate this part would violate another statute relating to conflicts of interest or applicable standards of conduct, the advisory opinion shall so state and shall caution the employee against engaging in the conduct.

(1) For the purpose of issuing an advisory opinion, the agency ethics official may request additional information from agency sources, including the requesting employee's supervisor, and may rely upon the accuracy of information furnished by the requester or any agency source unless he has reason to believe that the

information is fraudulent, misleading or otherwise incorrect.

(2) A copy of the request and advisory opinion shall be retained for a period of 6 years.

(c) Good faith reliance on an advisory opinion. An employee who engages in conduct in good faith reliance upon an advisory opinion issued to him under this section shall not be subject to civil or disciplinary action for having violated this part. Where an employee engages in conduct in good faith reliance upon an advisory opinion issued by an ethics official of his agency to another, neither the Office of Government Ethics nor the employing agency shall initiate civil or disciplinary action under this part for conduct that is indistinguishable in all material aspects from the conduct described in the advisory opinion. However, an advisory opinion issued under this section shall not insulate the employee from other civil or disciplinary action if his conduct violates any other laws, rule, regulation or lawful management policy or directive. Where an employee has actual knowledge or reason to believe that the opinion is based on fraudulent, misleading, or otherwise incorrect information, the employee's reliance on the opinion will not be deemed to be in good faith.

(d) Revision of an ethics opinion. Nothing in this section prohibits an agency ethics official from revising an ethics opinion on a prospective basis where he determines that the ethics opinion previously issued is incorrect, either as a matter of law or because it is based on erroneous information.

Sec. 2636.104 Civil, disciplinary and other action.

(a) Civil action. Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under Sec. 2636.103 of this subpart, an employee who accepts an honorarium or engages in any other conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil penalty of not more than \$10,000 or the amount of compensation the individual received for the prohibited conduct, whichever is greater. Knowing and willful failure to file the report required by Sec. 2636.205 of this part or falsification of information thereon may subject an employee to a civil penalty of not more than \$10,000 under 5 U.S.C. app. 104(a).

(b) Disciplinary and corrective action. An agency may initiate disciplinary or corrective action against an employee who violates any provision of this part, which may be in addition to any civil penalty prescribed by law. When an employee engages in conduct in good faith reliance upon an advisory opinion issued under Sec. 2636.103 of this subpart, an agency may not initiate disciplinary or corrective action for violation of this part. Disciplinary action includes reprimand, suspension, demotion and removal. Corrective action includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution or termination of an activity. It is the responsibility of the employing agency to initiate disciplinary or corrective action in appropriate cases. However, the Director of the Office of Government Ethics may order corrective action or recommend disciplinary action under the procedures at part 2638 of this subchapter. The imposition of disciplinary action is at the discretion of the employing agency.

(c) Late Filing Fee. An employee may be assessed a late filing fee of \$200 under 5 U.S.C. app. 104(d) for any report of payments to charitable organizations in lieu of honoraria required by Sec. 2636.205 of this part that is filed more than 30 days after the date the report is due.

(d) Criminal penalties. An employee who knowingly and willfully falsifies information on a report of payments to charitable organizations in lieu of honoraria required by Sec. 2636.205 of this part may be subject to criminal prosecution and sentencing under 18 U.S.C. 1001 and 3571.

SUBPART B: THE HONORARIUM PROHIBITION; CONFIDENTIAL REPORTING OF PAYMENTS TO CHARITIES IN LIEU OF HONORARIA

Sec. 2636.201 General standard.

An individual may not receive any honorarium while that individual is an employee.

Sec. 2636.202 Relationship to other laws and regulations.

The honorarium prohibition described in this subpart is in addition to any restriction on appearances, speaking or writing or the receipt of compensation therefor to which an employee is subject under applicable standards of conduct or by reason of any statute or regulation relating to conflicts of interests. Even though compensation for an activity is not prohibited by this subpart, an employee should accept compensation, including travel expenses, or engage in the activity for which compensation is offered, only after determining that it is not prohibited by the following:

(a) An employee is prohibited by criminal statute and by the standards of conduct at part 735 of this title and agency implementing regulations from accepting compensation for an appearance or speech made or an article written in his official capacity or as part of his official duties. Unless specifically authorized by a statute, such as 5 U.S.C. 4111, 5 U.S.C. 7342, or 31 U.S.C. 1353, this prohibition applies to the acceptance of travel expenses paid other than by the United States Government.

(b) An employee is prohibited by the standards of conduct from receiving compensation, including travel expenses, for speaking or writing on subject matter that focuses specifically on his official duties or on the responsibilities, policies and programs of his employing agency.

(c) As described in subpart C of this part, certain noncareer employees are subject to limitations on their receipt of outside earned income and may not engage in compensated teaching activities without advance approval under 2636.307 of that subpart.

Sec. 2636.203 Definitions.

For purposes of this subpart:

(a) Honorarium means a payment of money or anything of value for an appearance, speech or article. The term does not include:

(1) Items that may be accepted under applicable standards of conduct gift regulations if they were offered by a prohibited source;

(2) Meals or other incidents of attendance, such as waiver of attendance fees or course materials furnished as part of the event at which an appearance or speech is made;

(3) Copies of publication containing articles, reprints of articles, tapes of appearances or speeches, and similar items that provide a record of the appearance, speech or article;

(4) Actual and necessary travel expenses for the employee and one relative incurred in connection with an appearance or speech or the writing or publication of an article. Such travel expenses, when paid, reimbursed or provided in kind by another, shall not be counted as part of an honorarium. Where such expenses are not paid or reimbursed, the amount of an honorarium shall be determined by subtracting the actual and necessary travel expenses incurred in connection with the appearance or speech or the writing or publication of the article;

(5) Actual expenses in the nature of typing, editing and reproduction costs incurred in connection with the making of an appearance or speech or the writing or publication of an article, when paid or reimbursed by another;

(6) Compensation for goods or services other than appearing, speaking or writing, even though making an appearance or speech or writing an article may be an incidental task associated with provision of the goods or services;

(7) Salary, wages and other compensation pursuant to an employer's usual employee compensation plan when paid by the employer for services on a continuing basis that involve appearing, speaking or writing. For these purposes, the term "employment" refers to services rendered in the context of an employer-employee relationship. It does not include any arrangement entered into by the employee or another as an independent contractor or with an agent, speakers bureau or similar entity that facilitates appearances or speaking or writing opportunities;

(8) Compensation for teaching a course involving multiple presentations by the employee offered as part of a program of education or training sponsored and funded by the Federal government or by a state or local government;

(9) Compensation for teaching a course involving multiple presentations by the employee offered as part of the regularly established curriculum of an institution of higher education as defined at 20 U.S.C. 1141(a);

(10) An award for artistic, literary or oratorical achievement made on a competitive basis under established criteria;

(11) Witness fees credited under 5 U.S.C. 5515 against compensation payable by the United States; or

(12) Compensation received for any appearance or speech made or article accepted for publication prior to January 1, 1991, or for any appearance or speech made or article written in satisfaction of the employee's obligation under a contract entered into prior to January 1, 1991.

(13) Payment for a series of three or more different but related appearances, speeches or articles, provided that the subject matter is not directly related to the employee's official duties and that the payment is not made because of the employee's status with the Government.

Example 1. An employee of the Department of Agriculture has entered into a contract to develop a

complex software package for a private company. The contract, which is for a single fee for all work to be provided under the contract, requires the employee to provide 2 hours of oral instruction on use of the program. He may accept the entire fee for performance under the contract. No part of the fee is an honorarium since the 2 hours of instruction is only incidental to his development and delivery of the software package. He could not, however, receive a fee specifically for 2 hours of oral instruction on the use of a program he had earlier provided under a contract that required only his development of a program.

Example 2. A management trainee employed by the Bureau of Indian Affairs is employed two nights a week as a reporter on a local newspaper. He may receive a salary for his continuing employment even though it is in a profession characterized by the writing of articles. He may not, however, accept compensation for newspaper or magazine articles written on a freelance basis or pursuant to a contract to furnish 5 articles over a one year period.

Example 3. An economist employed by the Department of the Treasury has entered into an agreement with a speakers bureau to give 10 unrelated after-dinner speeches to be arranged by the speakers bureau with various organizations over a six-month period. The employee may not receive the contract fee of \$10,000. The 10 speeches do not constitute a series of speeches, but 10 individual speeches.

Example 4. An attorney employed by the Department of the Air Force may not accept compensation for teaching a two-day seminar on Federal procurement law presented by a publishing company under the sponsorship of an accredited law school. He may, however, accept compensation for teaching procurement law as part of the law school's regular curriculum of courses.

Example 5. An air traffic controller employed by the Federal Aviation Administration has entered into a contract with a magazine publisher to write an article on sheep ranching in New Zealand. In addition to a fee of \$500 for the article, the contract provides that the publisher will provide expenses for the employee to travel to New Zealand to conduct research on sheep ranching. The employee may accept the travel expenses, but not the \$500 fee. In lieu of the \$500 fee, he could not accept expenses to travel to and stay for a weekend in Sydney, Australia after the completion of his research.

Example 6. An employee of the National Aeronautics and Space Administration may accept compensation for a series of three articles on white collar crime she has agreed to write for a local newspaper. While she could not accept compensation for just two articles on white collar crime, she could accept a national journalism award for two articles she had written on an uncompensated basis.

Example 7. A physicist employed by the Department of Energy to conduct research on laser technology may not accept a contract fee for a series of three lectures on lasers where one of the lectures is to focus on the research he is conducting for DOE.

(b) Appearance means attendance at a public or private conference, convention, meeting, hearing, event or other gathering and the incidental conversation or remarks made at that time. Unless the opportunity was extended to the employee wholly or in part because of his official position, the term does not include performances using an artistic, athletic or other such skill or talent or primarily for the purpose of demonstration or display.

Example 1. Because the fee is for an "appearance", an employee of the Securities and Exchange Commission who was responsible for a major securities fraud investigation may not accept a fee for standing in the reception line at the premier of a movie entitled "Junk Bond Scandal."

Example 2. A staff member of the National Security Council does not make an "appearance" by playing the piano and singing at a wedding reception and may accept a fee for his performance.

Example 3. An employee of the Forest Service does not make an "appearance" by modeling in a fashion show and may accept a modeling fee.

(c) Speech means an address, oration, or other form of oral presentation, whether made in person, recorded or broadcast. Unless the opportunity was extended to the employee wholly or in part because of his official position, the term does not include the recitation of scripted material, as for a live or recorded theatrical production, or any oral presentation that is an incident of any performance that is excluded from the definition of an appearance in paragraph (b) of this section. It does not include the conduct of worship services or religious ceremonies.

Example 1. An attorney employed by the Department of Justice may not receive a \$50 honorarium for her informal talk to a local gardening club on how to design and grow a Victorian rose garden. Her talk, though informal, is a "speech."

Example 2. A nutritionist employed by the National Institutes of Health who is a stand-up comedian by avocation may accept a fee for performing a comedy routine at a dinner theater. His oral remarks do not constitute a speech because they are an incident of his performance using his talent as a comedian. He could not, however,

accept compensation for a speech simply because he tells an introductory joke or otherwise amuses his audience.

Example 3. A statistician employed by the Department of Labor who is a lay minister may accept a gratuitous payment of \$50 for performing a funeral service since it involves his conduct of a religious ceremony. However, he may not accept a payment for a talk on theology given to other ministers, for offering a prayer at the opening of a convention or for delivering a sermon during a worship service conducted by another minister. He could accept payment for his own conduct of worship services.

Example 4. A price analyst employed by the Defense Fuel Supply Agency may accept a fee of \$100 for writing a speech to be delivered by another. The term "speech" includes only oral presentations and does not include writing a speech to be delivered by someone other than the employee. Moreover, the text of a speech is not an article.

Example 5. The stage portrayal of Hamlet by an employee of the Department of State does not involve the making of a "speech." He may be paid for his role in the Shakespearean production.

(d) Article means a writing, other than a book or a chapter of a book, which has been or is intended to be published or republished in a journal, newspaper, magazine or similar collection of writings. The term does not include works of fiction, poetry, lyrics, or script.

Example 1. An employee of the Office of Personnel Management who has reviewed a new book about the New York Yankees may not accept a \$50 honorarium from the publisher of a sports magazine. The book review is an "article."

Example 2. The lyrics and music for a college song written by two Department of the Navy attorneys does not constitute an "article." The attorneys could each accept a gratuitous payment of \$50 if the song were selected by their alma mater for publication in its compendium of college songs.

Example 3. An engineer employed by the National Aeronautics and Space Administration has entered into a contract with an association of electrical component manufacturers to proofread and edit articles submitted by members of the association for publication in its monthly newsletter. The employee may accept the contract fee since the compensation is not for the writing of articles.

Example 4. An accountant employed by the Federal Deposit Insurance Corporation may accept compensation for writing a chapter of a textbook on corporate accounting. A chapter of a book is not an "article."

(e) Receive means that there is actual or constructive receipt of the honorarium by the employee so that the employee has a right to exercise dominion and control over the honorarium and direct its subsequent use. For purposes of this subpart, an honorarium is received while an employee if it is for an appearance or speech made or any article submitted for publication by that individual while he was an employee. Except when it is paid to a charitable organization in accordance with 2636.204 of this subpart, an honorarium is received by an employee:

(1) If it is paid to another person on the basis of designation, recommendation or other specification by the employee; or

(2) If, with the employee's knowledge and acquiescence, it is paid to his parent, sibling, spouse, child or dependent relative.

Example 1. At the suggestion of the Army officer who authored an article selected for publication in a popular magazine, the publisher paid the amount of its usual honorarium to the officer's husband. The officer has "received" an honorarium.

Example 2. An employee of the Department of Housing and Urban Development has been offered a \$500 honorarium for a speech to be given during the week before his scheduled date of retirement from Federal service. Since it is for a speech to be made while he is an employee, he will have "received" the offered honorarium while an employee even though actual payment may not occur until after his retirement.

(f) Charitable organization means an organization which is qualified with respect to deductible charitable contributions under 26 U.S.C. 170(c) because it is organized or operated exclusively for religious, charitable, scientific, literary, educational or another specified purpose. It includes, but is not limited to, an organization exempt from Federal taxation under the authority of 26 U.S.C. 501(c)(3).

(g) Travel expenses means the actual and necessary cost of transportation, lodging and meals incurred while away from the employee's residence or principal place of employment in connection with an appearance, speech or article. Where the lodgings and meals portion of travel expenses are paid or reimbursed by another in the form of a per diem or subsistence expense allowance, that allowance shall be treated as actual and necessary travel expenses if the allowance is no more than that customarily paid by the payor to its own officers or employees, provided the employee in fact incurs costs for commercial meals and lodgings on each day for which

the allowance is received.

Sec. 2636.204 Payment to charitable organizations in lieu of honoraria.

(a) Effect of payment to a charitable organization. An honorarium which, but for this subpart, could be paid to an employee but is paid instead on behalf of the employee to a charitable organization is deemed not to be received by the employee. An employee may suggest that an honorarium that he is prohibited from receiving solely by application of this subpart be paid in his name to a charitable organization. An honorarium received and later donated to a charitable organization by the employee does not qualify as a payment to a charitable organization in lieu of an honorarium made in accordance with this section.

Note: An employee on whose behalf a payment in lieu of an honorarium has been made to a charitable organization may not take a tax deduction on account of the payment under any provision of the Internal Revenue Code or under any tax law of a State or political subdivision thereof.

(b) Nonqualifying payments to charitable organizations. No payment may be made to a charitable organization pursuant to this section:

(1) If the employee would be prohibited from receiving and retaining the honorarium by any conflict of interest statute or regulation or applicable standards of conduct other than this subpart. Honoraria that the employee is prohibited from receiving and retaining would include, for example, any honorarium that is for:

(i) An appearance or speech made or article written by the employee in an official capacity or as part of his official duties; or

(ii) A speech or article, the subject matter of which focuses specifically on agency responsibilities, policies or programs.

(2) In an amount in excess of \$2,000 per appearance, speech, or article; or

(3) If the employee, the employee's parent, sibling, spouse, child, or dependent relative derives any direct financial benefit from the charitable organization that is separate from and beyond any general benefit conferred by the organization's activities.

Example 1. An Assistant U.S. Attorney who has successfully prosecuted an espionage case may not suggest that an honorarium offered for his speech about the prosecution be given to his law school. Because the topic of the speech relates to his official duties, he is prohibited from accepting any compensation by applicable standards of conduct. He could, however, suggest that an honorarium offered for his speech on training sheepdogs, be paid to his school.

Example 2. A personnel specialist employed by the Department of Labor whose spouse is employed by the Red Cross may not suggest that an honorarium for his speech about his vacation spent bicycling through China be donated in his name to the Red Cross.

Example 3. A claims examiner employed by the Department of Veterans Affairs whose mother suffers from Parkinson's Disease may suggest that an honorarium for her article on historic preservation be donated to a charitable organization that funds research seeking a cure for Parkinson's Disease. She may not suggest, however, that it be donated to a charitable organization that provides her mother with in-home nursing services.

Sec. 2636.205 Reporting payments to charitable organizations in lieu of honoraria.

(a) Who must file. A current or former employee, other than a new entrant, who is required to file a financial disclosure report, either on a confidential or public basis, shall at the same time file a confidential report of payments to charitable organizations in lieu of honoraria if:

(1) Payments in lieu of honoraria aggregating more than \$200 were made on his behalf by any one source to one or more charitable organizations during the reporting period covered by the financial disclosure statement; or

(2) In the case of an individual filing a termination report, there is an understanding between the reporting individual and any other person that payments in lieu of honoraria will be made on his behalf for an appearance or speech made or article submitted for publication while the individual was a Government employee which, together with any payments in lieu of honoraria made by that source during the reporting period, will aggregate more than \$200. This reporting requirement is in addition to any other requirement to disclose on a public or confidential financial disclosure report the source, date and amount of an honorarium paid to a charitable organization on the employee's behalf. It does not apply to any payment in lieu of an honorarium made to a charitable organization on behalf of the current or former employee's spouse or dependent child.

(b) Where and when to file. The report required by this section shall be filed with the agency ethics official

by the date the current or former employee is required to file a confidential or public financial disclosure report. Any grant of an extension to file a financial disclosure report shall automatically extend the date for filing the report of payments to charitable organizations in lieu of honoraria and the agency ethics official may, for good cause shown by the employee, grant a separate extension of the date for filing the report required by this section. The total of all extensions for filing the report required by this section shall not exceed 90 days.

(c) Reporting period. The report of payments to charitable organizations in lieu of honoraria shall cover the same period that applies to the confidential or public financial disclosure report the individual is required to file. For employees filing annual financial disclosure reports, the reporting period is the preceding calendar year or, if the employee commenced Government service during that year, the portion of the preceding calendar year beginning with the date the employee entered on duty. For those filing termination reports, the reporting period is the portion of the calendar year in which he terminated Government service up to the date of termination and, if he has not yet filed an annual financial disclosure report covering that period, the preceding calendar year or other period required for the annual report.

(d) What to report. Each report shall be filed on the standard form prescribed by the Office of Government Ethics and made available through the General Services Administration. Each report filed shall include the following information for each payment to a charitable organization in lieu of an honorarium, regardless of amount, made on the employee's behalf by any source from whom such payments made during the reporting period aggregate more than \$200:

- (1) The date of the payment (if payment has been made);
- (2) The date of the appearance or speech for which the honorarium was paid or, where the honorarium is for an article, the date the article was submitted by the employee for publication;
- (3) The name of the person or entity making the payment to the charitable organization;
- (4) The name and the tax status of charitable purpose of the recipient;
- (5) The subject matter of the speech or article or, where the honorarium is for an appearance, the reason for the appearance; and
- (6) The amount of the payment;

An individual filing a termination report who is reporting with respect to payments which have not yet been made should write "Not Applicable" in the space provided for the date of payment and should provide the remainder of the information required on the basis of his best knowledge and belief as to payments which he understands will be made to charitable organizations on his behalf.

(e) Effect of signing the form. By signing the form the employee certifies that the information he has reported is true, complete and correct to the best of his knowledge and that neither he nor his parent, sibling, spouse, child or dependent relative receives from the recipient charitable organization a benefit that is separate and distinct from any general benefit conferred by the organization's activities.

(f) Review of reports. Within 60 days after receipt, the agency ethics official shall review each report of payments to charitable organizations in lieu of honoraria to determine that the reporting requirements of this section have been met and that each payment reported meets the standards at 2636.204 of this subpart.

(1) The agency ethics official need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at face value unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report.

(2) If the agency ethics official determines that the report is complete and that each payment is proper, he shall sign and date the report.

(3) If the agency ethics official determines that the form is not complete, he shall request that the employee complete the form by a specific date and annotate each addition or change with the employee's signature and the date the annotation was made. The 60 day period for review shall run from the date the completed form is filed.

(4) If the agency ethics official determines that additional information is needed to determine whether a payment to a charitable organization meets the standards at 2636.204 of this subpart, he shall request that the employee furnish such information by a specific date and shall date and append to the report any information obtained in writing or annotate the report to reflect any information obtained other than in writing and the date it was furnished. The 60 day period for review shall run from the date the additional information is furnished.

(5) If the agency ethics official determines that the employee has failed to file a report or a

complete report or has received an honorarium in violation of 2636.201 of this subpart because a reported payment does not meet the standards at 2636.204 of this subpart, he shall give the individual written notice of the deficiency and 10 days in which to submit a written response and, thereafter, shall refer the case for appropriate action as described in 2636.104 of this subpart and annotate the report to reflect that referral.

(g) Filing of reports with the Office of Government Ethics. On August 15 of each year, the designated agency ethics official shall forward to the Office of Government Ethics all reports reviewed within his agency during the preceding one-year period.

(h) Review of reports by the Office of Government Ethics. Within 60 days after receiving the reports forwarded under paragraph (g) of this section, reports of payments to charitable organizations in lieu of honoraria filed by individuals whose public financial disclosure reports are required to be filed with the Director of the Office of Government shall be reviewed and signed by the Director.

(i) Retention of reports. Reports of payments to charitable organizations in lieu of honoraria shall be retained by the Office of Government Ethics for a period of 6 years. Unless needed in an ongoing investigation, the reports shall be destroyed after 6 years.

(j) Confidentiality of reports. Reports of payments to charitable organization in lieu of honoraria filed pursuant to this section are not available to members of the public and are to be treated with the confidentiality afforded confidential financial disclosure reports.

SUBPART C: OUTSIDE EARNED INCOME LIMITATION AND EMPLOYMENT AND AFFILIATION RESTRICTIONS AVAILABLE TO CERTAIN NONCAREER EMPLOYEES

Sec. 2636.301 General standards.

A covered noncareer employee shall not:

(a) Receive outside earned income in excess of the 15 percent limitation described in 2636.304 of this subpart;

(b) Receive compensation or allow the use of his name in violation of the restrictions relating to professions involving a fiduciary relationship described in 2636.305 of this subpart;

(c) Receive compensation for serving as an officer or board member in violation of the restriction described in 2636.306 of this subpart; or

(d) Receive compensation for teaching without having first obtained advance authorization as required by 2636.307 of this subpart.

Sec. 2636.302 Relationship to other laws and regulations.

The limitations and restrictions contained in this section are in addition to any limitations and restrictions imposed upon an employee by applicable standards of conduct or by reason of any statute or regulation relating to conflicts of interest. Even though conduct or the receipt of compensation is not prohibited by this subpart, an employee should accept compensation or engage in the activity for which compensation is offered only after determining that it is otherwise permissible. In particular, a covered noncareer employee should accept compensation only after determining that its receipt does not violate the following prohibitions:

(a) A covered noncareer employee who is a Presidential appointee to a full-time noncareer position is prohibited by section 102 of Executive Order 12674, as amended, from receiving any outside earned income for outside employment or any other activity performed during that Presidential appointment.

(b) An individual is prohibited from receiving any honorarium while he is an employee. The honoraria prohibition, described in subpart B of this part, applies to any compensation for an appearance or speech made or article submitted for publication while the individual is an employee.

Sec. 2636.303 Definitions.

For purposes of this section:

(a) Covered noncareer employee means an employee, other than a special Government employee as defined in 18 U.S.C. 202, whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for GS-16, step 1 of the General Schedule under 5 U.S.C. 5332 and who is:

(1) Appointed by the President to a position described in the Executive Schedule, 5 U.S.C. 5312 through 5317, or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:

- (i) A position within the uniformed services; or
- (ii) A position within the foreign service below the level of Assistant Secretary or Chief of Mission;

(2) A noncareer member of the Senior Executive Service or of another SES-type system, such as the Senior Foreign Service;

(3) Appointed to a Schedule C position or to a position under an agency-specific statute that establishes appointment criteria essentially the same as those set forth in 213.3301 of this title for Schedule C positions; or

(4) Appointed to a noncareer executive assignment position or to a position under an agency-specific statute that establishes appointment criteria essentially the same as those set forth in s 305.601 of this title for noncareer executive assignment positions.

For purposes of applying this definition to an individual who holds a General Schedule or other position that provides several rates of pay or steps per grade, his rate of basic pay shall be the rate of pay for the lowest step of the grade at which he is employed.

Example 1. A Schedule C appointee to a position with the United States Information Agency who holds a GS-15 position and who is compensated at the rate for GS-15, Step 9 is not a covered noncareer employee even though the pay he receives in a calendar year exceeds the annual pay for GS-16, Step 1. Notwithstanding that he is compensated at Step 9, the basic rate of pay for the GS-15 position he holds is the rate in effect for GS-15, Step 1 of the General Schedule, which is lower than the rate for GS-16, Step 1.

Example 2. An employee of the Environmental Protection Agency who has been a career GS-15 employee for 10 years and who is offered a non-career SES position with the Federal Aviation Administration will, if he accepts the offer, become a covered noncareer employee by reason of that appointment, regardless of his former status.

Example 3. A Department of Justice employee who holds a Schedule A appointment is not a covered noncareer employee even though he does not have competitive status within the meaning of 212.301 of this title.

(b) Outside earned income and compensation both mean wages, salaries, honoraria, commissions, professional fees and any other form of compensation for services other than salary, benefits and allowances paid by the United States Government. Neither term includes:

(1) Items that may be accepted under applicable standards of conduct gift regulations if they were offered by a prohibited source;

(2) Income attributable to service with the military reserves or national guard;

(3) Income from pensions and other continuing benefits attributable to previous employment or services;

(4) Income from investment activities where the individual's services are not a material factor in the production of income;

(5) Copyright royalties, fees, and their functional equivalent, from the use or sale of copyright, patent and similar forms of intellectual property rights, when received from established users or purchasers of those rights;

(6) Actual and necessary expenses incurred by the employee in connection with an outside activity. Where such expenses are paid or reimbursed by another person, the amount of any such payment shall not be counted as compensation or outside earned income. Where such expenses are not paid or reimbursed, the amount of compensation or earned income shall be determined by subtracting the actual and necessary expenses incurred by the employee from any payment received for the activity;

(7) An honorarium paid to a charitable organization pursuant to 2636.204 of this part; or

(8) Compensation for:

(i) Services rendered prior to January 1, 1991, or prior to becoming a covered noncareer employee;

(ii) Services rendered in satisfaction of a covered noncareer employee's obligation under a contract entered into prior to January 1, 1991; or

(iii) Services which the covered noncareer employee first undertook to provide prior to January 1, 1991, where the standards of the applicable profession require the employee to complete the case or other undertaking.

Example 1. A covered noncareer employee is a limited partner in a partnership that invests in commercial real estate. Because he does not take an active role in the management of the partnership, his share of the partnership income is neither "outside earned income" nor "compensation."

Example 2. A covered noncareer employee of the Civil Rights Commission serves without compensation as a member of the Board of Visitors for a university. The roundtrip airfare and hotel expenses paid by the university to permit him to attend quarterly meetings of the Board are neither "outside earned income" or "compensation."

Example 3. Where a covered noncareer employee pays for transcripts of a hearing in which he is providing pro bono legal representation, reimbursements for those expenses by a legal aid organization are neither "outside earned income" nor "compensation."

Example 4. During the term of his appointment, a Deputy Assistant Secretary of Labor enters into a contract to write a book of fictional short stories. Royalties based on actual sales of the book after publication are investment income attributable to the property interest he retains in the book and, as such, are neither "outside earned income" nor "compensation."

(c) Receive means that the employee has the right to exercise dominion and control over the compensation or outside earned income and direct its subsequent use. Compensation or outside earned income is received by an employee if it is for his conduct and:

(1) If it is paid to any other person on the basis of designation, recommendation or other specification by the employee; or

(2) If, with the employee's knowledge and acquiescence, it is paid to his parent, sibling, spouse, child or dependent relative. Compensation that is prohibited by 2636.305 through 2636.307 of this subpart is received while an individual is an employee if it is for conduct by him that occurs while an employee, even though actual payment may be deferred until after Federal employment has terminated. Payments made to charitable organizations in lieu of honoraria under 2636.204 of this part are not compensation or outside earned income and thus are not received in violation of any of the limitations contained in his subpart. However, other compensation or outside earned income donated to a charitable organization is received by the employee.

Sec. 2636.304 The 15 percent limitation on outside earned income.

(a) Limitation applicable to individuals who are covered noncareer employees on January 1 of any calendar year. A covered noncareer employee may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. The effective date of a change in the rate for level II of the Executive Schedule shall be the date on which a new rate of basic pay for level II first becomes applicable to any level II position.

Note: Notwithstanding the 15 percent limitation described in this section, a covered noncareer employee who is a Presidential appointee to a full-time noncareer position is prohibited by section 102 of Executive Order 12674, as amended, from receiving any outside earned income for outside employment or any other activity performed during that Presidential appointment.

Example. Notwithstanding that the compensation he will receive would not exceed 15 percent of the rate for level II of the Executive Schedule, a covered noncareer employee of the Department of Energy may not receive any compensation for teaching a university course unless he first receives the authorization required by 2636.307 of this subpart.

(b) Limitation applicable to individuals who become covered noncareer employees after January 1 of any calendar year. The outside earned income limitation that applies to an individual who becomes a covered noncareer employee during a calendar year shall be determined on a pro rata basis. His outside earned income while so employed in the calendar year shall not exceed 15 percent of the annual rate of basic pay for level II of the Executive Schedule in effect on January 1 of the calendar year divided by 365 and multiplied by the number of days during that calendar year that he holds the covered noncareer position.

Example. A former college professor received an appointment to a noncareer Senior Executive Service position on November 1, 1991. The rate of basic pay in effect for Executive Level II on January 1, 1991 was \$125,100. For the 61 day period from November 1, 1991 through December 31, 1991, the amount of outside income he may earn is limited to \$3,129. That amount is determined as follows:

Step 1. The rate of basic pay for Executive Level II as in effect on January 1 of that year (\$125,100) is

divided by 365. That quotient is \$342;

Step 2. The dollar amount determined by Step 1 (\$342) is then multiplied by the 61 days the employee held the covered noncareer position. That product is \$20,862;

Step 3. The dollar amount determined by Step 2 (\$20,862) is multiplied by .15 or 15 percent. The product (\$3,129) is the maximum outside earned income the employee may have in the particular year attributable to the period of his service in a covered noncareer position.

(c) Computation principle. For purposes of any computation required by this section, any amount of \$.50 or more shall be rounded up to the next full dollar and any amount less than \$.50 shall be rounded down to the next full dollar.

(d) Year to which outside earned income is attributable. Regardless of when it is paid, outside earned income is attributable to the calendar year in which the services for which it is paid were provided.

Sec. 2636.305 Compensation and other restrictions relating to professions involving a fiduciary relationship.

(a) Applicable restrictions. A covered noncareer employee shall not:

(1) Receive compensation for:

(i) Practicing a profession which involves a fiduciary relationship; or

(ii) Affiliating with or being employed to perform professional duties by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship; or

(2) Permit his name to be used by any firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship.

Example 1. A covered noncareer employee of the White House Office who is an attorney may not receive compensation for drafting a will for her friend. She may, however, participate in her bar association's pro bono program by providing free legal services for the elderly, provided her participation in the program is otherwise proper. For example, 18 U.S.C. 205 would prohibit her from representing her pro bono client in a hearing before the Social Security Administration.

Example 2. An accountant named C.B. Debit who is offered a covered noncareer appointment must terminate his partnership in the accounting firm of Delight, Waterhose and Debit upon appointment. Because his deceased father, J.R. Debit, was the founding partner for whom the firm is named, the name need not be deleted from the firm's name. However, the name C.B. Debit may not appear on the firm's letterhead after the individual enters on duty as a covered noncareer employee.

(b) Definitions. For the purposes of this section:

(1) "Profession" means a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as the scientific, historical or scholarly principles underlying such skills or methods. It is characteristic of a profession, through force of organization or concerted opinion, establish and maintain high standards of achievement and conduct, and commit its practitioners to continued study in the field. Consulting and advising with respect to subject matter that is generally regarded as the province of practitioners of a profession shall be considered a profession.

(2) "Profession which involves a fiduciary relationship" means a profession in which the nature of the services provided causes the recipient of those services to place a substantial degree of trust and confidence in the integrity, fidelity and specialized knowledge of the practitioner. Such professions are not limited to those whose practitioners are legally defined as fiduciaries and include practitioners in such areas as law, insurance, medicine, architecture, financial services, and accounting. A covered noncareer employee who is uncertain whether a particular field of endeavor is a profession which involves a fiduciary relationship may request an advisory opinion under 2636.103.

Example 1. In view of the standards of the profession which require a licensed real estate broker to act in the best interests of his clients, the selling of real estate by a licensed broker involves the practice of a profession involving a fiduciary relationship.

Example 2. A covered noncareer employee may receive the customary fee for serving as the executor of his mother's estate, provided he does not violate the applicable limitation on the amount of outside earned income he may receive. Although the executor of an estate has fiduciary obligations, serving as an executor in these circumstances does not involve the practice of a profession and therefore, is not prohibited. He could not, however, serve for compensation as attorney for the estate.

Sec. 2636.306 Compensation restriction applicable to service as an officer or member of a board.

(a) **Applicable restriction.** A covered noncareer employee shall not receive compensation for serving as an officer or member of the board of any association, corporation or other entity. Nothing in this section prohibits uncompensated service with any entity.

(b) **Definition.** For purposes of this section, the phrase "association, corporation or other entity" is not limited to for-profit entities, but includes nonprofit entities, such as charitable organizations and professional associations, as well as any unit of state or local government.

Example 1. A covered noncareer employee of the Environmental Protection Agency may not serve with compensation on the board of directors of his sister's closely-held computer software corporation.

Example 2. A covered noncareer employee of the Department of the Navy may serve without compensation as an officer of a charitable organization that operates a hospice.

Example 3. A covered noncareer employee of the Coast Guard appointed to serve as a member of the board of education of the county in which she is a resident may not receive compensation for that service.

Sec. 2636.307 Requirement for advance authorization to engage in teaching for compensation.

(a) **Authorization requirement.** A covered noncareer employee may receive compensation for teaching only when specifically authorized in advance by the designated agency ethics official.

(b) **Definition.** For purposes of this section "teaching" means any activity that involves oral presentation or personal interaction, the primary function of which is to instruct or otherwise impart knowledge or skill. It is not limited to teaching that occurs in a formal setting, such as a classroom, but extends to instruction on an individual basis or in an informal setting.

(c) **Request for authorization.** An employee may request authorization to engage in compensated teaching activities by forwarding a written request to the designated agency ethics official. The request shall describe the employee's official duties, the subject matter of the teaching activity, the entity sponsoring the course, and the student, class or audience to be taught. In addition, it shall set forth the terms of the compensation arrangement and identify the source of the payment. The request shall be accompanied by any contract or employment agreement and any literature describing, publicizing or otherwise promoting the class, classes or course.

(d) **Standard for authorization.** Compensated teaching may be approved by the designated agency ethics official only when:

(1) The teaching will not interfere with the performance of the employee's official duties or give rise to an appearance that the teaching opportunity was extended to the employee principally because of his official position,

(2) The employee's receipt of compensation does not violate any of the limitations and prohibitions on honoraria, compensation or outside earned income contained in this part; and

(3) Neither the teaching activity nor the employee's receipt of compensation therefor will violate applicable standards of conduct or any statute or regulation related to conflicts of interests.

(e) **Determination and authorization.** The determination by the designated agency ethics official to grant or deny authorization to engage in teaching for compensation shall be in writing and shall be final. The authority of the designated agency ethics official to authorize compensated teaching may not be delegated to any person other than the alternate designated agency ethics official described in 2636.202(b).

SECTION 2. OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-200. Attendance

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

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

3-201. **Membership.** DoD employees may serve as DoD liaisons to non-Federal entities where there is a significant and continuing DoD interest to be served by such representation. Liaisons serve as part of their official DoD duties and under DoD Component memberships. DoD employees may not accept DoD Component membership in a non-Federal entity on behalf of DoD except as provided by statute or regulation. DoD may pay for DoD Component memberships in accordance with opinions of the Comptroller General, such as 24 Comp. Gen. 814 (reference (e)). DoD is prohibited from paying for individual memberships by 5 U.S.C. 5946 (reference (b)). See also 10 U.S.C. 2601 (reference (f)).

3-202. **Management.** DoD employees may not participate in their official DoD capacities in the management of non-Federal entities without authorization from the Head of the DoD Component. However, authorized DoD employees may officially represent DoD in discussions of matters of mutual interest with non-Federal entities, may participate in the determinations and conclusions of non-Federal entities, and may cast a vote on issues within the scope of the DoD employees' official responsibilities.

3-203. **Impartiality of Agency Designee and Travel-Approving Authority.** When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the Agency Designee or travel approving authority is an active participant in the non-Federal entity, that Agency Designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (g)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (h)).

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

3-205. Endorsement. *Endorsement of a non-Federal entity may be neither stated nor implied by DoD or DoD employees and DoD employees may not use their titles or positions to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-208 of this Regulation, below.* Use of military grade as part of an individual's name in relationship to membership in private organizations is permissible. See 5 C.F.R. 2635.702(c) (reference (g)) in subsection 2-100 of this Regulation.

3-206. Distributing Information. In accordance with public affairs regulations, official channels may be used to notify DoD employees of events sponsored by non-Federal entities.

3-207. Remuneration. DoD employees may not receive any salary or salary supplement from a non-Federal entity for performance of DoD duties.

3-208. Co-sponsorship. A DoD Component is a sponsor or co-sponsor of an event when that DoD Component is one of the organizations holding the event or in whose name the event is held. Co-sponsorship of events with a non-Federal entity is prohibited except as follows:

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

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

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

(2) The head of the DoD Component command or organization finds that the purpose of co-sponsorship is to transfer federally

developed technology or to stimulate wider interest and inquiry into the scientific, technical or professional issues identified above;

(3) The non-Federal entity is a recognized scientific, technical or professional organization approved by the DoD Component DAEO for this purpose; and

(4) The DoD Component accomplishes the co-sponsorship through a contract, grant or cooperative agreement as identified in 31 U.S.C. 6303 through 6306 (reference (d)); or a Cooperative Research and Development Agreement (CRDA) as defined in 15 U.S.C. 3710a (reference (j)); or a cooperative agreement or other transaction identified in 10 U.S.C. 2371 (reference (f)).

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

3-209. Participation in Conferences and Similar Events. Subject to the provisions of subsection 3-211 of this Regulation, below, and in accordance with public affairs regulations and 31 U.S.C. 1345 (reference (d)), DoD employees may participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities.

3-210. Fundraising and Membership Drives

a. ***Except as provided in subsection 3-211 of this Regulation, below, DoD Components shall not officially support and DoD employees shall not officially endorse or officially participate in membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of subsection 3-211 of this Regulation, below:***

- (1) ***The Combined Federal Campaign (CFC);***
- (2) ***Emergency and disaster appeals approved by the Office of Personnel Management (OPM);***
- (3) ***Army Emergency Relief;***

- (4) *Navy-Marine Corps Relief Society;*
- (5) *Air Force Assistance Fund, including:*
 - (a) *Air Force Enlisted Mex's Widows and Dependents Home Foundation, Inc.;*
 - (b) *Air Force Village;*
 - (c) *Air Force Aid Society;*
 - (d) *General and Mrs. Curtis E. LeMay Foundation.*
- (6) *Other organizations composed of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members when approved by the head of the DoD Component command or organization.*

b. Fundraising by DoD employees is strictly regulated by E.O. 12353 (reference (k)), 5 C.F.R. 950 (reference (l)), DoD Directive 5035.1 (reference (m)), DoD Instruction 5035.5 (reference (n)), DoD Directive 5410.18 (reference (o)), 5 C.F.R. 2635.808 (reference (g)) in subsection 2-100 of this Regulation, and by the prohibition against preferential treatment established in subsection 3-203 of this Regulation, above.

3-211. Support of Non-Federal Entity Events

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

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

(2) The sponsoring, non-Federal entity is not affiliated with the CFC (including local CFC) or, if affiliated with the CFC, the Director, OPM or designee has no objection to DoD support of the event;

(3) The community relations with the immediate community and/or other legitimate DoD interests are served by the support;

- (4) It is appropriate to associate DoD, including the concerned Military Department, with the event;
- (5) The event is of interest and benefit to the local civilian or military community as a whole;
- (6) The DoD Component command or organization is able and willing to provide similar support to similar events that meet the criteria sponsored by other non-Federal entities;
- (7) The use is not restricted by other statutes or regulations; and
- (8) Except for a fundraising event that meets all other criteria for DoD participation, no admission fee beyond reasonable costs is charged for the event, no admission fee beyond reasonable costs is charged for the portion of the event supported by DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

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

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

3-212. Relationships Governed by Other Authorities. The provisions of this Chapter do not restrict activities involving certain organizations which have a special relationship with DoD or its employees specifically recognized by law or by other directives. Other restrictions may apply. These organizations include:

- a. Certain banks and credit unions (DoD Directive 1000.11 (reference (p)));
- b. United Service Organization (DoD Directive 1330.12 (reference (q)));
- c. Labor organizations (5 U.S.C. Chapter 71 (reference (b)); DoD 1400.25-M, Chapter 711 (reference (r)));

- d. Combined Federal Campaign (E.O. 10927 (reference (s)), DoD Directive 5035.1 (reference (m)));
- e. Association of Management Officials and Supervisors (DoD Instruction 5010.30 (reference (t)));
- f. American Registry of Pathology (10 U.S.C. 177); Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. 178); American National Red Cross (10 U.S.C. 2542); Boy Scouts Jamborees (10 U.S.C. 2544); Girl Scouts International Events (10 U.S.C. 2545); Shelter for Homeless (10 U.S.C. 2546); National Military Associations; Assistance at National Conventions (10 U.S.C. 2548); Assistance from American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation and Assistance in Foreign Areas (10 U.S.C. 2606); and Civil Air Patrol (10 U.S.C. 9441-9442) (reference (f)).

SECTION 3. PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-300. Participation

a. Fundraising and Other Activities. Subject to other provisions of this Regulation, DoD employees may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities provided they act exclusively outside the scope of their official position. Purely personal, unofficial, volunteer efforts to support fundraising are not prohibited where the efforts do not imply DoD endorsement. The head of the DoD Component command or organization may authorize such activities outside the Federal Government workplace, such as at public entrances, in community support facilities and in personal quarters. See 5 C.F.R. 950 (reference (l)) and E.O. 12353 (reference (k)). These activities may be further limited by Federal Government building and grounds regulations.

b. Professional Associations and Learned Societies. Agency Designees may permit their DoD employees to voluntarily participate in the activities of non-profit professional associations and learned societies without being charged leave and to use Federal Government equipment or administrative support services to prepare papers to be presented at such association or society events or to be published in professional journals, in accordance with FPM 252 and 630 (reference (u)) and related DoD regulations, when:

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

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

c. Community Support Activities. Agency Designees may permit their DoD employees to voluntarily participate in community support activities that promote civic awareness and uncompensated public service such as disaster relief events, without being charged leave in accordance with FPM 630 (reference (u) and related DoD regulations).

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

3-301. Membership and Management. DoD employees may become members and may participate in the management of non-Federal entities as individuals in a personal capacity provided they act exclusively outside the scope of their official position. A DoD employee may not serve in a personal capacity as an officer, member of the Board of Directors, or in any other similar position in any non-Federal entity offered because of their DoD assignment or position.

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

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

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

3-305. Use of Federal Government Resources

a. Authorized Uses. Other than Federal Government time authorized in subsections 3-300.b. and 3-300.c. of this Regulation, above, Federal Government assets, employees, or property may not be used in support of personal participation in non-Federal entities, except as follows:

(1) Agency Designees may permit occasional use of Federal Government telephone systems in keeping with GSA rules on personal calls, provided that such use does not interfere with the performance of official duties. See subsection 2-301 of this Regulation and 41 C.F.R. 201-21.6 (reference (v));

(2) Because the cost to the Federal Government is minimal, the use of office telecommunications equipment for local calls, word processing equipment, libraries and similar resources and facilities whose use would not affect Federal Government costs significantly, may be permitted by the Agency Designee if:

- (a) The non-Federal entity is not a prohibited source;
- (b) The Agency Designee determines that:
 - 1 A legitimate public interest is served by the use; or
 - 2 The use would enhance the professional development or skills of the DoD employee in his current position.
- (c) The use of such resources is made only during personal time, such as excused absence, lunch period, or after duty hours; and
- (d) The use does not interfere with the performance of official duties.

b. Prohibited Uses

(1) *Because of the potential for significant cost to the Federal Government, and the potential for abuse, DoD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial*

activity of another DoD employee in support of non-Federal entities except as provided in subsection 3-300.b. of this Regulation, above.

(2) For the same reasons, copiers and other duplicating equipment may not be used for unofficial activity in support of non-Federal entities.

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

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

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

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

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

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

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

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

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

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

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

3-307. Teaching, Speaking and Writing

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

(1) *The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components.*

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

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

c. Honoraria. Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of 5 U.S.C. App. 501 (reference (b)) and 5 C.F.R. 2636 (reference (a)) in subsection 3-100 of this Regulation, above, and by 5 C.F.R. 2635.807 (reference (g)) in subsection 2-100 of this Regulation.

SECTION 4. REFERENCES

3-400. References

- (a) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition
- (b) Title 5, United States Code, Chapter 71, App. 501, 4101 and 5946
- (c) Title 37, United States Code, Section 412
- (d) Title 31, United States Code, Sections 6303 through 6306 and 1345
- (e) Decisions of the Comptroller General, Volume 24, page 814, 1945
- (f) Title 10, United States Code, Sections 177, 178, 974, 2371, 2541, 2542, 2544, 2545, 2546, 2548, 2601, 2602, 2604, 2606, 3634, 6223, 8634, 9441 and 9442
- (g) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (h) Title 18, United States Code, Section 208
- (i) DoD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business", January 16, 1974
- (j) Title 15, United States Code, Section 3710a
- (k) Executive Order 12353, "Charitable Fund-Raising," March 23, 1982, as amended
- (l) Title 5, Code of Federal Regulations, Part 950, "Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations," current edition

- (m) DoD Directive 5035.1, "Fund-raising within the Department of Defense," August 28, 1990
- (n) DoD Instruction 5035.5, "DoD Combined Federal Campaign - Overseas Area," August 17, 1990
- (o) DoD Directive 5410.18, "Community Relations," July 3, 1974
- (p) DoD Directive 1000.11, "Financial Institutions on DoD Installations," July 26, 1989
- (q) DoD Directive 1330.12, "United Service Organizations, Inc.," November 9, 1987
- (r) DoD 1400.25-M, "DoD Civilian Personnel Manual," January 24, 1978, authorized by DoD Directive 1400.25, "Department of Defense Civilian Personnel Manual System," January 24, 1978
- (s) Executive Order 10927, "Abolishing the President's Committee on Fund-Raising Within the Federal Service and Providing for the Conduct of Fund-Raising Activities," March 18, 1961
- (t) DoD Instruction 5010.30, "Intramangement Communication and Construction," May 2, 1989
- (u) Federal Personnel Manual, 252 and 630
- (v) Title 41, Code of Federal Regulations, Part 201-21.6, "Management and Use of Federal Information Processing Resources," current edition
- (w) DoD Directive 6025.7, "Off Duty Employment by DoD Health Care Providers," October 21, 1985

CHAPTER 4

TRAVEL BENEFITS

SECTION 1. ACCEPTANCE OF OFFICIAL TRAVEL BENEFITS IN KIND OR PAYMENT FOR OFFICIAL TRAVEL EXPENSES

4-100. Acceptance from Non-Federal Sources

a. Official Travel. Official travel by DoD employees shall be funded by the Federal Government except that DoD Components may accept official travel benefits, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources as provided in this Chapter of this Regulation.

b. Personal Travel. This Chapter does not apply to travel benefits provided to DoD employees in their personal capacities. However, DoD employees must report such travel expenses when appropriate in accordance with Chapter 7 of this Regulation. There may be limitations on acceptance of travel benefits in a personal capacity, including limitations on acceptance from prohibited sources, because of official position, and under 41 U.S.C. 423 (reference (a)).

c. Acceptance Procedures. 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 (reference (b)), approved in advance of travel.

d. Spousal Travel. The travel approving authorities for travel of a spouse accompanying a DoD employee on official travel that is paid for or provided in kind by a non-Federal source are as follows:

(1) For DoD employees of OSD, Defense Agencies and DoD Field Activities, the Executive Secretary, OSD;

(2) For DoD employees of Military Departments, the Secretaries concerned or their designees;

(3) For DoD employees of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified or Specified Commands, and

the Combined Commands and Agencies, the Chairman, Joint Chiefs of Staff, or his designee.

4-101. Acceptance of Travel and Related Expenses by a DoD Component From Non-Federal Sources

**a. Attendance at a Meeting or Similar Function
(31 U.S.C. 1353 (reference (b)))**

(1) In accordance with 31 U.S.C. 1353 (reference (b)) and GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), Heads of DoD Components may accept travel benefits from a non-Federal source incurred by DoD employees in connection with their attendance in an official capacity at a meeting or similar function. The Joint Federal Travel Regulations (JFTR), Chapter 7, Part W, Paragraphs U7900-7908 (DoD Uniformed Services) (reference (d)) and Joint Travel Regulations (JTR), Chapter 4, Part Q, Paragraphs C4900-4908 (DoD Civilian Personnel) (reference (e)) implement 41 C.F.R. 301-1.2 and 304 (reference (c)). For detailed guidance as to the applicability and application of specific authority, these regulations should be consulted directly.

(2) Where the GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), are inconsistent with the JFTR (reference (d)) and JTR (reference (e)), 41 C.F.R. 301-1.2 and 304 (reference (c)) is the controlling authority.

(3) A DoD Component may not accept travel benefits from non-Federal sources under any other gift acceptance authority if 31 U.S.C. 1353 (reference (b)) applies.

(4) **Payment Guidelines.** DoD employees (or their spouses) shall not accept cash payments on behalf of the Federal Government.

(a) When travel benefits are paid for rather than provided in kind, payments from the non-Federal source will be by check or similar instrument made payable to the United States Treasury. Any such payment received by the DoD employee (or spouse) shall be submitted with his travel voucher as soon as practicable.

(b) The DoD employee shall exclude from his travel voucher any request for reimbursement for travel benefits furnished in kind by a non-Federal source on the travel voucher to ensure that appropriate deductions are made in the travel, per diem, or other allowances payable by the United States.

(5) **Reporting.** Each travel-approving authority designated by the DoD Component Head to accept travel benefits from non-Federal sources shall submit a report to the DoD Component DAEO or

designee semiannually on April 30 and October 31 to accommodate the required reporting to OGE on May 31 and November 30 each year. See JFTR, Paragraph U7908 (reference (d)) and JTR, Paragraph C4908 (reference (e)) for details on what to report.

b. DoD Component Gift Acceptance Statutes. In accordance with procedures established by those DoD Components with gift acceptance authority under 10 U.S.C. 2601 (reference (f)), travel benefits may be accepted by such DoD Component Heads or their designees.

(1) This authority may not be used to accept travel benefits covered by 31 U.S.C. 1353 (reference (b)).

(2) This authority may be used to accept, for example, reimbursement for travel benefits of flight crew members that accompany Federal Government aircraft to international air shows or the expenses incurred by the attendance of DoD employees at ceremonial events in order to enhance a DoD Component's public relations. This authority may also be used to accept travel benefits offered after travel has begun or has been completed.

c. DoD Component DAEO or Designee Approval. Acceptance of official travel benefits from non-Federal sources described in subsections 4-101.a. and 4-101.b. of this Regulation, above, requires the concurrence of the DoD Component DAEO or designee.

4-102. Acceptance of Contributions, Awards and Other Payments by DoD Employees from Tax-Exempt Organizations (5 U.S.C. 4111 (reference (g)))

a. Applicability. Military members are permitted to accept contributions, awards and other payments the same as civilian DoD employees in accordance with the requirements of this subsection, below.

b. Conditions for Acceptance. Except when acceptance is permitted under 5 C.F.R. 2635.204(d) (reference (h)) in subsection 2-100 of this Regulation, DoD employees are permitted to accept contributions, awards and other payments directly from non-Federal sources only when all of the following conditions are met:

(1) The source is a tax-exempt organization described by 26 U.S.C. 501(c)(3) (reference (i)) or a State or local government (see 5 C.F.R. 410, Subpart G (reference (j)));

(2) The contribution, award, or payment of travel benefits is incidental to training in non-Federal Government facilities or attendance at a meeting;

(3) An appropriate deduction is made from any payment by the Federal Government to the DoD employee for their official travel entitlement;

(4) The contribution, award, or payment is not a reward for services to the non-Federal source;

(5) Acceptance of the contribution, award or payment would not reflect unfavorably on the DoD employee's ability to perform his duties in a fair and objective manner, nor otherwise compromise the integrity of any Federal Government action; and

(6) The travel approving authority approves the acceptance of the contribution, award or payment in writing.

c. Payments from Multiple Sources. When more than one organization participates in making a single contribution, award, or payment, only the organization that selects the recipient and administers the funds from which the contribution, award, or payment is made will be considered the source.

d. Reporting

(1) Financial disclosure reporting individuals must report acceptance of these travel benefits if the fair market value of those benefits reaches the reportable amount.

(2) Travel benefits accepted under 5 U.S.C. 4111 (reference (g)) shall be reported by the travel-approving authority directly to the DoD Component DAEO or designee within 30 days after completion of travel. These reports shall include, at a minimum, the information required for the semiannual reports by the JFTR, Paragraph U7908 (reference (d)) and JTR, Paragraph C4908 (reference (e)).

4-103. Receipt and Disposition of Foreign Gifts and Decorations (5 U.S.C. 7342 (reference (g))). DoD employees may accept travel and travel-related expenses from a foreign government in accordance with DoD Directive 1005.13 (reference (k)).

SECTION 2. DoD GUIDANCE

4-200. Acceptance of Incidental Benefits. There are two basic principles DoD employees must consider in determining whether they may accept

benefits offered incident to their official travel. See DoD travel rules (e.g., DoD Directive 4500.9 (reference (l))).

a. **Federal Government Property.** Anything that does not fall within a gift exception or exclusion under 5 C.F.R. 2635 Subpart B (reference (h)) in subsection 2-100 of this Regulation, or subsection 2-202 of this Regulation, which is received by a DoD employee as a result of official travel, belongs to the Federal Government, regardless of the source of the funding.

(1) Travel coupons, tickets, promotional items of more than nominal value, frequent flyer mileage credits, and most other benefits received by DoD employees from non-Federal sources (e.g., airlines, rental car companies, hotels) incident to their official travel belong to the Federal Government. They may not be used for personal purposes.

(2) If possible, such benefits will be turned over to the appropriate official. See JFTR, Paragraph U2010B (reference (d)), JTR, Paragraph C1200 (reference (e)), 41 C.F.R. Part 301 (reference (c)) and 41 C.F.R. 101-25.103 (reference (m)).

b. **Gifts from Outside Sources.** Benefits offered to a DoD employee from a non-Federal source incident to official travel that cannot be used for official purposes must be treated as gifts to the DoD employee. DoD employees may not accept such gifts if acceptance would violate 5 C.F.R. 2635 Subpart B (reference (h)) in subsection 2-100 of this Regulation.

4-201. **Examples of Benefits Considered Federal Government Property**

a. **Frequent Flyer Mileage Credits.** Frequent flyer mileage credits earned as a result of official travel are the property of the Federal Government. They shall not be used except in connection with official travel. Credits are used in connection with official travel either by redeeming them for airline tickets which are used for official travel or by using them for travel upgrades while on official travel (e.g., airline seat upgrades, rental car upgrades, hotel upgrades). First consideration should be given to the former. When mileage credits for official and personal travel have been commingled in the same account, only those credits or points that clearly can be shown to have been derived from personal travel may be used for future personal travel. All other points in the account belong to the Federal Government.

b. **Other Awards to Users of Travel Services.** Travel companies sometimes give away merchandise, or award points toward merchandise or other prizes, to users of their services. If the travel services used are paid for by the Federal Government, any resulting award belongs to the

Federal Government (e.g., if a DoD employee renting a car for official business is offered either a calculator or points toward a larger prize, both would belong to the Federal Government).

4-202. Examples of Benefits Treated as Gifts to an Individual

a. Travel Upgrades. Travel upgrades are commonly offered for such travel accommodations as airline seats, rental cars, and hotel rooms. Some travel upgrades are given on the spot without any prearranged entitlement. Others are provided pursuant to some prearranged entitlement, such as a coupon. DoD employees on official travel may accept benefits such as an airline seat upgrade to first class, a luxury rental car in place of a compact, or a hotel room with a view instead of an interior room, for official use as long as there is no extra charge to the Federal Government to obtain the upgrade (see 5 C.F.R. 2635.204(c) (reference (h)) in subsection 2-100 of this Regulation) subject to the following:

(1) On the Spot Upgrades. DoD employees may accept an upgrade offered on the spot under circumstances in which such upgrades are generally available to the public or at least to all Federal Government employees or all military members. For example, a travel company may provide upgrades to remedy overbooking or overcrowding, due to a shortage of smaller cars, or simply for customer relation purposes; or upgrades may be offered to all military members in uniform. No upgrade may be accepted, however, if it is provided on the basis of the DoD employee's grade or position. Upgrades resulting from involuntary "bumping" while on official travel may not be used for personal travel. See 5 C.F.R. 2635.202(a)(2) (reference (h)) in subsection 2-100 of this Regulation;

(2) Use of Upgrade Certificates (Other Than Those Obtained for Frequent Flyer Miles). Some travel companies distribute coupons for free travel upgrades as a promotional offer. DoD employees may accept and use such coupons if they are realistically available to the general public (e.g., widely available coupons usable by bearer) or to all Federal Government employees or all military members (e.g., coupons available to any Federal Government employee for official travel). DoD employees may not use coupons provided on the basis of their grade or position.

b. "Gold Card" and Similar Memberships. Certain airlines offer special benefits, including free upgrades, to members of their traveler incentive programs (e.g., Gold card, Key Club, etc.). Membership in these programs ordinarily is earned by accumulating a large number of travel miles during the current calendar year, or in some cases, memberships may be purchased. DoD employees who obtain eligibility under these circumstances (i.e., by purchasing a membership with their personal funds or by accumulating the necessary miles, even by official travel) may accept the membership and resulting benefits, including travel upgrades. If membership in the program is offered to

DoD employees who have not met the usual requirements for membership, however, primarily because of the DoD employee's grade or position, neither the membership nor its benefits may be accepted.

c. Prizes in "Open" and "Closed" Contests. When travel companies and related organizations offer prizes in a competition that is open to the general public, so that no one must perform official travel to win, a DoD employee may keep any prize he wins, even if he happened to enter the contest only because of official travel (e.g., a DoD employee flying on official business receives the winning entry blank in an airline's contest while on the flight, but individuals not using the airline will be given the entry blank on request). Some travel companies and related organizations offer prizes in connection with official travel. The prize usually is given as a result of a drawing or some kind of contest. If competition for a prize is limited to individuals using a certain kind of travel accommodation, which in the case of the DoD employee is paid for by the Federal Government, any prize won belongs to the Federal Government (e.g., an airline provides contest entry blanks only to passengers on its planes, and the DoD employee receives the winning entry blank while flying on official travel).

d. Incentives for Voluntary Surrender of Flight Reservations. DoD employees may keep payments or free tickets received from a carrier for voluntarily giving up a seat on an overbooked flight. DoD employees on official travel may not voluntarily surrender their seats if the resulting delay would interfere with the performance of duties. The delay may not increase the cost to the Federal Government. Therefore, travel vouchers should disclose the voluntary surrender and resulting delays and leave must be taken as appropriate.

SECTION 3. PROCEDURES AND RESPONSIBILITIES

4-300. The travel-approving authority shall:

a. Approve or disapprove acceptance of travel benefits in kind or payments of travel expenses from non-Federal sources in accordance with subsections 4-102 and 4-103 of this Regulation, above;

b. Acquire the concurrence of the DoD Component DAEO or designee when approving travel benefits in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5 (reference (c));

c. Prepare and submit a report to the DoD Component DAEO or designee reporting all travel benefits over \$250 accepted in accordance with the authority granted under 31 U.S.C. 1353 (reference (b)) as implemented in subsection 4-101 of this Regulation above;

d. Prepare and submit a report to the DoD Component DAEO or designee within 30 days after completion of travel during which travel benefits have been paid by non-Federal sources under 5 U.S.C. 4111 (reference (g)). See subsection 4-102.c. of this Regulation, above.

4-301. Each DoD Component DAEO or Designee shall:

a. Prepare and submit semiannual reports to OGE on acceptance of payments under 31 U.S.C. 1353 (reference (b)) due May 31 and November 30 each year. See subsection 4-101.a.(5) of this Regulation, above;

b. Retain reports from the travel approving authority under 5 U.S.C. 4111 (reference (g)) for three years. See subsection 4-102.c. of this Regulation, above;

c. Provide written concurrence for the approval of travel benefits in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5 (reference (c)).

4-302. Each traveling DoD employee shall:

a. Provide all necessary information to the travel approving authority for a semiannual report to the DoD Component DAEO;

b. Turn in any merchandise, frequent flyer miles or other benefits as required under subsection 4-200 of this Regulation, above.

SECTION 4. REFERENCES

4-400. References

- (a) Title 41, United States Code, Section 423
- (b) Title 31, United States Code, Section 1353
- (c) Title 41, Code of Federal Regulations, Parts 301 through 304, "Federal Travel Regulation System," current edition
- (d) Joint Federal Travel Regulations, Paragraphs U2010B and U7900 through 7908 (DoD Uniformed Services)
- (e) Joint Travel Regulations, Paragraphs C1200 and C4900 through 4908 (DoD Civilian Personnel)
- (f) Title 10, United States Code, Section 2601
- (g) Title 5, United States Code, Sections 4111 and 7342
- (h) Title 5, Code of Federal Regulations, Section 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (i) Title 26, United States Code, Section 501

DoD 5500.7-R

- (j) Title 5, Code of Federal Regulations, Part 410, Subpart G, "Acceptance of Contributions, Awards, and Payments from Non-Government Organizations," current edition
- (k) DoD Directive 1005.13, "Gifts from Foreign Governments," October 13, 1988
- (l) DoD Directive 4500.9, "Transportation and Traffic Management," January 26, 1989
- (m) Title 41, Code of Federal Regulations, Chapter 101, "Federal Property Management Regulations," current edition

CHAPTER 5

CONFLICTS OF INTEREST

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

(reference (a)) 5-100. 5 C.F.R. 2639, "Interpretation of 18 U.S.C. 209"

[TO BE PUBLISHED]

SECTION 2. OFFICE OF GOVERNMENT ETHICS REGULATION

(reference (b)) 5-200. 5 C.F.R. 2640, "Interpretation of 18 U.S.C. 208"

[TO BE PUBLISHED]

SECTION 3. GUIDANCE ON 18 U.S.C. 208 (reference (c))

5-300. Conflicts and Appearance of Conflicts Under 18 U.S.C. 208 (reference (c)). See 5 C.F.R. 2635, Subpart D and Subpart E (reference (d)), in subsection 2-100 of this Regulation, OGE opinions (reference (e)), and subsection 2-204 of this Regulation for provisions on conflicts of interest under 18 U.S.C. 208 (reference (c)).

5-301. Applicability to Enlistees. The provisions of 18 U.S.C. 208 (reference (c)) and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 (reference (c)) do apply to enlisted members as follows: *except as approved by the DoD Component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest.*

5-302. Waiver of 18 U.S.C. 208(a). Pursuant to 18 U.S.C. 208(b) (reference (c)), application of 18 U.S.C. 208(a) (reference (c)) may be waived.

a. The regulatory waivers for DoD under 18 U.S.C. 208(b)(2) (reference (c)) have been preserved and are reprinted in Appendix D of this Regulation as follows (see 5 C.F.R. 2635.402(d) (reference (d))):

(1) For civilian DoD Components, such waivers appear in 32 C.F.R. 40.1 (reference (f));

(2) For the Department of the Army, such waivers appear in AR 600-50 (reference (g));

(3) For the Department of the Air Force, such waivers appear in AFR 30-30 (reference (h));

(4) For the Department of the Navy, such waivers appear in SECNAVINST 5370.2J (reference (i)).

b. Application of 18 U.S.C. 208(a) (reference (c)) may be waived for individuals when a financial interest is not so substantial as to be likely to affect the integrity of the services that the Federal Government may expect from the DoD employee. Considerations in determining whether the interest is not so substantial as to be deemed likely to affect the integrity of the services that the Federal Government may expect from the DoD employee include:

(1) The extent to which the DoD employee's exercise of authority and responsibility can affect his interest;

(2) The relative importance of the interest in the DoD employee's life or finances;

(3) The potential for harm to the Federal Government and to the DoD employee if the DoD employee's interests influence his decision-making;

(4) How the situation would appear to an informed public;

(5) The nature of the relationship between the DoD employee and the individual who has the interest concerned.

c. In order to pursue an individual waiver under 18 U.S.C. 208(b)(1) (reference (c)), the following steps are mandatory:

(1) Before a waiver is requested, consideration should first be given to alternative resolutions, such as disqualification, divestiture, reassignment, or rearrangement of duties. Individual waivers are to be considered only when all alternatives have been exhausted. The supervisor should also consider, with the advice of the Ethics Counselor, whether a potential violation of 18 U.S.C. 208(a) (reference (c)) exists. See subsection 5-303 of this Regulation, below. Even if the interests are insubstantial, consideration should be given to whether the particular matter will have a direct and predictable effect on the financial interest. See 5 C.F.R. 2635.402(b)(1) (reference (d)) in subsection 2-100 of this Regulation;

(2) A request for a waiver shall be forwarded through the chain of command or supervision to the DoD Component DAEO. The DoD Component DAEO shall consult, if practicable, on the action with OGE;

(3) Pending the approval of the waiver, the DoD employee shall be disqualified from participation in the particular matter that will have an effect on the financial interest;

(4) The waiver request shall include the Ethics Counselor's findings of fact on the following:

(a) The manner in which the financial interest was acquired;

(b) The purpose behind the DoD employee's acquisition of the interest;

- (c) The dollar value of the interest;
- (d) The potential amount by which the DoD employee's official actions may affect the financial interest;
- (e) The degree to which the DoD employee has control over official actions which may affect the non-Federal entity;
- (f) The size of the non-Federal entity and the degree to which official actions may affect the non-Federal entity;
- (g) The value of the financial interest in relation to the DoD employee's net worth and income from other sources;
- (h) The degree to which the DoD employee has control over the financial interest, and whether it is capable of being divested.

d. By statute, authority to grant 18 U.S.C. 208(b)(1) (reference (c)) waivers rests with the DoD official responsible for the DoD employee's appointment. By E.O. 12674 (reference (j)), in subsection 12-100 of this Regulation, that authority shall not be exercised without prior consultation, if practicable, with OGE. The DoD Component DAEO shall consult with OGE regarding the waiver on behalf of the DoD official responsible for the DoD employee's appointment.

5-303. Resolution of Conflicts. Resolution of actual or apparent conflicts of interest is the responsibility of the head of the DoD Component command or organization. An Ethics Counselor should be consulted about alternatives for resolution. See Chapter 10 of this Regulation for enforcement information.

SECTION 4. OTHER CONFLICT OF INTEREST LAWS

5-400. Bribery and Graft

a. All DoD employees are prohibited from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting, or agreeing to receive anything of value to influence any official act, to influence

commission of fraud on the United States, to induce committing or omitting any act in violation of a lawful duty, or to influence testimony given before an individual or non-Federal entity authorized to hear evidence or take testimony. See 18 U.S.C. 201(b) (reference (c)).

b. DoD employees are also prohibited, except as provided by law for the proper discharge of official duties, from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting, or agreeing to accept anything of value for or because of any official act performed or to be performed, or for or because of any testimony given or to be given before an individual or non-Federal entity authorized to hear evidence or take testimony. See 18 U.S.C. 201(c) (reference (c)).

c. These prohibitions do not apply to the payment or receipt of witness fees authorized by law, certain travel and subsistence expenses to appear as a witness and value of time lost in attendance at a trial, hearing, or proceeding. Other prohibitions may apply. See 18 U.S.C. 201(d) (reference (c)); 5 U.S.C. 5515 and 5751 (reference (k)) and paragraph 66 of Part IV, MCM, 1984 (reference (l)).

5-401. Compensation Related to Matters Pending Government Decision. OGE interpretation of prohibitions under 18 U.S.C. 203 (reference (c)) appear in 5 C.F.R. 2635.801(d)(3) (reference (d)) in subsection 2-100 of this Regulation. These prohibitions do not apply to enlisted members. A DoD employee whose salary is not tied to the profitability of the non-Federal entity's Federal Government contracts does not violate this statute. See OGE opinion 86x9 (informal) (reference (e)). This statute prohibits receiving compensation for any representation, including those where there is no intent to be corrupted or to provide preferential treatment. Representations can be either oral or written.

a. The prohibition does not apply to a DoD employee's representation of himself, but this exception does not extend to the representation of a distinct, legal, non-Federal entity as a corporation, a partnership, or even a sole proprietorship. 18 U.S.C. 203(a)(2) (reference (c)) prohibits an offer or payment of compensation, the solicitation or receipt of which is otherwise barred.

b. The prohibitions apply to special Government employees but only in relation to a particular matter involving a specific party or parties in which the special Government employee participated personally and substantially or, absent such participation, if he served more than a total of 60 days in the preceding 365 days, in relation to any particular matter pending in the DoD Agency.

c. 18 U.S.C. 203 (reference (c)) does not prohibit giving testimony under oath or making statements required to be made under penalty of perjury.

d. 18 U.S.C. 203 (reference (c)) does not prohibit representation, with or without compensation, of one's parents, spouse, child, or any person or estate the DoD employee serves as administrator, guardian or other personal fiduciary. This exemption is permitted only if approved by the DoD official responsible for appointing the DoD employee to his DoD position. The exemption may not be extended to the DoD employee's representation of any such person in matters in which the DoD employee has officially participated personally and substantially or in matters which, even absent such participation, are the subject of his official responsibility.

e. The head of a department or agency may authorize a special Government employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the Federal Register that the national interest requires such representation.

5-402. Contracts with DoD Employees. Contracts for the procurement of goods and services between the Federal Government and its employees are prohibited unless the needs of the Federal Government cannot otherwise be met. See FAR 3.601 and 3.602 (reference (m)) in Appendix B of this Regulation.

5-403. Representation of Others

a. Prohibition Under 18 U.S.C. 205 (reference (c)). 18 U.S.C. 205 (reference (c)) prohibits DoD employees, other than enlisted members, whether or not they are employed for compensation, from personally acting as an agent or attorney for anyone else before a department, agency, or court in connection with any covered matter in which the United States is a party or has a direct and substantial interest or from prosecuting any claim against the Federal Government or receiving any gratuity or interest in such claim for assistance in prosecuting the claim. 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.

b. Exceptions. The following are excluded from the scope of 18 U.S.C. 205 (reference (c)):

(1) Giving testimony under oath or making statements required to be made under penalty of perjury or representing another

person, with or without compensation, in a disciplinary, loyalty, or other personnel administration proceeding;

(2) Representing, with or without compensation, one's parents, spouse, child, or a person or estate the DoD employee serves as a fiduciary, but only if approved by the DoD official responsible for appointing the DoD employee to this DoD position. This exception does not apply to matters in which the DoD employee has participated personally and substantially or which, in the absence of such participation, are the subject of his official DoD responsibility;

(3) The head of a department or agency may allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the Federal Register that the national interest requires such representation;

(4) For special Government employees, the prohibitions apply only to covered matters in which they participated personally and substantially as a special Government employee. Absent such participation, the prohibitions apply only if he served more than a total of 60 days during the preceding 365 days and the covered matter was pending in the DoD Agency during that period.

5-404. Compensation From Other Sources

a. The provisions of 18 U.S.C. 209 (reference (c)) and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 209 (reference (c)) do apply to enlisted members as follows: *an enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government.*

b. 18 U.S.C. 209 (reference (c)) prohibits DoD employees from receiving pay or allowances or supplements of pay or benefits from any source other than the United States for the performance of official service or duties unless specifically authorized by law. Note that a task or job that is performed outside normal working hours does not necessarily allow acceptance of payment for performing it. If the undertaking is part of one's official duties, pay for its performance may not be accepted from any source other than the United States regardless of when it was performed.

c. A DoD employee may continue to participate in a bona fide pension, retirement, insurance, bonus, or other employee welfare or

benefit plan maintained by his former employer. See 18 U.S.C. 209(b) (reference (c)).

d. Reserve military officers and certain temporarily commissioned military officers who are ordered to active duty may continue to receive compensation from individuals who furnished compensation to them prior to being ordered to active duty. See 10 U.S.C. 1033 (reference (l)) and 50 U.S.C. App. 454(f) (reference (n)).

5-405. Additional Pay or Allowances. DoD employees may not receive additional pay or allowances for disbursement of public money or for the performance of any other service or duty unless specifically authorized by law. See 5 U.S.C. 5536 (reference (k)).

a. 5 U.S.C. 5536 (reference (k)) precludes extra pay from the Federal Government for the performance of official duties. Subject to certain limitations, civilian DoD employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed. Absent specific authority, however, military members may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties. That a military member may have leisure hours during which no official duty is performed does not alter the result. See 52 Comp. Gen. 471 (reference (o)) and 22 Comp. Gen. 127, 149 (reference (p)).

b. 5 U.S.C. 5536 (reference (k)) applies to enlisted members and precludes enlisted members from supplementing their official salaries from outside sources for performing their official duties.

5-406. Interference with Military Duties. Military officers on active duty (except while on terminal leave) may not accept employment if it requires separation from their organization, branch, or unit, or interferes with the performance of military duties. See 10 U.S.C. 973(a) (reference (l)).

5-407. Civil Office Prohibition. Regular military officers on the active duty list and retired Regular military officers on active duty for more than 180 days may not hold civil office, unless expressly authorized by law. See 10 U.S.C. 973(b) (reference (l)).

5-408. Assignment of Reserves for Training

a. Personnel who assign Reserves for training shall not assign them to duties in which they will obtain information that they or their private employers may use to gain unfair advantage over competitors. Reservists must disclose to superiors and assignment personnel information necessary to

ensure that no conflict exists between their duty assignment and their private interests.

b. Commanders, or their designees, shall screen Reservists performing training to ensure that no actual or apparent conflict exists between their private interests and their duty assignment. While Reservists have an affirmative obligation under this rule to disclose material facts in this regard, receiving commands cannot assume compliance and shall independently screen incoming personnel to avoid conflicts of interests.

5-409. Commercial Dealings Involving DoD Employees. A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this subsection.

a. In the absence of coercion or intimidation, this does not prohibit the sale or lease by an individual of one's non-commercial personal property or real estate, and commercial sales made in a retail establishment during off-duty employment. Solicitation does not include advertisements posted in accordance with Federal Government building management policies.

b. This prohibition includes the solicited sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services.

c. Both the act of soliciting and the act of selling as a result of soliciting are prohibited. In both cases, however, a solicitation is necessary for a violation to occur. While the standard prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion or intimidation by the senior.

d. Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may:

- (1) Cause actual or perceived partiality or unfairness;
- (2) Involve the actual or apparent use of rank or position for personal gain; or
- (3) Otherwise undermine discipline, morale, or authority.

5-410. Related Rules

a. There is a prohibition on holding conflicting financial interests. See 5 C.F.R. 2635.403 (reference (d)) in subsection 2-100 of this Regulation, 18 U.S.C. 208 (reference (c)), and 5 C.F.R. 2640 (reference (b)) in subsection 5-200 of this Regulation, above.

b. There are requirements regarding seeking outside employment. See 5 C.F.R. 2635.601-606 (reference (d)) in subsection 2-100 of this Regulation and Chapter 8 of this Regulation.

c. There is a prohibition on engaging in outside employment or activities that conflict with official duties. See 5 C.F.R. 2635.802 (reference (d)) in subsection 2-100 of this Regulation.

d. There are limitations on certain outside activities such as receipt of outside earned income by certain DoD Presidential appointees or non-career DoD employees, service as an expert witness, participation in professional associations, teaching, writing, speaking, or fundraising. See 5 C.F.R. 2635.804-808 (reference (d)) in subsection 2-100 of this Regulation.

e. There is a prohibition on the receipt of honoraria. See 5 C.F.R. 2636 (reference (a)) in subsection 3-100 of this Regulation.

f. There are prohibitions on the misuse of official position such as improper endorsements or improper use of non-public information. See 5 C.F.R. 2635.701-705 (reference (d)) in subsection 2-100 of this Regulation.

g. There are prohibitions on certain post-Government service employment. See Chapter 9 of this Regulation.

SECTION 5. REFERENCES

5-500. References

- (a) Title 5, Code of Federal Regulations, Part 2639, "Interpretation of 18 U.S.C. 209" [TO BE PUBLISHED]
- (b) Title 5, Code of Federal Regulations, Part 2640, "Interpretation of 18 U.S.C. 208" [TO BE PUBLISHED]
- (c) Title 18, United States Code, Sections 201, 203, 205, 208 and 209
- (d) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (e) Office of Government Ethics Opinions 83x1 (January 7, 1983), 85x10 (July 15, 1985), 86x9 (August 8, 1986), 87x6 (April 1, 1987), and 88x13 (September 12, 1988)
- (f) Title 32, Code of Federal Regulations, Part 40, "Standards of Conduct,"
- (g) AR 600-50, "Standards of Conduct for Department of Army Personnel," January 28, 1988
- (h) AFR 30-30, "Standards of Conduct," May 26, 1989
- (i) SECNAVINST 5370, "Standards of Conduct and Government Ethics," March 15, 1989
- (j) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989, as amended
- (k) Title 5, United States Code, Sections 5515, 5536, and 5751
- (l) Title 10, United States Code, sections 801 through 940 (Uniform Code of Military Justice, Manual for Courts-Martial), 973 and 1033
- (m) Federal Acquisition Regulation, Parts 3.601 and 3.602, current edition
- (n) Title 50, United States Code, Appendix, Section 454
- (o) Decisions of the Comptroller General, Volume 52, page 471 (1973)
- (p) Decisions of the Comptroller General, Volume 22, page 127 (1942)
- (q) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition

CHAPTER 6

POLITICAL ACTIVITIES

SECTION 1. OFFICE OF PERSONNEL MANAGEMENT REGULATION

(reference (a)) 6-100. 5 C.F.R. 733, "Political Activities of Federal Employees"

POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

5 CFR 733¹

Table of Contents

SUBPART A: THE COMPETITIVE SERVICE	3
GENERAL PROVISIONS	3
Sec. 733.101 Definitions.	3
Sec. 733.111 Permissible activities.	3
PROHIBITED ACTIVITIES	4
Sec. 733.121 Use of official authority; prohibition.	4
Sec. 733.122 Political management and political campaigning; prohibitions.	4
Sec. 733.123 Prohibited activity; exception of certain employees.	5
Sec. 733.124 Political management and political campaigning; exception of certain elections.	5
SUBPART B: THE EXCEPTED SERVICE	7
Sec. 733.201 Jurisdiction.	7
SUBPART C: THE U.S. POSTAL SERVICE	7
Sec. 733.301 Jurisdiction.	7

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

SUBPART A: THE COMPETITIVE SERVICE

GENERAL PROVISIONS

Sec. 733.101 Definitions.

In this subpart:

- (a) Employee means an individual who occupies a position in the competitive service;
- (b) Agency means an executive agency and the government of the District of Columbia;
- (c) Political party means a National political party, a State political party, and an affiliated organization;
- (d) Election includes a primary, special, and general election;
- (e) Nonpartisan election means-

(1) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character; and

(f) Partisan when used as an adjective refers to a political party.

(g) Political fund means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee, or other entity.

(h) Contribution means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(i) Federal workplace means any place, site, installation, building, room, or facility in which any Executive department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

(j) Employer or employing authority means the immediate employing agency head, agency principal, or an employee's supervisor.

[35 FR 16785, Oct. 30, 1970, as amended at 49 FR 17432, Apr. 24, 1984]

PERMISSIBLE ACTIVITIES

Sec. 733.111 Permissible activities.

(a) All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart. Each employee retains the right to-

- (1) Register and vote in any election;
- (2) Express his opinion as an individual privately and publicly on political subjects and candidates;
- (3) Display a political picture, sticker, badge, or button;
- (4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- (6) Attend a political convention, rally, fund-raising function; or other political gathering;
- (7) Sign a political petition as an individual;

- (8) Make a financial contribution to a political party or organization;
- (9) Take an active part, as an independent candidate, or in support of an independent candidate, in a partisan election covered by Sec. 733.124;
- (10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;
- (11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;
- (12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and
- (13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his agency.

(b) Paragraph (a) of this section does not authorize an employee to engage in political activity in violation of law, while on duty, or while in a uniform that identifies him as an employee. The head of an agency may prohibit or limit the participation of an employee or class of employees of his agency in an activity permitted by paragraph (a) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests.

PROHIBITED ACTIVITIES

Sec. 733.121 Use of official authority; prohibition.

An employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

Sec. 733.122 Political management and political campaigning; prohibitions.

(a) An employee may not take an active part in political management or in a political campaign, except as permitted by this subpart.

(b) Activities prohibited by paragraph (a) of this section include but are not limited to-

- (1) Serving as an officer of a political party, a member of a National, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;
- (2) Organizing or reorganizing a political party organization or political club;
- (3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;
- (4) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;
- (5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;
- (6) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;
- (7) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;
- (8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;
- (9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;
- (10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;
- (11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political Party, political fund, or other partisan recipient;

(15) Paying a contribution at or in the Federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and

(16) Soliciting, paying, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient.

[35 FR 16785. Oct. 30, 1970, as amended at 41 FR 49473, Nov. 9, 1976, 49 FR 17433, Apr. 24, 1984]

Sec. 733.123 Prohibited activity; exception of certain employees.

(c) Sections 733.121 and 733.122 do not apply to an employee of an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(b) Section 733.122 does not apply to-

(1) An individual exempted under section 7324(d) of title 5, United States Code;

(2) An employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to Political activities involving that municipality;

(3) Subject to the conditions of Sec. 733.124, an employee who resides in a municipality or other political subdivision designated by OPM under that section; or

(4) An employee who works on an irregular or occasional basis, on the days that he performs no services.

Sec. 733.124 Political management and political campaigning; exception of certain elections.

(a) Section 733.122 does not prohibit activity in political management or in a political campaign by an employee in connection with-

(1) A nonpartisan election, or

(2) Subject to the conditions and limitations established by OPM, an election held in a municipality or political subdivision designated by OPM under paragraph (b) of this section.

(b) For the purpose of paragraph (a)(2) of this section, the Office may designate a municipality or political subdivision in Maryland or Virginia in the immediate vicinity of the District of Columbia or a municipality in which the majority of voters are employed by the Government of the United States, when the Office determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections. Information as to the documentation required to support a request for designation is furnished by the Office on request. The following municipalities and political subdivisions have been designated, effective on the date specified:

IN MARYLAND

Annapolis (May 16, 1941).
 Anne Arundel County (March 14, 1973).
 Berwyn Heights (June 15, 1944).
 Bethesda (Feb. 17, 1943).
 Bladensburg (Apr. 20, 1942).
 Bowie (Apr. 11, 1952).
 Brentwood (Sept. 26, 1940).
 Calvert County (June 18, 1992).
 Capitol Heights (Nov. 12, 1940).
 Cheverly (Dec. 18, 1940).
 Chevy Chase, sections 1 and 2 (Mar. 4, 1941).

Chevy Chase, section 3 (Oct. 8, 1940).
 Chevy Chase, section 4 (Oct. 2, 1940).
 Martin's Additions 1, 2, 3, and 4 to Chevy
 Chase (Feb. 13, 1941).
 Chevy Chase View (Feb. 26, 1941).
 College Park (June 13, 1945).
 Cottage City (Jan. 15, 1941).
 District Heights (Nov. 2, 1940).
 Edmonston (Oct. 24, 1940).
 Fairmont Heights (Oct. 24, 1940).
 Forest Heights (Apr. 22, 1949).
 Frederick County (May 31, 1991).
 Garrett Park (Oct. 2, 1940).
 Glenarden (May 21, 1941).
 Glen Echo (Oct. 22, 1940).
 Greenbelt (Oct. 4, 1940).
 Howard County (Apr. 25, 1974).
 Hyattsville (Sept. 20, 1940).
 Kensington (Nov. 8, 1940).
 Landover Hills (May 5, 1945).
 Montgomery County (Apr. 30, 1964).
 Morningside (May 19, 1949).
 Mount Rainier (Nov. 22, 1940).
 New Carrollton (July 7, 1981).
 North Beach (Sept. 20, 1940).
 North Brentwood (May 6, 1941).
 North Chevy Chase (July 22, 1942).
 Northwest Park (Feb. 17, 1943).
 Prince Georges County (June 19, 1962).
 Riverdale (Sept. 26, 1940).
 Rockville (Apr. 15, 1948).
 Seat Pleasant (Aug. 31, 1942).
 Somerset (Nov. 22, 1940).
 Takoma Park (Oct. 22, 1940).
 University Park (Jan. 18, 1941).
 Washing-ton Grove (Apr. 5, 1941).

IN VIRGINIA

Alexandria (Apr. 15, 1941).
 Arlington County (Sept. 9, 1940).
 Clifton (July 14, 1941).
 Fairfax County (Nov. 10, 1949).
 Town of Fairfax (Feb. 9, 1954).
 Falls Church (June 6, 1941).
 Herndon (Apr. 7, 1945).
 Loudoun County (Oct. 1, 1971).
 Manassas (Jan. 8, 1980).
 Manassas Park (Mar. 4, 1980).
 Portsmouth (Feb. 27, 1958).
 Prince William County (Feb. 14, 1967).
 Stafford County (Nov. 2, 1979).
 Vienna (Mar. 18, 1946).

OTHER MUNICIPALITIES

Anchorage, Alaska (Dec. 22, 1947).
 Benicia, Calif. (Feb. 20, 1948).
 Bremerton, Wash. (Feb. 27, 1946).
 Centerville, Ga. (Sept. 16, 1971).
 Crane, Ind. (Aug. 3, 1967).
 District of Columbia (July 5, 1977).
 Elmer City, Wash. (Oct. 28, 1947).
 Huachuca City, Ariz. (Apr. 9, 1959).
 New Johnsonville, Tenn. (Apr. 28, 1956).
 Norris, Tenn. (May 6, 1959).
 Port Orchard, Wash. (Feb. 27, 1946).
 Sierra Vista, Ariz. (Oct. 5, 1955).

Warner Robins, Ga. (Mar. 19, 1948).

(c) An employee who resides in a municipality or political subdivision listed in paragraph (b) of this section may take an active part in political management and political campaigns in connection with partisan elections for local offices of the municipality or political subdivision, subject to the following limitations:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict, or apparent conflict, of interests.

(5 U.S.C. 7701, et seq.)
[35 FR 16785, Oct. 30, 1970]

EDITORIAL NOTE: For Federal Register citations affecting Sec. 733.124, see the List of CFR Sections Affected in the Finding Aids section of this volume.

SUBPART B: THE EXCEPTED SERVICE

Sec. 733.201 Jurisdiction.

Sections 733.111-733.124 apply to an employee in the excepted service. It is the responsibility of the employing agency to investigate and decide allegations of prohibited political activity on the part of such an employee.

SUBPART C: THE U.S. POSTAL SERVICE

Sec. 733.301 Jurisdiction.

Sections 733.101 (c), (d), (e), and (f) through 733.124 apply to an employee of the U.S. Postal Service.

(5 U.S.C. 7701, et seq.)
[44 FR 48954, Aug. 21, 1979]

SECTION 2. POLITICAL ACTIVITIES OF CIVILIAN DoD EMPLOYEES

6-200. Policy

a. The policy governing the political activities of civilian DoD employees is derived from the Hatch Act, 5 U.S.C. 7321 through 7327 (reference (b)), and 5 C.F.R. Part 733 (reference (a)) in subsection 6-100 of this Regulation, above.

b. Primary enforcement responsibility under the Hatch Act (reference (b)) lies with the Office of Special Counsel; however, DoD Components have responsibility to investigate allegations of prohibited political activity by excepted service employees of the DoD Component.

c. It is DoD policy to encourage civilian DoD employees and members of the Armed Forces to carry out the obligations of citizenship to the maximum extent possible consistent with the restrictions imposed by law and by this Regulation.

6-201. Applicability

a. Covered DoD Employees. Sections 1 and 2 of this Chapter, above, apply to DoD employees who are:

(1) Competitive service employees;

(2) Excepted service employees;

(3) Non-appropriated fund employees as specified in the FPM, Chapter 334 (reference (c)), and DoD 1401.1-M (reference (d)).

b. DoD Employees Not Covered. The provisions of the Hatch Act (reference (b)) and of this Chapter of this Regulation do not apply to civilian DoD employees appointed to their office by the President, by and with the advice and consent of the Senate (e.g., Secretary of Defense, Secretaries of the Military Departments, etc.). Nevertheless, as a matter of longstanding DoD policy, such DoD employees may not engage in activities that could be interpreted as associating DoD with any partisan political cause or issue. Military members are covered by Section 3 of this Chapter, below.

6-202. Permissible Activities. Subject to subsections 6-203 and 6-204 of this Regulation, below, civilian DoD employees are free to:

a. Register and vote in any election;

b. Express an opinion as an individual privately and publicly on political subjects and candidates;

c. Display a political picture, sticker, badge, or button;

d. Participate in a personal capacity in the non-partisan activities of civic, community, social, labor, professional, or similar organizations except as proscribed in subsections 3-300 through 3-306 of this Regulation;

e. Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

f. Attend, in an individual capacity, a political convention, rally, fundraising function or other political gathering;

g. Sign a political petition as an individual;

h. Make a financial contribution to a political party or organization, except as proscribed in subsection 6-204.c. of this Regulation, below;

i. Take an active part, as an independent candidate or in support of an independent candidate, in a partisan election covered by 5 C.F.R. 733.124 (reference (a)) in subsection 6-100 of this Regulation, above;

j. Take an active part, as a candidate or in support of a candidate, in a non-partisan election;

k. Participate in an individual capacity in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of similar character;

l. Serve as an election judge or clerk, or in a similar position to perform non-partisan duties as prescribed by State or local law;

m. Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the efficiency or integrity as a DoD employee or the neutrality, efficiency, or integrity of DoD or other Federal Government agency; and

n. Participate in non-partisan voter registration drives.

6-203. Limitations. Subsection 6-202 of this Regulation, above, does not authorize a DoD employee to engage in political activities in violation of law, while on duty, or while wearing anything that identifies him as a DoD employee. The Head of a DoD Component may, in appropriate cases, prohibit or limit participation in the permitted activity of a DoD employee or class of DoD employees if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interest.

6-204. Prohibited Activities. Civilian DoD employees may not:

a. Use official authority or influence for the purpose of interfering with or affecting the result of an election; or

b. Except as specified in 5 C.F.R. 733.124 (reference (a)) in subsection 6-100 of this Regulation, above, take an active part in political management or in a political campaign, including but not limited to:

(1) Serving as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party organization or political club;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(4) Organizing, publicizing, selling tickets to, promoting, or actively participating in a fundraising activity of a candidate in a partisan election or of a political party, or political club;

(5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(6) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

(7) Soliciting votes in support of, or in opposition to, a candidate for public office in a partisan election or a candidate for political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, broadcast, campaign, literature, or similar material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a convention, caucus, rally, or similar gathering of a political party in support of, or in opposition to, a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, paying, collecting, or receiving a contribution in the Federal Government workplace for any political party, political fund, or other partisan recipient;

(15) Paying a contribution in the Federal Government workplace to any political party, political fund, or other partisan recipient.

c. Contribute to the political campaign of another Federal Government employee who is in his chain of command or supervision or who is his employing authority, including the political campaign to re-elect the President or Vice President.

6-205. Exemptions

a. The Hatch Act (reference (b)) does not prohibit all activities associated with a partisan election. The restrictions only apply where the DoD employee's activity involves active participation in organized activities where the organizing group is partisan. For example, writing letters in support of a particular candidate for publication or contributing to a newsletter with editorials or columns opposing one candidate and supporting another does not violate the Act. See Blaylock v. MSPB, 851 F.2d 1348 (reference (e)). The activities must be in coordination with the partisan activity. Even fundraising for political action does not violate the activity if the fundraising organization is not associated with a partisan group. See Biller v. MSPB, 863 F.2d 1079 (reference (f)).

b. DoD employees who reside in municipalities or other political subdivisions designated by OPM in 5 C.F.R. 733.124 (reference (a)) in subsection 6-100 of this Regulation, above, are partially exempt from the above restrictions.

c. DoD employees in some areas of high Federal Government employment are excepted from certain aspects of the Hatch Act as to local elections. OPM regulations, 5 C.F.R. 733 (reference (a)) in subsection 6-100 of this Regulation, above, should be consulted for a list of the areas for which these exceptions apply. However, the District Court for the District of Columbia has ruled that the exception granted by the regulations for the District of Columbia is incorrect and the Office of Special Counsel has chosen to support this ruling. See Ward Three Democratic Committee v. U.S., 609 F.2d 10 and Memorandum Opinion No. 78-853 (reference (g)). Therefore, District of Columbia residents are subject to the provisions of the Hatch Act (reference (b)) without exception.

d. A DoD employee who works on an irregular or occasional basis is exempt from the above restrictions on the days that he performs no services.

SECTION 3. POLITICAL ACTIVITIES OF MILITARY MEMBERS

6-300. DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990 (reference (h))

DoD DIRECTIVE 1344.10¹

June 15, 1990
ASD(FM&P)

SUBJECT: Political Activities by Members of the Armed Forces on Active Duty

References: (a) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces," September 25, 1986 (hereby canceled)
(b) Title 10, United States Code
(c) DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979
(d) DoD Directive 1325.6, "Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces," September 12, 1969
(e) through (h), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a) to update DoD policies on political activities of members of the Armed Forces on active duty (AD).
2. Implements Section 973(b) of reference (b).

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD); the Military Departments the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; and the Coast Guard when it is not operating as a Service in the Navy, by agreement with the Department of Transportation.

C. DEFINITIONS

The terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy that a member of the Armed Forces (hereafter referred to as "member") is encouraged to carry out the obligations of a citizen. While on AD, however, members are prohibited from engaging in certain political activities. Subject to the guidelines in enclosure 3, the following DoD policy shall apply:

1. General

a. A member on AD may:

- (1) Register, vote, and express his or her personal opinion on political candidates and issues, but not as a representative of the Armed Forces.
- (2) Make monetary contributions to a political organization-
- (3) Attend partisan and nonpartisan political meetings or rallies as a spectator when not in uniform.

b. A member on AD shall not:

(1) Use his or her official authority or influence for interfering with an election; affecting the course or outcome of an election; soliciting votes for a particular candidate or issue; or requiring or soliciting political contributions from others.

(2) Be a candidate for, or hold, civil office except as authorized in subsections D.2. and D.3., below.

(3) Participate in partisan political management, campaigns, or conventions.

(4) Make campaign contributions to another r of the Armed Forces or an employee of the Federal Government.

c. To assist in applying paragraphs D.1-a- and D.1.b., above, to particular situations, enclosure 3 provides

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

guidelines and examples of permissible and prohibited political activities. The guidelines in enclosure 3 do not supersede other specific requirements and policies, such as those established in DoD Directives 5200.2 and 1325.6 (references (c) and (d)).

d. Enclosure 4 provides a summary of Federal statutes restricting certain types of political activities by members of the Armed Forces.

2. Candidacy for Elective Office. A member on AD may not:

a. Campaign as a nominee, or as a candidate for nomination, for civil office, except as authorized in paragraph D.3.c., below. When circumstances warrant, the Secretary concerned or the Secretary's designee may permit a member to file such evidence of nomination or candidacy for nomination, as may be required by law. Such permission shall not authorize activity while on AD that is otherwise prohibited in paragraph D.1.b., above, or enclosure 3 or 4.

b. Become a candidate for any civil office while serving an initial tour of extended active duty (EAD) or a tour of EAD that the member agreed to perform as a condition of receiving schooling or other training wholly or partly at U.S. Government expense.

3. Election or Appointment to Civil Office

a. Except as authorized by paragraph D.3.c., below, or otherwise provided for by law, no member on AD may hold or exercise the functions of civil office:

(1) In the U.S. Government that:

- (a) Is an elective office.
- (b) Requires an appointment by the President by and with the advice and consent of the Senate.
- (c) Is a position on the executive schedule under sections 5312 through 5317 of reference (e).

(2) In the government of a State; the District of Columbia; a territory, possession, or commonwealth of the United States; or in any political subdivision thereof.

b. A member may hold or exercise the functions of a civil office in the U.S. Government that is not described in subparagraph D.3.a.(1), above, when assigned or detailed to such office or to perform such functions.

c. As long as they are not serving on EAD, enlisted members and Reserve officers may hold partisan or nonpartisan civil office if such office is held in a private capacity and does not interfere with the performance of military duties. Additionally, enlisted members on EAD may seek and hold nonpartisan civil office as a notary public or member of a school board, neighborhood planning commission, or similar local agency, as long as such office is held in a private capacity and does not interfere with the performance of military duties.

d. Unless prohibited by Service regulations, a member on AD may serve as a regular or reserve civilian law enforcement officer or as a member of a civilian fire or rescue squad. Such service shall be in a private capacity, shall not involve the exercise of military authority, and shall not interfere with the performance of military duties.

e. A member elected or appointed to a prohibited civil office may request retirement and shall be retired if eligible for retirement. If such member does not request or is not eligible for retirement, the member shall be discharged or released from AD, as determined by the Secretary concerned.

f. The separation and retirement requirements of paragraph D.3.e., above, do not apply if the member declines to serve in the prohibited office; if the Secretary concerned determines that the member should not be released from active duty based on the needs of the Service; or if the member is:

- (1) Obligated to fulfill an AD Service commitment.
- (2) Serving or has been issued orders to serve afloat or in an area that is overseas, remote, a combat zone, or a hostile fire pay area.
- (3) Ordered to remain on AD while the subject of an investigation or inquiry.
- (4) Accused of an offense under the Uniform Code of Military Justice (UCMJ), 10 U.S.C., chapter 43 (reference (b)), or serving a sentence or punishment for such offense.

(5) Pending administrative separation action or proceedings.

(6) Indebted to the United States.

(7) On AD during a period of declared war, a national emergency, or other period when a unit of the Reserves or National Guard has been called to AD.

(8) In violation of an order or regulation prohibiting such r from assuming or exercising the functions of civil office.

g. A member who refuses to decline to serve in a prohibited civil office after being denied separation or retirement in accordance with paragraph D.3.f., above, may be subject to disciplinary or adverse administrative action under Service regulations.

h. No actions undertaken by a member in carrying out assigned military duties shall be invalidated solely by virtue of such member having assumed or exercised the functions of a civil office in violation of subsection D.3., above.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel)(ASD(FM&P)) shall be responsible for the administration of this Directive.

2. The Secretaries of the Military Departments shall be responsible for issuance of appropriate implementing documents for their respective Departments.

F. PROCEDURES

All members of the Armed Forces on AD engaging in political activities shall follow the guidelines in enclosure 3.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. The Secretaries of the Military Departments shall forward one copy of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

Donald Atwood
Deputy Secretary of Defense

Enclosures - 4

1. References
2. Definitions
3. Guidelines on Political Activities
4. Statutory Restrictions Pertaining to Political Activities by Members of the Armed Forces

Enclosure 1 - REFERENCES CONTINUED

- (e) Title 5, United States Code
- (f) DoD Directive 1334.1, "Wearing of the Uniform," August 11, 1969
- (g) Title 2, United States Code, Sections 441a, 441f, and 441g
- (h) Title 18, United States Code, Sections 592 through 594, 596, 602 through 603, 606 through 607, and 609

Enclosure 2 - DEFINITIONS

1. **Active Duty (AD).** Full-time duty in the active military Service of the United States without regard to duration or purpose, including fulltime training duty; annual training duty; attendance, while in the active Military Service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned; and National Guard duty, as defined in 10 U.S.C. 101(42) (reference (b)).
2. **Armed Forces.** The U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve components and the National Guard, as defined in 10 U.S.C. 101(9), 101(10), and 101(12) (reference (b)).
3. **Civil Office.** A nonmilitary office involving the exercise of the powers or authority of civil government, to include elective and appointive office in the U.S. Government, a U.S. territory or possession, State, county, municipality, or official subdivision thereof.
4. **Extended Active Duty (EAD).** AD under a call or order for a period in excess of 180 days.
5. **Nonpartisan Political Activity** supporting or relating to candidates not representing, or issues not specifically identified with, national or State political parties and associated or ancillary organizations. Issues relating to constitutional amendments, referendums, approval of municipal ordinances, and others of similar character are not considered under this Directive as specifically being identified with national or State political parties.
6. **Partisan Political Activity.** Activity supporting or relating to candidates representing, or issues specifically identified with, national or State political parties and associated or ancillary organizations.
7. **Secretary Concerned.** Defined in 10 U.S.C. 101(8)(reference (b)).

Enclosure 3 - GUIDELINES ON POLITICAL ACTIVITIES

A. PURPOSE

This enclosure provides guidance for implementing this Directive-

B. EXAMPLES OF PERMISSIBLE POLITICAL ACTIVITIES

A member on active duty may:

1. Register, vote, and express a personal opinion on political candidates and issues, but not as a representative of the Armed Forces.
2. Promote and encourage other military members to exercise their voting franchise, if such promotion does not constitute an attempt to influence or interfere with the outcome of an election.
3. Join a political club and attend its meetings when not in uniform (See DoD Directive 1334.1, reference (f).)
4. Serve as an election official, if such service is not as a representative of a partisan political party, does not interfere with military duties, is performed while out of uniform, and has the prior approval of the Secretary concerned or the Secretary's designee-
5. Sign a petition for specific legislative action or a petition to place a candidate's name on an official election ballot, if the signing does not obligate the member to engage in partisan political activity and is done as a private citizen and not as a representative of the Armed Forces.
6. Write a letter to the editor of a newspaper expressing the member's personal views on public issues or political candidates, if such action is not part of an organized letter-writing campaign or concerted solicitation of votes for or against a political party or partisan political cause or candidate.
8. Make monetary contributions to a political organization, party, or committee favoring a particular candidate or slate of candidates, subject to the limitations under 2 U.S.C. 441a and 18 U.S.C. 609 (references (g) and (h)).
9. Display a political sticker on the member's private vehicle.

C. EXAMPLES OF PROHIBITED POLITICAL ACTIVITIES

In accordance with the statutory restrictions in 10 U.S.C. 973(b) (reference (b)) and references (g) and (h), and the policies established in section D., above, of this Directive, a member on AD shall not:

1. Use official authority or influence to interfere with an election, affect the course or outcome of an election, solicit votes for a particular candidate or issue, or require or solicit political contributions from others.
2. Be a candidate for civil office in Federal, State, or local government, except as authorized in section D., above, of this Directive, or engage in public or organized soliciting of others to become partisan candidates for nomination or election to civil office.
3. Participate in partisan political management or campaigns, or make public speeches in the course thereof.
4. Make a campaign contribution to another member of the Armed Forces or to a civilian officer or employee of the United States for promoting a political objective or cause.
5. Solicit or receive a campaign contribution from another member of the Armed Forces or from a civilian officer or employee of the United States for promoting a political objective or cause.
6. Allow or cause to be published partisan political articles signed or written by the member that solicit votes for or against a partisan political party or candidate.
7. Serve in any official capacity or be listed as a sponsor of a partisan political club.
8. Speak before a partisan political gathering of any kind for promoting a partisan political party or candidate.
9. Participate in any radio, television, or other program or group discussion as an advocate of a partisan political party or candidate.
10. Conduct a political opinion survey under the auspices of a partisan political group or distribute partisan political literature.
11. Use contemptuous words against the officeholders described in 10 U.S.C. 888 (reference (b)), or participate in activities proscribed by DOD Directives 5200.2 and 1325-6 (references (c) and (d)).
12. Perform clerical or other duties for a partisan political committee during a campaign or on an election day.
13. Solicit or otherwise engage in fundraising activities in Federal offices or facilities, including military reservations, for a partisan political cause or candidate.
14. March or ride in a partisan political parade.
15. Display a large political sign, banner, or poster (as distinguished from a bumper sticker) on the top or side of a private vehicle.
16. Participate in any organized effort to provide voters with transportation to the polls if the effort is organized by, or associated with, a partisan political party or candidate.
17. Sell tickets for, or otherwise actively promote, political dinners and similar fundraising events.
18. Attend partisan political events as an official representative of the Armed Forces.

D. POLITICAL ACTIVITIES NOT EXPRESSLY PERMITTED OR PROHIBITED

Some activities not expressly prohibited may be contrary to the spirit and intent of section D. of the Directive or section C. of this enclosure. In determining whether an activity violates the traditional concept that Service members should not engage in partisan political activity, rules of reason and common sense shall apply. Any activity that may be viewed as associating the Department of Defense or the Department of Transportation, in the case of the Coast Guard, or any components of such Departments directly or indirectly with a partisan political cause or candidate shall be avoided.

E. LOCAL NONPARTISAN POLITICAL ACTIVITIES

This Directive does not preclude participation in local nonpartisan political campaigns, initiatives, or referendums. A member taking part in local nonpartisan political activity, however, shall not:

1. Wear a uniform or use any Government property or facilities while participating.
2. Allow such participation to interfere with, or prejudice, the member's performance of military duties.
3. Engage in conduct that in any way may imply that the Department concerned or any component of such Department has taken an official position on, or is otherwise involved in, the local political campaign or issue.

F. ADDITIONAL REQUIREMENTS

Members of the Armed Forces on AD engaging in permissible political activities shall:

1. Give full time and attention to the performance of military duties during prescribed duty hours.
2. Avoid any outside activities that may be prejudicial to the performance of military duties or are likely to bring discredit upon the Armed Forces.
3. Refrain from participating in any political activity while in military uniform, as proscribed by DoD Directive 1334.1 (reference (f)), or using Government facilities or resources for furthering political activities.

Enclosure 4 - STATUTORY RESTRICTIONS PERTAINING TO POLITICAL
ACTIVITIES BY MEMBERS OF THE ARMED FORCES

Members of the Armed Forces are prohibited by various provisions of titles 10, 2, and 18, United States Code (references (b), (g), and (h)), from engaging in certain types of political activities. The statutory provisions most directly applicable to members of the Armed Forces are as follows:

"Title 10 U.S.C. 933. Duties: officers on active duty; performance of civil functions restricted

"(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties-

"(b)(1) This subsection applies--

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States--

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate; or

(iii) that is a position in the Executive Schedule under sections 5312 through 5313 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the function of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

(4) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(5) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section."

"Title 2 U.S.C. 441a. Limitations on contributions and expenditures

"(a) Dollar limits on contributions

(1) No person shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate in any calendar year which, in the aggregate, exceed \$20,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(2) No multi-candidate political committee shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed \$15,000;

or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(3) No individual shall make contributions aggregating more than \$25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made is considered to be made during the calendar year in which such election is held.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

"Title 2 U.S.C. 441f. Contributions in the name of another prohibited

"No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."

"Title 2 U.S.C. 441g. Limitation on contribution of currency

"No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office."

"Title 18 U.S.C. 592. Troops at polls

"Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such forces be necessary to repel armed enemies of the United States, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

"This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote."

"Title 18 U.S.C. 593. Interference by armed forces

"Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

"Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

"Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

"Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

"Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties--

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

"This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district."

"Title 18 U.S.C. 594. Intimidation of voters

"Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person

for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"Title 18 U.S.C. 596. Polling armed forces

"Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

"The word 'poll' means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form."

"Title 18 U.S.C. 602. Solicitation of political contributions

"It shall be unlawful for--

- (1) a candidate for the Congress;
- (2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;
- (3) an officer or employee of the United States or Any department or agency thereof; or
- (4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both."

"Title 18 U.S.C. 603. Making political contributions

"(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for service from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

"(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee."

"Title 18 U.S.C. 606. Intimidation to secure political contributions

"Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than \$5,000 or imprisoned not more than three years, or both."

"Title 18 U.S.C. 603. Place of solicitation

(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such

contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.1,

"Title 18 U.S.C. 609. Use of military authority to influence vote of member of Armed Forces

"Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

SECTION 4. REFERENCES

6-400. References

- (a) Title 5, Code of Federal Regulations, Part 733, "Political Activities of Federal Employees," current edition
- (b) Title 5, United States Code, Sections 7321 through 7327
- (c) Federal Personnel Manual, Chapter 334, current edition
- (d) DoD 1401.1-M, "Personnel Policy Manual for Non-Appropriated Fund Instrumentalities," December, 1988, authorized by DoD Instruction 1401.1, "Personnel Policy for Nonappropriated Fund Instrumentalities (NAFIs)," November 15, 1985
- (e) Blaylock v. MSPB, 851 F.2d 1348 (11th Cir. 1988)
- (f) Biller v. MSPB, 863 F.2d 1079 (2nd Cir. 1988)
- (g) Ward Three Democratic Committee v. United States, 609 F.2d 10 (D.C. Cir. 1979) and No. 78-853 (D.D.C. Aug 29, 1980) (unpublished memorandum opinion)
- (h) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990

CHAPTER 7

FINANCIAL AND EMPLOYMENT DISCLOSURE

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

7-100. 5 C.F.P. 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees" (reference (a))

EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

5 CFR 2634¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	3
Sec. 2634.101 Authority.	3
Sec. 2634.102 Purpose and overview.	3
Sec. 2634.103 Executive agency supplemental regulations.	3
Sec. 2634.104 Policies.	3
Sec. 2634.105 Definitions.	4
Act (4); Agency (4); Confidential filer (4); Dependent child (4); Designated agency ethics official (4); Executive branch (4); Filer (4); Gift (4); Honorarium (4); Income (4); Personal hospitality of any individual (5); Personal residence (5); Public filer (5); Reimbursement (5); Relative (5); Reporting individual (5); Reviewing official (5); Secretary concerned (5); Special Government employee (5); Value (6)	
SUBPART B: PERSONS REQUIRED TO FILE PUBLIC FINANCIAL DISCLOSURE REPORTS	6
Sec. 2634.201 General requirements, filing dates, and extensions.	6
Incumbents (6); New entrants (6); Nominees (6); Candidates (7); Termination of employment (7); Extensions (7)	
Sec. 2634.202 Public filer defined.	7
The President (7); The Vice President (7); Each officer or employee (7); administrative law judge (7); Any employee not otherwise described in paragraph (c) (7); The Postmaster General (7); The Director of the Office of Government Ethics (7); Any civilian employee not otherwise described in paragraph (c) (7); Anyone whose employment in a position or office described in paragraphs (a) through (h) (8)	
Sec. 2634.203 Persons excluded by rule.	8
In general (8); Exclusion determination (8); Procedure (8)	
Sec. 2634.204 Employment of sixty days or less.	8
In general (8); Alternative reporting (8); Exception (8)	
Sec. 2634.205 Special waiver of public reporting requirements.	8
General rule (8); Procedure (9)	
SUBPART C: CONTENTS OF REPORTS	9
Sec. 2634.301 Interests in property.	9
In general (9); Types of property reportable (9); Exceptions (10); Valuation categories (10); Valuation of interests in property (10)	
Sec. 2634.302 Income.	11
Noninvestment income (11); Investment income (11)	
Sec. 2634.303 Purchases, sales, and exchanges.	12
In general (12)	
Sec. 2634.304 Gifts and reimbursements.	13
Gifts (13); Reimbursements (13); Exclusions (13); Aggregation exception (13); Valuation of gifts and reimbursements (14); Waiver rule in the case of certain gifts (14)	
Sec. 2634.305 Liabilities.	15
In general (15); Exceptions (15)	
Sec. 2634.306 Agreements and arrangements.	15
Sec. 2634.307 Outside positions.	15
In general (15); Exceptions (15)	
Sec. 2634.308 Reporting periods and contents of public financial disclosure reports.	16
Incumbent (16); New entrants, nominees, and candidates (16); Termination reports (16)	
Sec. 2634.309 Spouses and dependent children.	16
Special disclosure rules (16); Exception (17); Divorce and separation (17)	
Sec. 2634.310 Trusts, estates, and investment funds.	17
In general (17); Qualified trusts and excepted trusts (18); Excepted investment funds (18)	
Sec. 2634.311 Special rules.	18
Political campaign funds (18); Certificates of Divestiture (18); Reporting standards (18)	
SUBPART D: QUALIFIED TRUSTS	19
Sec. 2634.401 General considerations.	19
In general (19); Nature of qualified trusts (19); Certification of pre-existing trusts (20)	
Sec. 2634.402 Special rules in the case of certain trusts.	20
In general (20); Subpart C reporting requirements (20)	
Sec. 2634.403 Qualified blind trusts.	21

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

Definition (21); Required provisions (21)	
Sec. 2634.404 Qualified diversified trusts.	22
Definition (22); Required portfolio (22); Personal income tax returns (23); Applicability (24)	
Sec. 2634.405 Certification of trusts proposed for qualification; other matters	24
General rule (24); Absence of control by interested party (24); Interested party, defined (24); Restrictions applicable to reporting individuals (24)	
Sec. 2634.406 Independent trustee, defined.	24
General rule (25); Eligible person (25); Requirements (25); Sec. 2634.407 Special filing requirement in the case of qualified trusts. (25); Reporting individuals (25); Trustees (26); Written communications (26)	
Sec. 2634.408 Effective date.	26
SUBPART E: SPECIAL PROVISIONS	26
Sec. 2634.501 Outside earned income.	26
Limitation (26); Defined (26); Other employment limitations (27)	
Sec. 2634.502 Waivers.	27
With respect to reporting requirements (27)	
SUBPART F: PROCEDURE	27
Sec. 2634.601 Report forms. (this section not reproduced).	27
Sec. 2634.602 Filing of reports.	27
Sec. 2634.603 Custody of and public access to reports.	28
Sec. 2634.604 Review of reports.	29
In general (29); Responsibilities of reviewing officials (29); Expedited procedure (31); Updated disclosure of earned income and honoraria (31)	
Sec. 2634.605 Advice and opinions.	31
The Director, Office of Government Ethics (32); Each Secretary concerned and designated agency official (32)	
SUBPART G: PENALTIES AND REMEDIAL ACTION	32
Sec. 2634.701 Failure to file or falsifying reports.	32
Civil action (32); Referral of cases (32); Administrative remedies (32)	
Sec. 2634.702 Certain actions in the case of qualified trusts.	32
Sec. 2634.703 Misuse of reports.	32
SUBPART H: ETHICS AGREEMENTS	32
Sec. 2634.801 Scope.	32
Sec. 2634.802 Requirements.	32
Ethics Agreement defined (32); Time limit (33); Exception (33)	
Sec. 2634.803 Notification of ethics agreements.	33
Sec. 2634.804 Evidence of compliance.	33
Sec. 2634.805 Retention.	34
SUBPART I: CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS	34
Sec. 2634.901 Policies of confidential financial disclosure reporting.	34
Sec. 2634.902 Transition to the new confidential financial disclosure reporting system.	35
Sec. 2634.903 General requirements, filing dates, and extensions.	35
Incumbents (35); New entrants (35); Advisory committee definition (36); Extensions (36)	
Sec. 2634.904 Confidential filer defined.	36
Sec. 2634.905 Exclusions from filing requirements.	37
Sec. 2634.906 Review of confidential filer status.	38
Sec. 2634.907 Report contents.	38
Sec. 2634.908 Reporting periods.	38
Incumbents (38); New entrants (38)	
Sec. 2634.909 Procedures, penalties, and ethics agreements.	38
SUBPART J: CERTIFICATES OF DIVESTITURE	39
considerations.	39
Purpose (39); Scope (39); Policy (39)	
Sec. 2634.1002 Issuance of Certificates of Divestiture.	39
General rule (39); Procedural requirements (39); Eligible person (40)	
Sec. 2634.1003 Permitted property.	40
In general (40); Definition of "permitted property" (40); Diversified investment fund (40)	
Sec. 2634.1004 Special rule.	41

SUBPART A: GENERAL PROVISIONS**Sec. 2634.101 Authority.**

The regulation in this part is issued pursuant to the authority of title I of the Ethics in Government Act of 1978, (Pub. L. 95-521, as amended) ("the Act") as modified by the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended by Pub. L. 101-280) ("the Reform Act"); section 502 of the Reform Act; and section 201(d) of Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

Sec. 2634.102 Purpose and overview.

(a) This regulation supplements and implements title I of the Act and section 201(d) of Executive Order 12674 (as modified by Executive Order 12731) with respect to executive branch employees, by setting forth more specifically the uniform procedures and requirements for financial disclosure and for the certification and use of qualified blind and diversified trusts. Additionally, this regulation implements section 502 of the Reform Act by establishing procedures for executive branch personnel to obtain Certificates of Divestiture, which permit deferred recognition of capital gain in certain instances.

(b) The rules in this part govern both the public and confidential (nonpublic) financial disclosure systems, except as otherwise indicated. Subpart I of this part contains special rules unique to the confidential disclosure system.

Sec. 2634.103 Executive agency supplemental regulations.

(a) This regulation is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Shall be consistent with the Act, Executive Orders 12674 and 12731, and this part; and

(2) Shall impose no additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government Ethics as supplemental confidential reporting.

Note: Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. App. (Ethics in Government Act of 1978, Section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section shall be submitted in writing to the Office of Government Ethics, and shall set forth the agency's need for any proposed supplemental reporting requirements. See 2634.901 (b) and (c).

(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform with the requirements of this part. Any amendatory agency regulations shall be processed in accordance with paragraphs (a) and (b) of this section.

Sec. 2634.104 Policies.

(a) Title I of the Act requires that high-level Federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust. Title I also authorizes the Office of Government Ethics to establish a confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict-of-interest review.

(b) Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programs and providing counseling to employees.

(c) Financial disclosure reports are not net worth statements. Financial disclosure systems seek only the information that the President, Congress, or OGE as the supervising ethics office for the executive branch has deemed relevant to the administration and application of the criminal conflict of interest laws, other statutes on ethical conduct or financial interests, and Executive orders or regulations on standards of ethical conduct.

(d) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize receipt of income, honoraria, gifts, or reimbursements; holding of assets, liabilities, or positions; or involvement in transactions that are prohibited by law, Executive order or regulation.

(e) The provisions of title I of the Act and this part requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. However, the provisions of title I and this part shall not supersede the requirements of 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act).

(f) This regulation is intended to be gender-neutral; therefore, use of the terms he, his, and him include she, hers, and her, and vice versa.

Sec. 2634.105 Definitions.

For purposes of this part:

(a) Act means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), as modified by the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended).

(b) Agency means any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office.

(c) Confidential filer. For the definition of "confidential filer," see 2634.904.

(d) Dependent child means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and living in the household of the reporting individual; or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

(e) Designated agency ethics official means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in his absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See subpart B of part 2638 of this chapter on the appointment and additional responsibilities of a designated agency ethics official and alternate.

(f) Executive branch means any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) Filer is used interchangeably with "reporting individual," and may refer to a "confidential filer" as defined in paragraph (c) of this section, a "public filer" as defined in paragraph (m) of this section, or a nominee or candidate as described in 2634.201.

(h) Gift means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance;

(2) Suitable mementos of a function honoring the reporting individual;

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages which are not consumed in connection with a gift of overnight lodging;

(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(6) Consumable products provided by home-State businesses to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President.

(i) Honorarium means a payment of money or anything of value for an appearance, speech, or article. For guidance on the propriety of receiving honoraria, see part 2636 of this subchapter.

(j) Income means all income from whatever source derived. It includes but is not limited to the following items: earned income such as compensation for services, fees, commissions, salaries, wages and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from

dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the Internal Revenue Service principles at 26 CFR 1.61-1 through 1.61-15 and 1.61-21.

(k) Personal hospitality of any individual means, hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family.

(l) Personal residence means any real property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one's domicile; there may be more than one personal residence, including a vacation home.

(m) Public filer. For the definition of "public filer," see 2634.202.

(n) Reimbursement means any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act); or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434)(relating to reports of campaign contributions).

Note: Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer's employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 CFR part 304-1, are not considered reimbursements under this part 2634, because they are not payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual's agency).

(o) Relative means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual.

(p) Reporting individual is used interchangeably with "filer," and may refer to a "confidential filer" as defined in 2634.904, a "public filer" as defined in 2634.202, or a nominee or candidate as described in 2634.201.

(q) Reviewing official means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) Secretary concerned has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) Special Government employee has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) Value means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in 2634.301(e). For gifts and reimbursements, see 2634.304(e).

SUBPART B: PERSONS REQUIRED TO FILE PUBLIC FINANCIAL DISCLOSURE REPORTS

Sec. 2634.201 General requirements, filing dates, and extensions.

(a) Incumbents. A public filer as defined in 2634.202 of this subpart who, during any calendar year, performs the duties of his position or office, as described in that section, for a period in excess of 60 days shall file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS-15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report.

(b) New entrants.

(1) Within 30 days of assuming a public filer position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 12, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in 2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report covering the 1990 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 1991, with Commerce, which should provide a copy to Treasury so that both may review it.

(c) Nominees.

(1) At any time after a public announcement by the President or President-elect of his intention to nominate an individual to an executive branch position, appointment to which requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate shall, file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement shall not apply to any individual who is nominated to a position as:

(i) An officer of the uniformed services; or

(ii) A Foreign Service Officer.

Note: Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service officers only if they are nominated for appointment to a grade or rank for which the pay grade is O-6 or below, the Senate confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by the committee assignment.

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports shall file new entrant reports, if required by paragraph (b) of this section.

(d) Candidates. A Candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 2 U.S.C. 431) for nomination or election to the office of President or Vice President (other than an incumbent) shall file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

(1) Within 30 days of becoming a candidate on or before May 15 of the calendar year in which the individual becomes a candidate, or whichever is later, but in no event later than 30 days before the election; and

(2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy were held in prior calendar years, the individual need not file a report unless he becomes a candidate for a vacancy during that year.

Example. P became a candidate for President in January 1991. P will be required to file a public financial disclosure report on or before May 15, 1991. If P had become a candidate on June 1, 1991, he would have been required to file a disclosure report within 30 days of that date.

(e) Termination of employment.

(1) On or before the thirtieth day after termination of employment from a public filer position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report shall be required by the provisions of this paragraph. See the related Example in paragraph (b) of this section.

(f) Extensions. The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which shall not exceed 45 days. The Director of the Office of Government Ethics, for good cause shown, may grant an additional extension of time which shall not exceed 45 days. The employee shall set forth specific reasons for such additional extension, which shall be forwarded to the Director through the reviewing official. The reviewing official shall also submit his comments on the request. (For extensions on confidential financial disclosure reports, see 2634.903(d).)

Sec. 2634.202 Public filer defined.

The term public filer includes:

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS-15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of 0-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not otherwise described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, unless excluded by virtue of a determination under 2634.203 of this subpart;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule;

(g) The Director of the Office of Government Ethics and each agency's primary designated agency ethics official;

(h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and

(i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of 2634.201(e) of this subpart.

Note: References in this section and in 2634.203 and 2634.904 to position classifications have been adjusted to reflect elimination of General Schedule classifications GS-16, GS-17, and GS-18 by the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509.

Sec. 2634.203 Persons excluded by rule.

(a) In general. Any individual or group of individuals described in 2634.202(e) of this subpart (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart when the Director of the Office of Government Ethics determines, in his sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) Exclusion determination. The determination required by paragraph (a) of this section has been made for the following group of individuals who, therefore, may be excluded from the public reporting requirements of this subpart, pursuant to the procedures in paragraph (c) of this section: Individuals in any position classified at GS-15 of the General Schedule or below, or the rate of basic pay for which is less than 120% of the minimum rate of basic pay fixed for GS-15, who have no policy-making role with respect to agency programs. Such individuals may include chauffeurs, private secretaries, stenographers, and others holding positions of a similar nature whose exclusion would be consistent with the basic criterion set forth in paragraph (a) of this section. See 2634.904(d) for possible coverage by confidential disclosure rules.

(c) Procedure.

(1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file. A subsequent list or description showing any additions to or deletions from the original submissions, or a statement that no changes have been made, must be filed annually with the Office of Government Ethics on or before May 15.

(2) If the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency and set a date for the filing of the report.

Sec. 2634.204 Employment of sixty days or less.

(a) In general. Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in 2634.201(c) or 2634.202 of this subpart for more than 60 days in any calendar year shall not be subject to the reporting requirements of 2634.201 (b), (c), or (e) of this subpart. This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of 2634.201 (b) or (e) of this subpart (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of 2634.201(c) of this subpart (relating to nominee reports) would otherwise apply.

(b) Alternative reporting. Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under 2634.903(b). See 2634.904(b).

(c) Exception. If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 50 days in a calendar year, the public report otherwise required by:

(1) Section 2634.201 (b) or (c) of this subpart (relating to new entrant and nominee reports) shall be filed within 15 calendar days after the sixtieth day of duty; and

(2) Section 2634.201(e) of this subpart (relating to termination reports) shall be filed as provided in that paragraph.

Sec. 2634.205 Special waiver of public reporting requirements.

(a) General rule. In unusual circumstances, the Director of the Office of Government Ethics may grant a request for a waiver of the public reporting requirements under this subpart for an individual who is reasonably expected to perform, or has performed, the duties of an office or position for fewer than 130 days in a calendar year, but only if the Director determines that:

- (1) The individual is a special Government employee, as defined in 18 U.S.C. 202(a), who performs temporary duties either on a full-time or intermittent basis;
- (2) The individual is able to provide services specially needed by the Government;
- (3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest; and
- (4) Public financial disclosure by the individual is not necessary under the circumstances.

(b) Procedure.

(1) Requests for waivers must be submitted to the Office of Government Ethics, via the requester's agency, within 10 days after an employee learns that he will hold a position which requires reporting and that he will serve in that position for more than 60 days in any calendar year, or upon serving in such a position for more than 60 days, whichever is earlier.

(2) The request shall consist of:

(i) A cover letter which identifies the individual and his position, states the approximate number of days in a calendar year which he expects to serve in that position, and requests a waiver of public reporting requirements under this section;

(ii) An enclosure which states the reasons for the individual's belief that the conditions of paragraphs (a) (1) through (4) of this section are met in the particular case; and

(iii) The report otherwise required by this subpart B, as a factual basis for the determination required by this section. The report shall bear the legend at the top of page 1: "CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 2634.205."

(3) The agency in which the individual serves shall advise the Office of Government Ethics as to the justification for a waiver.

(4) In the event a waiver is granted, the report shall not be subject to the public disclosure requirements of 2634.603; however, the waiver request cover letter shall be subject to those requirements. In the event that a waiver is not granted, the confidential legend shall be removed from the report, and the report shall be subject to public disclosure; however, the waiver request cover letter shall not then be subject to public disclosure.

SUBPART C: CONTENTS OF REPORTS

Sec. 2634.301 Interests in property.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000. In the case of public financial disclosure reports, the report shall designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property shall be disclosed separately. Note that for Individual Retirement Accounts (IRA's), brokerage accounts, trusts, mutual or pension funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under 2634.310 of this subpart.

(b) Types of property reportable. Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

- (1) Real estate;
- (2) Stocks, bonds, securities, and futures contracts;
- (3) Livestock owned for commercial purposes;
- (4) Commercial crops, either standing or held in storage;
- (5) Antiques or art held for resale or investment;
- (6) Beneficial interests in trusts and estates;
- (7) Deposits in banks or other financial institutions;

- (8) Pensions and annuities;
- (9) Mutual funds;
- (10) Accounts or other funds receivable; and
- (11) Capital accounts or other asset ownership in a business.

(c) Exceptions. The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

- (1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;
- (2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating \$5,000 or less in that institution or fund;
- (3) A personal residence of the filer or spouse, as defined in 2634.105(l); and
- (4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act.

(d) Valuation categories. The valuation categories specified for property items on public financial disclosure reports are as follows:

- (1) Not more than \$15,000;
- (2) Greater than \$15,000 but not more than \$50,000;
- (3) Greater than \$50,000 but not more than \$100,000;
- (4) Greater than \$100,000 but not more than \$250,000;
- (5) Greater than \$250,000 but not more than \$500,000;
- (6) Greater than \$500,000 but not more than \$1,000,000; and
- (7) Greater than \$1,000,000.

(e) Valuation of interests in property. A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. Fair market value may also be determined by:

- (1) The purchase price (in which case, the filer should indicate date of purchase);
- (2) Recent appraisal;
- (3) The assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);
- (4) The year-end book value of nonpublicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;
- (5) The net worth of a business partnership;
- (6) The equity value of an individually owned business; or
- (7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1. An official has a \$4,000 savings account in Bank A. His spouse has a \$2,500 certificate of deposit issued by Bank B and his dependent daughter has a \$200 savings account in Bank C. The official does not have to disclose the deposits, as the total value of the deposits in any one bank does not exceed \$5,000. Note, however, that the source, and if he is a public filer the amount, of interest income from any bank is required to be reported under 2634.302(b) of this subpart if it exceeds the reporting threshold for income. See 2634.309 of this subpart for disclosure coverage of spouses and dependent children.

Example 2. Public filer R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to 2634.302(b) of this subpart. Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3. A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a fair market value in excess of \$1,000 at the close of the reporting period must be separately listed, and also the value must be shown if she is a public filer. See 2634.311(c) of this subpart for attachment of brokerage statements in lieu of listing, in the event of extensive holdings. Note that for a mutual fund held in this IRA investment account, its underlying assets must also be separately detailed, unless it qualifies as an excepted investment fund, pursuant to 2634.310 of this subpart.

Sec. 2634.302 Income.

(a) Noninvestment income.

(1) Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose the source, type, and in the case of public financial disclosure reports the actual amount or value, of earned or other noninvestment income in excess of \$200 from any one source which is received by the filer or has accrued to his benefit during the reporting period, including:

(i) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(ii) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security);

(iii) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

(iv) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness.

Note: In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. For example, if such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment; if the expenses are paid or reimbursed by the individual receiving the honorarium, the amount of honorarium shall be reduced by the amount of such expenses.

Example 1. An official is a participant in a retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge, and they receive passage on other flights at a discounted fare. The difference between what Coastal charges members of the public generally and what the official and his spouse are charged for a particular flight is deemed income in-kind and must be disclosed by this reporting individual if it exceeds the \$200 threshold.

Example 2. An official serves on the board of directors at a bank, for which he receives a \$500 fee each calendar quarter. He also receives an annual fee of \$1,500 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and if he is a public filer the actual amount must be shown.

(2) In the case of payments in lieu of honoraria made on or after January 1, 1991, the individual shall also file a separate confidential report of charitable recipients, in accordance with part 2636 of this chapter.

(b) Investment income. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose:

(1) The source and type of investment income, characterized as dividends, rents, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see 2634.310 of this subpart), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts (as defined in 2634.301(c)(2) of this subpart). Note that for entities with portfolio holdings, such as Individual Retirement Accounts (IRA's), brokerage accounts, trusts, and mutual or pension funds, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under 2634.310 of this subpart. For public financial disclosure reports, the amount or value of income from each reported source shall also be disclosed and categorized in accordance with the following table:

- (i) Not more than \$1,000;
- (ii) Greater than \$1,000 but not more than \$2,500;
- (iii) Greater than \$2,500 but not more than \$5,000;
- (iv) Greater than \$5,000 but not more than \$15,000;
- (v) Greater than \$15,000 but not more than \$50,000;
- (vi) Greater than \$50,000 but not more than \$100,000;
- (vii) Greater than \$100,000 but not more than \$1,000,000; and
- (viii) Greater than \$1,000,000.

(2) The source, type, and in the case of public financial disclosure reports the actual amount or value, of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer or accrued to his benefit during the reporting period and which exceed \$200 from any one source.

Example 1. An official rents out a portion of his residence. He receives rental income of \$600 from one individual for four months and \$1,200 from another individual for the remaining eight months of the year covered by his incumbent financial disclosure report. He must identify the property, specify the type of income (rent), and if he is a public filer indicate the category of the total amount of rent received. (He must also disclose the asset information required by 2634.301 of this subpart.)

Example 2. A reporting individual has three savings accounts with Bank A. One is in his name and earned \$85 in interest during the reporting period. One is in a joint account with his spouse and earned \$120 in interest. One is in his name and his dependent daughter's name and earned \$35 in interest. Since the aggregate interest income from this source exceeds \$200, the official must disclose the name of the bank, the type of income, and if he is a public filer, the category of the total amount of interest earned from all three accounts. (He must also disclose the accounts as assets under 2634.301 of this subpart if, in the aggregate, they total more than \$5,000 in that bank.)

Example 3. An official has an ownership interest in a fast-food restaurant, from which she receives \$10,000 in annual income. She must specify on her financial disclosure report the type of income, such as partnership distributive share or gross business income, and if she is a public filer indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to 2634.301 of this subpart.)

Sec. 2634.303 Purchases, sales, and exchanges.

(a) In general. Except as indicated in 2634.308(b) of this subpart, each public financial disclosure report filed pursuant to subpart B of this part shall include a brief description, the date and value (using the categories of value in 2634.301(d) of this subpart) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000:

(1) Of real property, other than a personal residence of the filer or spouse, as defined in 2634.105(l) of this part; and

(2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) Exceptions.

(1) Any transaction solely by and between the reporting individual, his spouse, and dependent children need not be reported under paragraph (a) of this section.

(2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and personal savings accounts (as defined in 2634.301(c)(2) of this subpart) need not be reported when occurring at rates, terms, and conditions available generally to members of the public. Likewise, transactions involving portfolio holdings of trusts and investment funds described in 2634.310 (b) and (c) of this subpart need not be reported.

(3) Any transaction which occurred at a time when the reporting individual was not a Federal Government officer or employee need not be reported under paragraph (a) of this section.

Example 1. An official sells her personal residence in Virginia for \$100,000 and purchases a personal residence in the District of Columbia for \$200,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence.

Example 2. An official sells his beach home in Maryland for \$50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under this section and any capital gain over \$200 realized on the sale under 2634.302 of this subpart.

Example 3. An official sells a ranch to his dependent daughter. The official need not report the sale because it is a transaction between the reporting individual and a dependent child; however, any capital gain, except for that portion attributable to a personal residence, is required to be reported under 2634.302 of this subpart.

Example 4. An official sells an apartment building and realizes a loss of \$100,000. He must report the sale of the building if the sale price of the property exceeds \$1,000; however, he need not report anything under 2634.302 of this subpart, as the sale did not result in a capital gain.

Sec. 2634.304 Gifts and reimbursements.

(a) **Gifts.** Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description, and in the case of public financial disclosure reports the value, of all gifts aggregating \$250 or more in value which are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

(b) **Reimbursements.** Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and in the case of public financial disclosure reports the value, of any travel-related reimbursements aggregating \$250 or more in value, which are received by the filer during the reporting period from any one source.

Note: The \$250 threshold in paragraphs (a) and (b) of this section will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102-90 established the threshold for financial disclosure of gifts and reimbursements as "more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater."

(c) **Exclusions.** Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply which are received from relatives (see 2634.205(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as "personal hospitality of any individual," as defined in 2634.105(k), need not be reported. See also exclusions specified in the definitions of gift and reimbursement, at 2634.105(h) and (n).

(d) **Aggregation exception.** Any gift or reimbursement with a fair market value of \$100 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Note: The aggregation exception for gifts or reimbursements with a fair market value of \$100 or less will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102-90 established the aggregation exception for "any gift with a fair market value of \$100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted" above \$250 pursuant to 5 U.S.C. 7342(a)(5).

Example 1. An official accepts a print, a pen and pencil set, and a letter opener from a community service organization he has worked with solely in his private capacity. He determines, in accordance with paragraph (e) of this section, that these gifts are valued as follows:

Gift 1--Print: \$150

Gift 2--Pen and pencil set: \$105

Gift 3--Letter opener: \$20

The official must disclose Gifts 1 and 2, since together they aggregate \$250 or more in value from the same source. Gift 3 need not be aggregated, because its value does not exceed \$100.

Example 2. An official receives the following gifts from a single source:

1. Dinner for two at a local restaurant--\$120.

2. Round-trip taxi fare to meet donor at the restaurant--\$25.

3. Dinner at donor's city residence--(value uncertain).

4. Round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida--\$400.

5. Weekend at donor's country home, including duck hunting and tennis match--(value uncertain).

The official need only disclose Gift 4. Gift 1 falls within the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed \$100.

Example 3. An official receives free tickets from an outside source for himself and his spouse to attend an awards banquet at a local club. The value of each ticket is \$130. Even though this is a gift which exceeds the \$250 threshold amount for disclosure, the official need not report it, because of the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging.

Note: Prior to accepting this gift of tickets, the individual should consult ethics officials at his agency to determine whether standards of conduct rules will permit acceptance, depending on whether or not the donor is a prohibited source and the exact nature of the event.

Example 4. An official is asked to speak at an out-of-town meeting on a matter which is unrelated to her official duties and her agency. The round-trip airfare exceeds \$250. If the official pays for the ticket and is then reimbursed by the organization to which she spoke, she must disclose this reimbursement under paragraph (b) of this section. If the organization simply provided the ticket, that must be disclosed as a gift under paragraph (a) of this section.

(e) Valuation of gifts and reimbursements. The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(1) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(2) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(3) The term readily available in the market means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Example 1. Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

Example 2. The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value, based on the posted fare of the restaurant. The filer need not ask to see the check.

Note: The market value of a ticket entitling the holder to attend an event which includes food, refreshments, entertainment or other benefits is the face value of the ticket, which may exceed the actual cost of the food and other benefits.

(f) Waiver rule in the case of certain gifts--

(1) In general. In unusual cases, a gift as defined in 2634.105(h) need not be aggregated under this section by public filers, if the Director of the Office of Government Ethics receives a written request for and issues a waiver, after determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal; and

(ii) No countervailing public purpose requires public disclosure of the nature, source, and value of the gift.

(2) Public disclosure of waiver request. If approved, the cover letter requesting the waiver shall be subject to the public disclosure requirements in 2634.603 of this part.

(3) Procedure. A public filer seeking a waiver under this paragraph shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section. On an enclosure to the cover letter, the filer shall set forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the filer is entirely personal in nature; and

(iii) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

Sec. 2634.305 Liabilities.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify and include a brief description of the filer's liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed. For public financial disclosure reports, the report shall designate the category of value of the liabilities in accordance with 2634.301(d) of this subpart, using the greatest amount owed to the creditor during the period.

(b) Exceptions. The following are not required to be reported under paragraph (a) of this section:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or his spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it; and

(4) Any revolving charge account with an outstanding liability which does not exceed \$10,000 at the close of the reporting period.

Example. An incumbent official has the following debts outstanding at the end of the calendar year:

1. Mortgage on personal residence--\$80,000.
2. Mortgage on rental property--\$50,000.
3. VISA Card--\$1,000.
4. Master Card--\$11,000.
5. Loan balance of \$15,000, secured by family automobile purchased for \$16,200.
6. Loan balance of \$10,500, secured by antique furniture purchased for \$8,000.
7. Loan from parents--\$20,000.

The loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure under paragraph (b)(2) of this section because it is secured by the personal residence. Loan 3 need not be disclosed under paragraph (b)(4) of this section because it is considered to be a revolving charge account with an outstanding liability that does not exceed \$10,000 at the end of the reporting period. Loan 5 need not be disclosed under paragraph (b)(3) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 7 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section.

Sec. 2634.306 Agreements and arrangements.

Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify the parties to and the date of, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(a) Future employment;

(b) A leave of absence from employment during the period of the reporting individual's Government service;

(c) Continuation of payments by a former employer other than the United States Government; and

(d) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

Sec. 2634.307 Outside positions.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executive, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) Exceptions. The following need not be reported under paragraph (a) of this section:

- (1) Positions held in any religious, social, fraternal, or political entity; and
- (2) Positions solely of an honorary nature, such as those with an emeritus designation.

Sec. 2634.308 Reporting periods and contents of public financial disclosure reports.

(a) Incumbents. Each public financial disclosure report filed pursuant to 2634.201(a) shall include on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the preceding calendar year (or for any portion of that year not already covered by a new entrant or nominee report filed under paragraph (b) or (c) of 2634.201), and, in the case of 2634.306 and 2634.307, for the additional period up to the date of filing.

(b) New entrants, nominees, and candidates. Each public financial disclosure report filed pursuant to 2634.201(b), (c), or (d) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, except for 2634.303 (relating to purchases, sales, and exchanges of certain property) and 2634.304 (relating to gifts and reimbursements). The following special rules apply:

(1) Interests in property. For purposes of 2634.301 of this subpart, the report shall include all interests in property specified by that section which are held on or after a date which is fewer than thirty-one days before the date on which the report is filed.

(2) Income. For purposes of 2634.302 of this subpart, the report shall include all income items specified by that section which are received or accrued during the period beginning on January 1 of the preceding calendar year and ending on the date on which the report is filed, except as otherwise provided by 2634.606 relating to updated disclosure for nominees.

(3) Liabilities. For purposes of 2634.305 of this subpart, the report shall include all liabilities specified by that section which are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than thirty-one days before the date on which the report is filed.

(4) Agreements and arrangements. For purposes of 2634.306 of this subpart, the report shall include only those agreements and arrangements which still exist at the time of filing.

(5) Outside positions. For purposes of 2634.307 of this subpart, the report shall include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

(6) Certain sources of compensation. Except in the case of the President, the Vice President, or a candidate referred to in 2634.201(d), the report shall also identify the filer's sources of compensation which exceed \$5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing, and shall briefly describe the nature of the duties performed or services rendered by the reporting individual for each such source of compensation. Information need not be reported, however, which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person. The report also need not contain any information with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless such individual was directly involved in the provision of such services.

Example. A nominee who is a partner or employee of a law firm and who has worked on a matter involving a client from which the firm received over \$5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the nominee exceeded \$5,000. The name of the client would not normally be considered confidential.

(c) Termination reports. Each public financial disclosure report filed under 2634.201(e) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the period beginning on the last date covered by the most recent public financial disclosure report filed by the reporting individual under this part, or on January 1 of the preceding calendar year, whichever is later, and ending on the date on which the filer's employment terminates.

Sec. 2634.309 Spouses and dependent children.

(a) Special disclosure rules. Each report required by the provisions of either subpart B or subpart I of this part shall also include the following information with respect to the spouse or dependent children of the reporting individual:

- (1) Income. For purposes of 2634.302 of this subpart:

(i) With respect to a spouse, the source but not the amount of items of earned income (other than honoraria) which exceed \$1,000 from any one source; and if items of earned income are derived from a spouse's self-employment in a business or profession, the nature of the business or profession but not the amount of the earned income;

(ii) With respect to a spouse, the source, and for a public financial disclosure report the actual amount or value, of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) which exceed \$200 from any one source, and the date on which the services were provided; and

(iii) With respect to a spouse or dependent child, the type and source, and for a public financial disclosure report the amount or value (category or actual amount, in accordance with 2634.302 of this subpart), of all other income exceeding \$200 from any one source, such as investment income from interests in property (if the property itself is reportable according to 2634.301 of this subpart).

Example 1. The spouse of a filer is employed as a teller at Bank X and earns \$23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed, either on a public or confidential financial disclosure report.

Example 2. The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he is a physician, but need not disclose the amount of income, either on a public or confidential financial disclosure report.

(2) Gifts and reimbursements. For purposes of 2634.304 of this subpart, gifts and reimbursements received by a spouse or dependent child which are not received totally independent of their relationship to the filer.

(3) Interests in property, transactions, and liabilities. For purposes of 2634.301, 2634.303 (applicable only to public filers), and 2634.305 of this subpart, all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure statement.

(b) Exception. For reports filed as a new entrant, nominee, or candidate under 2634.201(b), (c), or (d), or as a new entrant under 2634.908(b), no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

(c) Divorce and separation. A reporting individual need not report any information about:

(1) A spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;

(2) A former spouse or a spouse from whom the reporting individual is permanently separated;

or

(3) Any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

Sec. 2634.310 Trusts, estates, and investment funds.

(a) In general.

(1) Except as otherwise provided in this section, each financial disclosure report shall include the information required by this subpart or subpart I of this part about the holdings of and income from the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.

(2) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

(b) Qualified trusts and excepted trusts.

(1) A filer should not report information about the holdings of or income from holdings of, any qualified blind trust (as defined in 2634.403) or any qualified diversified trust (as defined in 2634.404). For a qualified blind trust, a public financial disclosure report shall disclose the category of the aggregate amount of the trust's income attributable to the beneficial interest of the filer, his spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report shall disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, his spouse, or dependent child, or applied for the benefit of any of them.

(2) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust's holdings or income from holdings. The category of the aggregate amount of income from an excepted trust which is received by or accrued to the benefit of the filer, his spouse, or dependent child shall be reported on public financial disclosure reports. For purposes of this part, the term "excepted trust" means a trust:

- (i) Which was not created directly by the filer, spouse, or dependent child; and
- (ii) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(c) Excepted investment funds.

(1) No information is required under paragraph (a) of this section about the underlying holdings of or income from underlying holdings of an excepted investment fund as defined in paragraph (c)(2) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income. Public financial disclosure reports must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by or accrued to the benefit of the filer, his spouse, or dependent child; and value of any transactions involving shares or units of the fund.

(2) For purposes of financial disclosure reports filed under the provisions of this part, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

- (i) (A) The fund is publicly traded or available; or
(B) The assets of the fund are widely diversified; and
- (ii) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(3) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

Sec. 2634.311 Special rules.

(a) Political campaign funds. Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(b) Certificates of Divestiture. Each public financial disclosure report required by the provisions of this part shall identify those sales which have occurred pursuant to a Certificate of Divestiture during the period covered by such report. See subpart J of this part for the rules relating to the issuance of such Certificates.

(c) Reporting standards.

(1) In lieu of entering data on a schedule of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other

material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the schedule.

(2) In lieu of reporting the category of amount or value of any item listed in any public financial disclosure report filed pursuant to this part, a filer may report the actual dollar amount of such item.

SUBPART D: QUALIFIED TRUSTS

Sec. 2634.401 General considerations.

(a) In general.

(1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind trust. However, there was general agreement that the use of blind trusts frequently could ameliorate potential conflict of interest situations. An underlying concept is that if a Government official does not know the identity of his or her financial interests, his or her official actions should not be subject to collateral attack by questions of conflict of interest or the appearance of such a conflict. In other words if the Government official does not know what he or she owns, it is impossible for him or her intentionally to take actions to benefit specifically his or her own personal interests. Therefore, the general public policy goal to be achieved through the use of blind trusts is an actual "blindness" or lack of knowledge by the Government official with respect to the holdings held in trust. In unusual cases, this goal may be deemed to have been achieved with respect to an official appointed to a position by the President, by and with the advice and consent of the Senate, where there is a general dispersion of securities held in trust among individual entities and economic sectors under circumstances in which it is unlikely that official actions taken by him or her will affect individual holdings to such a degree that the overall value of the entire portfolio will be materially enhanced. The result of wide diversification under the conditions prescribed is considered tantamount to actual blindness.

(2) Trusts certified under the provisions of this Subpart D are not subject to the general rules of Subpart C of this part, which normally require the public financial disclosure report of a reporting individual to indicate the contents of a trust's portfolio. Further, as described in paragraph (b)(3) of this section, in the case of trusts which are certified, the normal application of 18 U.S.C. 208 and other Federal conflict of interest laws is ameliorated by the Act in accordance with the concepts discussed in paragraph (a)(1) of this section.

(b) Nature of qualified trusts. The public policy concerns and objectives indicated in paragraph (a) of this section are fulfilled by the major requirements of this subpart as described in this paragraph (b). The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) A truly independent trustee. Under 2634.406, the individual or institution in charge of a qualified trust, and therefore of investing the assets of the trust, must be independent of the Government official in reality and appearance. The trustee must not be subject to control or influence in the administration of the trust by any interested party: the official, his or her spouse, or dependent children. Permissible trustees are limited to members of professional groups with standards of conduct governing their actions as fiduciaries (financial institutions, attorneys, accountants, investment advisers and brokers). The trustee cannot be a relative, employee, or business partner of the official, spouse, or dependent children.

(2) A trust document meeting certain minimum standards. Under 2634.404, regarding qualified diversified trusts, the trust document must, except for limited exceptions, expressly prohibit communications between the trustee and the Government official, and other interested parties, regarding the trust's holdings and activities. The trustee must be empowered to make investment decisions independent of any consultation with or control by the interested parties. Generally, communications about the trust between the interested parties and the trustee must be in writing. Copies of all written communications must be filed with the Office of Government Ethics. The trust document must also provide that the interested parties will not attempt to obtain information about the trust holdings and activities except as specifically provided therein.

(3) Relationship to conflict of interest laws--

(i) Qualified blind trusts. In the case of a qualified blind trust (2634.403), an asset placed in trust by an interested party is considered a financial interest of the Government official for the purposes of 18 U.S.C. 208 and any other conflict of interest statutes or regulations of the Federal Government until the party is notified by the trustee that the asset has been disposed of, or has a value of less than \$1,000. Thus, the trust is considered blind only as to assets subsequently purchased by the trustee. The interested parties will have no knowledge of the trustee's acquisitions, and thus the Government official and the other interested parties will be truly blind with respect to these holdings.

(ii) Qualified diversified trusts. In the case of a qualified diversified trust (2634.404), the trust's holdings are not deemed financial interests of the Government official for purposes of 18 U.S.C. 208 or any other Federal conflict of interest law. This type of trust may only be utilized by an official appointed by the President, by and with the advice and consent of the Senate. It must be established to the satisfaction of the Director, Office of Government Ethics, under 2634.404(b), that the assets of a diversified trust proposed for

qualification consist of a well-diversified portfolio of readily marketable securities. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility.

(4) Relationship to Subpart C reporting requirements. Qualified trusts are not subject to the normally applicable reporting requirements of Subpart C of this part. The less inclusive rules of 2634.402(b) are applied with respect to qualified trusts pursuant to the Act.

(5) Prior approval of trust document and assets placed in the trust. Before a trust can be certified, every proposed trust document (see 2634.405) and proposed trustee (see 2634.406) must be approved by the Office of Government Ethics. This is essential so that the Office can ensure in advance that the proposed trust arrangement satisfies the letter and spirit of the established standards. Model qualified trust instruments are available from the Office to attorneys for their use in drafting trust agreements to be proposed for qualification.

(6) Effective sanctions and enforcement. Under the provisions of Subpart G of this part, civil and criminal sanctions are provided for any Government official or trustee who violates his or her obligation under a qualified trust. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions.

(c) Certification of pre-existing trusts. Normally, trusts certified by the Director, Office of Government Ethics, under 2634.405 are newly created trust arrangements formulated by representatives of the interested parties in consultation with the staff of the Office to meet the established standards. However, in a case where the Director determines that such action is appropriate to assure compliance with applicable laws and regulations, an existing trust may be proposed for certification as a qualified blind trust or qualified diversified trust under the provisions of 2634.403 or 2634.404. In addition to the normally applicable rules of this Subpart D, there are other considerations that pertain in the case of pre-existing trusts. Interested parties and their representatives are invited to contact the Office of Government Ethics for further information.

Sec. 2634.402 Special rules in the case of certain trusts.

(a) In general. Notwithstanding the provisions of Subpart C of this part, a reporting individual need not, except as otherwise provided in this subpart, report the holdings of or the source of income from any of the holdings of:

- (1) Any qualified blind trust, as defined in 2634.403,
- (2) Any qualified diversified trust, as defined in 2634.404, or
- (3) Any "excepted trust," one:

(i) Which was not created directly by the individual, his or her spouse, or any dependent child, and

(ii) The holdings or sources of income of which the individual, his or her spouse, and any dependent child have no knowledge.

(b) Subpart C reporting requirements--

(1) Income. In the case of a trust referred to in paragraph (a) of this section except for a qualified diversified trust, a reporting individual shall report the category of the aggregate amount of the trust's income attributable to the beneficial interest in the trust of the individual, his or her spouse, or any dependent child under the rules of Subpart C of this part. In the case of a qualified diversified trust, only amounts actually received in respect of such a trust by the individual, his or her spouse, or any dependent child, or applied for the benefit of any such interested party, shall be deemed income derived from the trust for purposes of this part.

(2) Holdings and sources of income. In the case of a trust referred to in:

(i) Paragraph (a)(1) or (a)(2) of this section, no report under Subpart C of this part on holdings and sources of income is required, or

(ii) Paragraph (a)(3) of this section, holdings and sources of income shall be reported under the rules of Subpart C of this part only to the extent that the reporting individual has reasonably specific knowledge of the holdings and sources of income.

Example 1. A reporting individual, R, is the beneficiary of a family trust created by his grandfather. R -- (i) has never seen the trust instrument, (ii) receives a monthly payment of \$500 from the trustee, and (iii) has been told by his grandfather that the trust assets include large holdings of Canadian mining stock. R does not have any further specific knowledge about the trust and its holdings, and the grandfather and trustee have declined to provide further information. This trust would be considered by the Office of Government Ethics to be an excepted trust described in paragraph (a)(3) of this section. R is obligated to report \$6,000 as income from the trust in his annual

financial disclosure report filed under Subpart C, and under 2634.301(d) he would report that he is a beneficiary of an excepted trust which he believes to have Canadian mining stock among its holdings.

Example 2. During 1979, the trustee of reporting individual M's qualified diversified trust makes payments as follows: (i) A monthly distribution of \$1,000 to M as specified in the trust instrument, (ii) \$4,000 to M's wife for medical expenses pursuant to the trustee's discretion under the terms of the trust instrument, and (iii) \$2,500 to M's son for educational expenses pursuant to the trust instrument. For 1979, \$18,500 is deemed to be the income derived from the trust and should be reported under Subpart C of this part; notwithstanding, that the actual income attributable to the interests of M, his spouse, and dependent children in the qualified diversified trust might be a greater amount. The actual amount must be kept confidential by the trustee and, under 2634.404, not revealed to the interested parties.

Example 3. Note that \$18,500 would be the income deemed to have been derived from the qualified diversified trust in Example 2, even if the actual income attributable to the interests of the interested parties was less than \$18,500 or even if the trust had a net loss for the year.

Sec. 2634.403 Qualified blind trusts.

(a) Definition. For purposes of 2634.402, the term "qualified blind trust" means a trust certified by the Director, Office of Government Ethics, under 2634.405 which includes the provisions described in paragraph (b) of this section and has an independent trustee (as defined in 2634.406). See section 202(f)(3) of the Act.

(b) Required provisions. The trust instrument which establishes a trust to which this section applies must provide that --

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(3) The trustee shall notify promptly the reporting individual and the Director, Office of Government Ethics, when any particular asset transferred to the trust by any interested party has been completely disposed of or when the value of that asset becomes less than \$1,000;

(4) The trust tax return shall be prepared by the trustee or his or her designee, and the return and any information relating thereto, other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return, shall not be disclosed publicly or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust, except that the trustee shall--

(i) Make quarterly reports of the aggregate market value of the assets representing the interested party's interest in the trust,

(ii) Report the net income or loss of the trust and make any other reports necessary to enable the interested party to complete an individual tax return required by law, and

(iii) Provide the information described in 2634.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only:

(i) To the general financial interest and needs of the interested party including, but not limited to, an interest in maximizing income or long-term capital gain,

(ii) To the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or

(iii) To directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual but nothing in the trust instrument shall require any such direction;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources of income of, the trust, including obtaining a

copy of any trust tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (b)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfil the filing requirements of 2634.407(b) and(c).

Example (A) Professionals employed by the trustee to prepare the trust tax return should be cautioned against sending informational copies to any interested party, and (B) An interested party who inadvertently receives in the mail a broker's confirmation of a transaction for the trust should send the confirmation to the trustee with an accompanying letter instructing the trustee to take steps to assure that the party will not receive such confirmations in the future (a copy of such a letter must be sent to the Office of Government Ethics pursuant to 2634.407(c)). Paragraph (b)(7) of this section prohibits any activity by interested parties to obtain, directly or indirectly, any information which under the rules of this section is precluded from interested parties. The paragraph also specifically prohibits the passive receipt of precluded information by interested parties. Accordingly, interested parties and trustees, their staffs, and professionals who may be employed by them are required to exercise a high degree of diligence to safeguard against inadvertent disclosure of precluded information to the interested parties.

Sec. 2634.404 Qualified diversified trusts.

(a) Definition. For purposes of 2634.402, the term "qualified diversified trust" means a trust certified by the Director, Office of Government Ethics, under 2634.405 which has a portfolio as specified in paragraph (b) of this section, includes the provisions described in paragraph (c) of this section, and has an independent trustee (as defined in 2634.406). This certification may be granted only in the case of individuals described in paragraph (e) of this section. See section 202(f)(4)(B) of the Act.

(b) Required portfolio--

(1) In general. It must be established to the satisfaction of the Director, Office of Government Ethics, that the assets of the trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. Accordingly, the reporting individual, or a representative of the individual, shall provide the Director with a detailed listing of the securities proposed for inclusion in the portfolio, specifying their market values and demonstrating that the requirements of this paragraph (b) have been met. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility. No limitations are established under this paragraph with respect to --

(i) Cash, or

(ii) Debt instruments issued by the United States or its non-corporate instrumentalities.

(2) Well-diversified--

(i) Portfolios which exceed \$ 250,000. In the case of a trust which has assets with a total market value which exceeds \$250,000, the portfolio will be deemed well-diversified, for purposes of this section, unless the trust holds --

(A) Securities of any issuer which have a market value which exceeds twenty percent of the total market value of the portfolio, or

(B) Securities substantially related to any industry or economic sector which have a market value which exceeds thirty percent of the total market value of the portfolio. Notwithstanding the preceding sentence, the Office of Government Ethics may authorize limited deviations from the standards of this paragraph (b)(2)(i) with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example. In unusual circumstances involving a divorce settlement, the proposed initial portfolio of a trust with a total market value of \$350,000 is determined by the Office of Government Ethics to have overall balance and is deemed well-diversified even though securities of three utilities represent 32 percent of the portfolio's total market value and the securities of one bank represent 23 percent. However, the trustee may not purchase additional utility or bank securities while the percentages of portfolio market value they represent continue to exceed the standards of paragraph (b)(2)(i) of this section.

(ii) Portfolios which do not exceed \$250,000. The Office of Government Ethics recognizes that it is impractical in the case of smaller trusts to expect the same quantitative diversification with respect to initial holdings that is required in the case of larger trusts. Consequently, in the case of a trust which has assets with a total market value which does not exceed \$250,000, the Office may authorize a lesser degree of diversification than the standards of paragraph (b)(2)(i) of this section with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example. A proposed initial portfolio with a total market value of \$100,000 contains four listed securities, each representing a different industry or economic sector. Two of the securities each have a market value of \$24,000, and the other two securities each have a market value of \$26,000. The portfolio will be deemed to be well-diversified.

(iii) **Consultation.** Interested parties and their representatives are invited to consult with the Office of Government Ethics on the question of whether overall portfolio balance has been achieved in particular cases.

(3) **Readily marketable.** A security will be deemed readily marketable, for purposes of this section, if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation, such as the Wall Street Journal, New York Times, and Washington Post, and

(ii) The trust holds the security in a quantity which does not unduly impair liquidity.

(c) **Required provisions.** The trust instrument which establishes a trust to which this section applies must provide that:

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trustee shall not acquire any securities in excess of the diversification standards of paragraph (b)(2)(i) of this section;

(3) The trustee shall not disclose publicly or to any interested party information as to the acquisition, retention, or disposition of any particular securities;

(4) The trust tax return shall be prepared by the trustee or his delegate, and such return and any information relating thereto shall not be disclosed to the public or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust; except that the trustee shall:

(i) Make quarterly reports of the aggregate market value of the assets representing such interested party's interest in the trust, and

(ii) Provide the information described in 2634.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only--

(i) To the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), or

(ii) To information, documents, and funds provided by, or needed from, the interested party to effectuate the provisions of paragraph (d) of this section;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources and amounts of income of the trust including obtaining a copy of any trust or personal tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph(c)(5) of this section; (with respect to paragraph (c)(7) of this section, see Example 1 following 2634.403(b)), and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of 2634.407(b) and(c).

(d) **Personal income tax returns.** In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party, the personal income tax returns and similar returns which may contain information about the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose. Communications regarding decisions such as whether to file joint or separate returns, the portions of a tax obligation to be borne by each spouse, the amounts and timing of tax payments, and the sources of funds therefor, shall be subject to paragraph (c)(6)(ii) of this section.

(e) **Applicability.** The provisions of this section shall be applicable only in the case of a trust created for the benefit of a reporting individual appointed to his or her office by the President, by and with the consent of the Senate, or the spouse or dependent child of such a person. In the case of a reporting individual whose nomination is before a Senate committee, the individual must inform the Committee of his or her intention to establish a qualified diversified trust at the time his or her financial disclosure report is filed with the Committee. This notification is not required of a reporting individual who is already in office. This section is not applicable in the case of members of the uniformed services or foreign service officers in the State Department.

Sec. 2634.405 Certification of trusts proposed for qualification; other matters.

(a) **General rule.** In any case in which an interested party desires to have a trust certified as a qualified blind trust or qualified diversified trust under the provisions of 2634.403 or 2634.404, respectively, the party or his or her representative should consult with the Director, Office of Government Ethics (or his or her delegate), as to the appropriateness of and requirements for certification in the particular case. In order to assure timely trust certification, the interested party shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information. A trust will be certified by:

(1) The Director in the case of a qualified blind trust, or

(2) The Director in concurrence with the Attorney General in the case of a qualified diversified trust, only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that certification in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations. Certification shall be indicated by a letter from the Director to the interested parties or their representative. The certification of qualified trusts and the Office of Government Ethics blind trust program are for the primary benefit of the public through ensuring the confidence of the public in the integrity of the Government's decisional processes and officials. The Office shall maintain a continuing assessment of the appropriateness of any certification which has been granted. Certification of a trust may be revoked pursuant to the rules of Subpart I of this part. The terms of a qualified trust are normally irrevocable. The terms may not be amended, except with the prior written approval of the Director upon a showing of necessity and appropriateness.

(b) **Absence of control by interested party.** Except as expressly approved by the Director, Office of Government Ethics, in the case of a trust proposed for certification under the provisions of 2634.403, any asset transferred to a trust under this subpart shall be free of any restriction on its transfer or sale. Accordingly, in the case of interests in tax shelters, partnerships, and close corporations, the interested party shall demonstrate to the satisfaction of the Director that, under all the facts and circumstances, the interests are free of any restriction with respect to their transfer or sale.

(c) **Interested party, defined.** For purposes of this subpart, the term "interested party" means a reporting individual, the spouse, and any dependent child in a case in which the individual, spouse, or dependent child has a beneficial interest in the principal or income of a trust proposed for certification. (d) **Restrictions applicable to trustees.** The trustee of a qualified blind trust or qualified diversified trust shall not knowingly or negligently:

(1) Disclose any information to an interested party with respect to the trust that may not be disclosed under any provision or requirement of this subpart,

(2) Acquire any holding:

(i) Directly from an interested party without the prior written approval of the Director, or

(ii) The ownership of which is prohibited by, or not in accordance with the terms of, the trust instrument,

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by any provision or requirement of this subpart or the trust instrument, or

(4) Fail to file any document required by this subpart.

(e) **Restrictions applicable to reporting individuals.** In the case of a qualified blind trust or qualified diversified trust, a reporting individual shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under any provision or requirement of this subpart, or

(2) Fail to file any document required by this subpart.

Sec. 2634.406 Independent trustee, defined.

(a) **General rule.** For purposes of this subpart, the term "independent trustee" shall include any person referred to in paragraph (b) of this section who, under all the facts and circumstances, is determined by the Director, Office of Government Ethics to be independent of any interested party with respect to a trust proposed for qualification under this subpart. Appropriate documentation to establish the independence of a proposed trustee or any other person to be designated in a trust instrument shall be submitted to the Office of Government Ethics in writing. Approval of a proposed trustee or any other person designated in a trust instrument to perform fiduciary duties shall be granted only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that approval in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations. The Director shall indicate approval of a proposed trustee, and of any other person designated in the trust instrument to perform fiduciary duties including those of an investment adviser, by personal signature on properly executed Certificates of Independence submitted to the Office of Government Ethics in the form prescribed by Appendix A of this part. Certification shall be indicated by a letter from the Director to the interested parties or their representative. The approval of proposed trustees and other persons designated in trust instruments and the Office of Government Ethics' blind trust program are for the primary benefit of the public through ensuring the confidence of the public in the integrity of the Government's decisional processes and officials. The Office shall maintain a continuing assessment of the appropriateness of any approval which has been granted. Approval of a trustee or any other designated person may be revoked pursuant to the rules of subpart I.

(b) **Eligible person.** A person, to be eligible to serve as a trustee under this section, must be:

- (1) A financial institution, which is a "bank" as defined in 15 U.S.C.80b-2(a)(2);
- (2) An attorney, who is admitted to practice before the highest court of any jurisdiction;
- (3) A certified public accountant;
- (4) A "broker", as defined in 15 U.S.C. 78c(a)(4); or

(5) An "investment adviser", who is a person as defined in 15 U.S.C.80b-2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts.

(c) **Requirements.** No eligible person shall be determined to be independent under this section unless that person, or any officer or employee thereof, involved or to be involved in the management or control of the trust:

(1) Is independent of and unassociated with any interested party so that that person cannot be controlled or influenced in the administration of the trust by any interested party,

(2) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(3) Is not a relative of any interested party. Accordingly, an otherwise eligible person who shares in a business enterprise or other undertaking with any interested party shall not be deemed to be independent under the rules of this paragraph (c).

Example 1. Reporting individual R terminates his partnership in a law firm upon nomination to a full-time government position. R wishes to have T, a partner in R's former firm, serve as his trustee. T may serve as R's trustee.

Example 2. In Example 1, T would have been precluded from serving as R's trustee if additionally:

- (i) They both serve on the board of a local bank,
- (ii) They are each limited partners in a tax shelter or operating business venture, or
- (iii) Their spouses jointly operate a commercial venture.

Example 3. In Example 1, T would not have been precluded from serving as R's trustee if additionally:

- (i) They both serve on a committee of their country club,
- (ii) They each bought XYZ Corp. listed stock, after it was discussed by them during a golf weekend several months ago, or
- (iii) R had purchased an office building from T.

Sec. 2634.407 Special filing requirement in the case of qualified trusts.

(a) **Reporting individuals.** In the case of any qualified blind trust or qualified diversified trust, the reporting individual shall:

(1) **Execution.** Within thirty days after the trust is certified under 2634.405(a) by the Director, Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust, and

(ii) A list of the assets which were transferred to the trust, categorized as to value in accordance with 2634.304. The provisions of any trust filed with the Director under this paragraph which relate to the testamentary disposition of the trust assets need not be reported. If reported, the provisions shall not be subject to public disclosure.

(2) Transfer of assets. Within thirty days of transferring an asset, other than cash, to the trust, file a report with the Director, Office of Government Ethics, which shall briefly describe each asset, categorized as to value in accordance with 2634.304.

(3) Dissolution. Within thirty days of the dissolution of the trust --

(i) File a report of the dissolution with the Director, Office of Government Ethics, and

(ii) File with the Director, a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with 2634.304. Any document filed under the requirements of this paragraph shall be subject to the public disclosure requirements of 2634.602.

(b) Trustees. The trustee of a qualified blind trust or qualified diversified trust, and any person in addition to a party to the trust designated in the trust instrument as an investment adviser, shall file with the Director, Office of Government Ethics, by the May 15 following any calendar year during which the trust was in existence a properly executed Certificate of Compliance in the form prescribed by Appendix B of this part. In addition, the trustee shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust. Any document (and the information contained therein) inspected under the requirements of this paragraph (other than a Certificate of Compliance) shall not be subject to the public disclosure requirements of 2634.602, and shall not be disclosed to any interested party.

(c) Written communications. In the case of any written communication with respect to a qualified blind trust or qualified diversified trust, which is described in 2634.403(b)(6) or 2634.404(c)(6), respectively, a copy of the communication shall, within five days of its date, be filed by the person initiating the communication with the Director, Office of Government Ethics. In the case of a qualified diversified trust, notwithstanding the preceding sentence, written communications not described in the third sentence of 2634.404(d) which consist entirely of reports from interested parties of their transactions and occurrences unrelated to the trust made to the trustee to effectuate the provisions of that section shall (in lieu of being filed with the Director) be retained by the trustee and are subject to inspection under paragraph (b) of this section.

Sec. 2634.408 Effective date.

The provisions of this subpart shall be applicable to trusts certified as approved qualified blind trusts or qualified diversified trusts after October 26, 1978. In the case of a trust certified prior to November 1, 1980, notwithstanding the preceding sentence, the Director of the Office of Government Ethics may exempt the trust from specific provisions of this part if he or she determines, upon application of the trustee or any interested party, that exemption is necessary and appropriate to avoid impracticality or undue hardship.

SUBPART E: SPECIAL PROVISIONS

Sec. 2634.501 Outside earned income.

(a) Limitation. All reporting individuals:

(1) Who occupy full-time positions in the Executive Branch, appointment to which is made by the President by and with the consent of the Senate, and who are compensated at a rate of pay specified for GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or

(2) Who are employees of the White House Office and are compensated at a rate equivalent to level II of the Executive Schedule under 5 U.S.C. 5313, may not have in any calendar year outside earned income attributable to that calendar year which is in excess of 15 percent of that compensation.

(b) Defined. For the purposes of this section, the term "outside earned income" means wages, salaries, commissions, professional fees and other compensation received for personal services actually rendered, other than for services for the United States Government described in paragraph (a) of this section. Income received

(1) By an inactive partner, or

(2) From investments with respect to which the personal services of the reporting individual are not a material factor, shall not be deemed outside earned income for purposes of this section. The term does not

include amounts received during a period in which the reporting individual was not employed as specified by paragraph (a) of this section for personal services actually rendered during the period.

(c) Other employment limitations. The provisions of this section shall not preclude the application of limitations on outside employment which may be imposed on employees of a particular agency.

Sec. 2634.502 Waivers.

(a) With respect to reporting requirements: Section 201(i) of the Act authorizes the Director to grant a waiver for officers and employees if they have served fewer than 130 days in a calendar year. For the rules relating to this waiver, see 2634.205.

(b) With respect to gifts: Section 202(a)(2)(D) of the Act authorizes the Director to grant a waiver in an unusual case with respect to the necessity for aggregating gifts. For the rules relating to this waiver, see 2634.305(g).

SUBPART F: PROCEDURE

Sec. 2634.601 Report forms. (this section not reproduced).

Sec. 2634.602 Filing of reports.

(a) Except as otherwise provided in this section, a reporting individual shall file the report required under this part with the designated agency ethics official at the agency in which the individual:

- (1) Is serving,
- (2) Served prior to termination of employment, or
- (3) Will serve.

The designated agency ethics official shall note on any report or supplemental report the date it is received.

(b) The President and Vice President shall file their reports with the Director of the Office of Government Ethics.

(c) Each agency shall transmit to the Director, Office of Government Ethics, copies of the reports required to be filed by:

- (1) The Postmaster General,
- (2) The Deputy Postmaster General,
- (3) The governors of the Board of Governors of the United States Postal Service,
- (4) Designated agency ethics officials,

(5) Employees of the White House Office who are described in 3 U.S.C. 105(a)(2)(A) or (B); employees of the Office of Vice President who are described in 3 U.S.C. 106(a)(1) (A) or (B), and employees of the Domestic Policy Staff and Office of Administration (agencies in the Executive Office of the President) who are described in 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i).

(6) Candidates for the office of President or Vice President, and

(7) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate other than those required of members of the uniformed services. Prior to transmitting a copy of the report to the Director, the agency shall, except in the case of the designated agency ethics official's report, which shall be reviewed by the head of the agency (or his or her delegate), review the report in accordance with 2634.604(b). The Director shall forward a copy of the report of each nominee to the Senate committee considering the nomination. (See 2634.604(c) for procedures regarding the review of such reports.)

(d) The Director shall file his or her report in the Office of Government Ethics. Upon receipt, the report will be made immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in 2634.201(d), other than an incumbent President or Vice President, shall file their reports with the Federal Election Commission which in turn shall send copies of such reports to the Office of Government Ethics pursuant to paragraph (c) of this section.

(f) Members of the uniformed services identified in 2634.202(c), shall file their reports with the Secretary concerned.

Sec. 2634.603 Custody of and public access to reports.

(a) Each agency shall make each report filed with it under this part available to the public in accordance with the provisions of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved, if available.

(b) This section does not require public availability of the report filed by any individual in:

- (1) The Central Intelligence Agency,
- (2) The Defense Intelligence Agency,
- (3) The National Security Agency, or

(4) Any individual engaged in intelligence activities in any agency of the United States, if the President finds that, due to the nature of the office or position occupied by the individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. These individuals may be authorized, notwithstanding 2634.701(a), to file any additional reports necessary to protect their identity from public disclosure if the President first finds that such filings are necessary in the national interest.

(c) Each agency shall, within fifteen days after any report is actually received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes a written application stating:

(1) The person's name, occupation and address,

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested, and

(3) That the person is aware of the prohibitions on the obtaining or use of the report, as set forth in paragraph (e) of this section. The application shall be made available to the public throughout the period during which the report itself is made available to the public. The reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit the application provided for by this paragraph.

(d) The agency may require a reasonable fee, established by appropriate agency regulation, to recover the direct cost of reproduction or mailing of such report, excluding any salary of any employee involved in such process. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by an appropriate regulation. (e) It is unlawful for any person to obtain or use a report--

(1) For any unlawful purpose;

(2) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(3) For determining or establishing the credit rating of any individual; or

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example 1. The deputy general counsel of an agency as its reviewing official (see 2634.105(n)) is responsible for reviewing the public financial disclosures filed by officials within that agency. The personnel director for that agency, not exercising functions within the ethics program, wishes to review the disclosure of an individual within the agency. The personnel director must file an application to review the disclosure. However, the supervisor of an official with whom the deputy general counsel consults with respect to matters arising in the review process need not file such an application.

Example 2. A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public disclosure. The agent must complete a written application in order to review or obtain a copy of the statement.

Example 3. A copy of a report is obtained by a reporter for use in a general newspaper article. This copy is seen on the reporter's desk by an editor who is in charge of a local charity drive. The editor observes that the reporting individual owns a business in his community and sends a personal note to the individual referring to the business and soliciting a contribution for the charity. This use is prohibited.

Example 4. A financial institution has received an application for a loan from an official indicating her present financial status. The official has filed a public financial disclosure with her agency. The financial institution cannot review the disclosure for purposes of checking the information contained on the report against that which appears on the application.

(f) (1) Any report filed with an agency, or transmitted to the Director, Office of Government Ethics, under this section, shall be retained by the agency or the Office of Government Ethics, or both, as the case may be. The report shall be made available to the public for a period of six years after receipt of the report. After the six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report under 2634.201(c) and was not subsequently confirmed by the Senate, or who filed the report under 2634.201(d) and was not subsequently elected, the report shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President.

(2) For purposes of paragraph (f)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under Subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained until the periods for retention of all other reports on the individual have lapsed under paragraph (f)(1) of this section.

Sec. 2634.604 Review of reports.

(a) In general. Reports shall be reviewed by the appropriate reviewing official within 60 days after the date of filing. Reports reviewed by the Director, Office of Government Ethics, shall be reviewed within 60 days from the date each report was transmitted by the agency to OGE.

(b) Responsibilities of reviewing officials--

(1) Initial review. The reviewing official shall review each report to determine to his or her satisfaction that:

(i) Each item is completed, and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of Chapter 11 of 18 U.S.C. Part 1,

(B) The Ethics in Government Act of 1978, as amended, and the regulations promulgated thereunder,

(C) Executive Order 11222 and applicable regulations promulgated thereunder, or

(D) Any other statute or regulation applicable to the employees of the reviewing official's agency. The reviewing official shall not sign and date the report until that determination is made. A reviewing official need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. A report which is signed by a reviewing official, however, shall signify that the agency in which the reporting individual serves has found that the information contained in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements of this paragraph (b)(1).

(2) Requests for additional information. If the reviewing official believes that additional information is required, the official shall request this information indicating a date by which the information must be submitted. This additional information shall be made a part of the report.

(3) Review on basis of additional information. If the reviewing official concludes on the basis of the information disclosed in the report and any additional information required under paragraph (b)(2) of this section that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report, or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the official shall:

(A) Notify the reporting individual of this opinion,

response, and (B) Afford the reporting individual a reasonable opportunity for an oral or written

requirements. (C) Determine on the basis of the response whether or not the report fulfills the

(4) Review to determine remedial action. If the reviewing official concludes, after following the procedure set forth in paragraph (b)(3)(ii) of this section, that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report and notify the reporting individual in writing that this action was taken; or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the reviewing official shall:

(A) Notify the individual of that opinion,

(B) Afford the individual an opportunity for personal consultation, if practicable,

(C) Determine what remedial action should be taken to bring the report into compliance, and

(D) Notify the individual in writing of the remedial action required, indicating a date by which that action must be taken. Except in unusual situations which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed within 90 days from the date the individual was notified that the action would be required.

(5) Remedial steps. Remedial steps may include, as appropriate:

(i) Divestiture of the conflicting interest,

(ii) Restitution,

(iii) The establishment of a qualified trust under section 202(f) of the Act,

(iv) Request for an exemption under 18 U.S.C. 208(b),

(v) Recusal, or

(vi) Voluntary request by the individual for transfer, reassignment, limitation of duties or resignation.

(6) Compliance or referral.

(i) If the reporting individual complies with a written request for remedial action required under paragraph (b)(4)(ii), the reviewing official shall indicate in the comment section of the report that this action has been taken and shall sign and date the report. The reviewing official shall send to the reporting individual written notification of the signing and of the addition of the comment to the form.

(ii) If the reporting individual does not comply with a written request for remedial action transmitted under paragraph (b)(4)(ii) of this section, the reviewing official shall notify the Office of Government Ethics and refer the matter for appropriate action to:

(A) The President, where the reporting individual is in a position, other than in the uniformed services, appointment to which requires the advice and consent of the Senate,

(B) The Secretary concerned, for a member of the uniformed services, or

(C) The head of the agency, for any other officer or employee, except in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. In unusual circumstances, the Office of Government Ethics may order corrective action as authorized by section 402(b)(9) of the Act.

(7) Appropriate action. Appropriate action includes changes in assigned duties or adverse action in accordance with the procedures set forth in 5 CFR Part 752.

(8) Scope of this paragraph. The provisions of this paragraph (b) shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

(c) Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate. Notwithstanding paragraph (a) of this section, in the case of a report filed by an individual described in 2634.201(c) who is nominated to a position, by the President, by and with the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the financial disclosure reporting forms to the nominee and shall forward the completed report to the designated agency ethics official at the agency in which the nominee will serve or is serving; or when appropriate, the nominee shall file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall review the report and, only after the official completes a review in accordance with paragraph (b)(1) of this section and concludes that there is no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a copy of the official position description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report and date the certification;

(iii) Write an opinion letter to the Director, Office of Government Ethics, certifying that there is no conflict of interest under applicable laws and regulations, and discussing:

(A) Any problems which the official encountered in reaching the conclusions upon which that certification is based and describing the resolution of the problems, and

(B) Any specific commitment, agreement, recusal, or other undertaking by the nominee to resolve any such problem through recusal, divestiture or similar action (with a copy of any such commitment, agreement, recusal, or other undertaking which has been reduced to writing to be sent to the Director as soon as it is available); and

(iv) Deliver the letter and report to the Director, Office of Government Ethics, within three days after the receipt of the report by the agency in which the nominee will serve or is serving.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency official and, if satisfied that there is no unresolved conflict, the Director shall sign the report and date the approval. The Director shall submit the report with a letter to the Senate Committee involved expressing the Director's opinion that on the basis of information contained in the report the nominee is in compliance with applicable laws and regulations.

(4) If in the case of any nominee or class of nominees for any reason the expedited procedure specified in this paragraph (c) cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency official shall inform the Director. When necessary and appropriate in the case of a class of nominees, the Director may modify the rule of that paragraph with respect to a particular department or agency.

(d) Updated disclosure of earned income and honoraria in the case of an individual nominated by the President to a position to which appointment is subject to confirmation by the Senate--

(1) General Rule. Each individual described in 2634.201(c) who is nominated by the President to a position to which appointment is subject to confirmation by the Senate shall, at or before the commencement of the first Senate Committee hearing to consider the nomination, submit to the Committee an amendment to his or her report previously filed under 2634.201(c) which shall update, through the period ending no earlier than five days prior to the date of the commencement of the hearing, the disclosure of items and other data with respect to (i) outside earned income, as defined in 2634.501(b), without application of its last sentence, and (ii) honoraria, as defined in 2634.105. Such individual shall transmit copies of the amendment to the designated agency ethics official referred to in paragraph (c)(1) of this section and to the Office of Government Ethics.

(2) Additional certification. In each case to which this paragraph applies, the Director of the Office of Government Ethics shall, at the request of the Committee considering the nomination, submit to it with respect to the updated disclosure an opinion letter of the nature described in paragraph (c)(3) of this section. In the event of such a request, the expedited procedure provided for by paragraph (c) shall apply to the updated disclosure which shall, for purposes of that paragraph, be deemed a report filed.

Sec. 2634.605 Advice and opinions.

For purposes of assisting both current and former employees in avoiding situations in which they would not be in compliance with applicable laws and regulations and to inform members of the public--

(a) The Director, Office of Government Ethics, will render advisory opinions on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments on the request for the advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public; and

(b) Each Secretary concerned and designated agency official, including the President in the case of individuals employed in the Executive Office of the President, shall maintain a list of those circumstances or situations which have resulted or may result in non-compliance with such laws or regulations; such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this part, however, the absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

SUBPART G: PENALTIES AND REMEDIAL ACTION

Sec. 2634.701 Failure to file or falsifying reports.

(a) Civil action. The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information required under this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$5,000.

(b) Referral of cases. The head of each agency, each Secretary concerned, or the Director, Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file required information.

(c) Administrative remedies. The President, the Vice President, the Director, Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to file required information. This action includes adverse action under 5 CFR Part 752.

Sec. 2634.702 Certain actions in the case of qualified trusts.

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of 2634.407(a) (1) and (2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$5,000.

(b) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of 2634.407(a)(1) and (a)(2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$1,000.

Sec. 2634.703 Misuse of reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 205(c)(1) of the Act and 2634.603(e). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed \$5,000. This remedy shall be in addition to any other remedy available under statutory or common law.

SUBPART H: ETHICS AGREEMENTS

Sec. 2634.801 Scope.

This subpart applies to ethics agreements made by reporting individuals (see 2634.202) to resolve potential or actual conflicts of interest.

Sec. 2634.802 Requirements.

(a) Ethics Agreement defined. Except as provided in subsection (c) of this section, the term "ethics agreement" shall for the purposes of this subpart include any undertaking to carry out one or more of the following actions:

- (1) Recusal or disqualification from one or more particular matters or categories of official action;
- (2) Divestiture of a financial interest or interests;
- (3) Resignation from a non-federal business or other entity;

(4) Participation in one or more particular matters or categories of official action upon the issuance of an 18 U.S.C. 208(b)(1) waiver; or

(5) Establishment of a blind trust under this Act.

(b) Time limit. The ethics agreement shall specify that the individual must complete the action which he or she has undertaken within a period not to exceed 3 months from the date of the agreement, except in cases of unusual hardship as determined by the Office of Government Ethics.

(c) Exception. An ethics agreement shall not include an undertaking by a reporting individual to carry out an action listed in subsection (a) of this section if the power to permit or deny the action by such individual has been granted by statute to an agency or official who has not approved the undertaking. See, for example, Department of Energy Organization Act, Pub. L.95-91, Sections 602(a) and 606 (a) and (b).

Example. An official of the Boeing Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position the individual has agreed to divest himself of his Boeing stock which he recently acquired while he was an officer with the company. However, a Securities and Exchange Commission law and regulation preclude officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within 6 months of acquiring the stock, and direct that any such profit must be returned to the issuing corporation or its stockholders. Since meeting the usual 3-month time limit specified in this subpart might entail losing any profit that might be realized on the sale of the stock, the Boeing official requests that such limit be extended beyond the end of the 6-month period imposed by the Commission to enable any profits from the transaction to inure to his benefit. Written approval would have to be obtained from the Office of Government Ethics to extend the customary 3-month period.

Sec. 2634.803 Notification of ethics agreements.

(a) Nominees to positions requiring the advice and consent of the Senate.

(1) In the case of a nominee referred to in 2634.201(c), the designated agency ethics official shall include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official shall immediately notify the Office of Government Ethics of an ethics agreement of a nominee which is made or becomes known after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made by a nominee with the Senate confirmation committee. The nominee for his or her part shall immediately report to the designated agency official an ethics agreement he or she has made with the committee.

(3) With regard to any ethics agreements made between the nominee and the Office of Government Ethics, the Office of Government Ethics shall immediately apprise the designated agency ethics official and the Senate confirmation committee.

(b) Incumbents of positions requiring the advice and consent of the Senate. In the case of a position requiring the incumbent's confirmation by the Senate, the designated agency ethics official shall immediately apprise the Office of Government Ethics of any ethics agreement which the incumbent has made.

(c) Designated agency ethics officials not covered by paragraph (a) or (b) and employees of the White House Office and other agencies referred to in 2634.602(c)(5). A designated agency ethics official not covered by paragraph (a) or (b) of this section and each employee of the White House Office, the Office of Vice President, or the Domestic Policy Staff and Office of Administration (agencies in the Executive Office of the President) who is referred to in 2634.602(c)(5) shall include with his or her initial report submitted to the Office of Government Ethics any ethics agreement which such official or employee has undertaken and shall immediately apprise the Office of Government Ethics of any subsequent ethics agreement.

(d) Other reporting individuals. Other reporting individuals desiring to enter into ethics agreements may do so with the designated agency ethics official. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved shall immediately apprise the designated agency ethics official of the agreement.

Sec. 2634.904 Evidence of compliance.

(a) Requisite evidence of action taken.

(1) For ethics agreements of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted by the designated agency ethics official, upon receipt of the evidence, to the Office of Government Ethics and to the Senate confirmation committee.

(2) For ethics agreements of incumbents in positions which required the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted promptly by the designated agency ethics official to the Office of Government Ethics. A designated agency ethics official or an employee referred to in 2634.803(c) of this subpart who is neither a nominee to, nor an incumbent in, an advice-and-consent position, must also promptly send evidence of any action taken to comply with the terms of an ethics agreement to the Office of Government Ethics.

(3) In the case of all other reporting individuals, evidence of any action taken to comply with the terms of an ethics agreement must be sent promptly to the designated agency ethics official.

(b) The following materials and any other appropriate information constitute evidence of the action taken:

(1) Recusal. A copy of any recusal instrument listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors).

Example. A new employee of a Federal safety board owns stock in Nationwide Airlines. She has entered into an ethics agreement to recuse herself from participating in any accident investigations involving that company's aircraft until such time as she can complete a divestiture of the asset. She must give a copy of the recusal instrument to her immediate subordinates and supervisors, and to the designated agency ethics official. The employee has also agreed to recuse herself from any particular matter (as that term is used in 18 U.S.C. 208) that might arise with respect to any of her present or future holdings. There is no requirement to execute a recusal instrument for this type of general recusal, because it is simply a promise to abide by the terms of the statute.

(2) Divestiture or resignation. Written notification that the divestiture or resignation has occurred.

(3) Waivers. A copy of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.

(4) Blind or diversified trusts. Information required by subpart D of this part to be submitted to the Office of Government Ethics for its certification of any qualified trust instrument. If the Office of Government Ethics does not certify the trust, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.

Sec. 2634.805 Retention.

Records of ethics agreements and actions described in this subpart shall be maintained with the individual's financial disclosure report at the agency and additionally, in the case of filers described in paragraphs (a), (b), and (c) of 2634.803 of this subpart, at the Office of Government Ethics.

SUBPART I: CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS

Sec. 2634.901 Policies of confidential financial disclosure reporting.

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by 2634.907 of this subpart reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from

employees who file public reports, it may proceed on a confidential, nonpublic basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as "confidential," and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act's system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3 (A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel shall not publicly release the reports or the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT-2 Governmentwide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see 2634.104 and 2634.105.

Sec. 2634.902 Transition to the new confidential financial disclosure reporting system.

(a) The new confidential financial disclosure reporting system for executive branch departments and agencies established by this subpart will become effective on October 5, 1992. Until this subpart becomes effective, each executive agency shall continue to comply with its current regulations governing confidential statements regarding employment and financial interests, as promulgated under prior Executive Order 11222, and 5 CFR part 735, s 735.106 and subpart D, and as preserved by the savings clause of section 502(a) of Executive Order 12674 as modified by Executive Order 12731.

(b) To the extent feasible, agencies should strive to eliminate overlaps between, or gaps in, reporting periods as the transition to the new confidential reporting system takes place. However, the reporting periods prescribed under the new system, once effective, must be followed.

(c) Once effective, this new subpart and any other portions of this part applicable to confidential reports will supersede 5 CFR 735.106, all of subpart D of part 735 of 5 CFR, and any implementing agency regulations thereunder. See also 2634.103 and 2634.601 and 2634.901 of this subpart concerning requests for new special supplemental agency regulations and forms, where necessary.

(d) As required by applicable law and Executive order, the confidential statements regarding employment and financial interests which were collected and retained under existing confidential financial disclosure reporting systems shall continue to be held in confidence. See section 107(a)(2) of the Act, as effective January 1, 1991 (as well as former section 207(a)(2) thereof, which was effective through December 31, 1990), section 502(b) of Executive Order 12674 as modified by Executive Order 12731 (and the prior ethics Executive Orders 11222 and 12565), and 2634.901(d) of this subpart.

Sec. 2634.903 General requirements, filing dates, and extensions.

(a) Incumbents. A confidential filer who holds a position or office described in 2634.904 of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the twelve-month period ending September 30 (including more than 60 days in an acting capacity) shall file a confidential report containing the information prescribed in 2634.907 and 2634.908 of this subpart on or before October 31 immediately following that period. For confidential filers under 2634.904(c) of this subpart, consult agency supplemental regulations.

(b) New entrants.

(1) No later than 30 days after assuming a new position or office described in 2634.904 of this subpart (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer shall file a confidential report containing the

information prescribed in 2634.907 and 2634.908 of this subpart. For confidential filers under 2634.904(c) of this subpart, consult agency supplemental regulations.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming his position, left another position or office referred to in 2634.904 of this subpart or in 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed.

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of this section, agencies may at their discretion, require that prospective entrants into positions described in 2634.904 of this subpart file their new entrant confidential financial disclosure reports prior to serving in such positions, to insure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee shall file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) Advisory committee definition. For purposes of this subpart, the term advisory committee shall have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) Extensions. The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

Sec. 2634.904 Confidential filer defined.

The term confidential filer includes:

(a) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(1) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially through decision or the exercise of significant judgment, in taking a Government action regarding:

(i) Contracting or procurement;

(ii) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(iii) Regulating or auditing any non-Federal entity; or

(iv) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by that employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1. A contracting officer drafts the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action. The contracting officer should be required to file a confidential financial disclosure report.

Example 2. An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with a permit to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

(b) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees as defined in 18 U.S.C 202(a) and 2634.105(s), including those who serve on advisory committees. The term special Government employees does not include an advisory committee member who serves only as a representative of an industry of other outside entity or who is already a Federal employee.

Example 1. A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2. An advisory committee member (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report, since she is a special Government employee.

(c) Each public filer referred to in 2634.202 on public disclosure who is required by agency regulations issued in accordance with 2634.907(b) of this subpart to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(d) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under 2634.203, is covered by the criteria of paragraph (a) of this section.

Sec. 2634.905 Exclusions from filing requirements.

Any individual or class of individuals, including special Government employees, described in 2634.904 of this subpart, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

(a) The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;

(b) The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:

(1) The substantial degree of supervision and review over the position; or

(2) The inconsequential effect of any potential conflict on the integrity of the Government; or

(c) The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest.

Example 1. An agency special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that his actions will create a conflict of interest is remote. The draftsman need not be required by the agency to file a confidential financial disclosure report.

Example 2. An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. The agency may decide not to require the investigator to file a confidential disclosure report.

Example 3. A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined

that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternate procedure, if approved by the Office of Government Ethics in writing, will suffice for a conflict of interest review. Therefore, the agency may exclude the auditor from filing a confidential disclosure report under this subpart.

Sec. 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final.

Sec. 2634.907 Report contents.

(a) Other than the reports of confidential filers described in 2634.904(c), each confidential financial disclosure report filed pursuant to 2634.903 of this subpart shall include on the standard form prescribed by the Office of Government Ethics (see 2634.601 of subpart F of this part) and in accordance with instructions issued by the Office, a full and complete statement of information required to be reported according to the provisions of subpart C of this part, (except for those provisions in subpart C requiring the reporting of the amounts or values of any item), with respect to the following:

- (1) Interests in property. All the interests in property specified by 2634.301;
- (2) Income. All the income items specified by 2634.302;
- (3) Gifts and reimbursements. All gifts and reimbursements specified by 2634.304 (except that new entrants, as described in 2634.903(b) of this subpart, need not report any information on gifts and reimbursements);
- (4) Liabilities. All liabilities specified by 2634.305;
- (5) Agreements and arrangements. All agreements and arrangements specified by 2634.306; and
- (6) Outside positions. All outside positions specified by 2634.307.

(b) For reports of confidential filers described in 2634.904(c) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

- (1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and
- (2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under 2634.103 and 2634.601(b) (see 2634.901 (b) and (c) of this subpart).

Sec. 2634.908 Reporting periods.

(a) Incumbents. Each confidential financial disclosure report filed under 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months ending September 30, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) New entrants. Each confidential financial disclosure report filed under 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

Sec. 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

SUBPART J: CERTIFICATES OF DIVESTITURE**Sec. 2634.1001 Nonrecognition for sales to comply with conflict of interest requirements; general considerations.**

(a) Purpose. This subpart establishes the procedures and policies of the Office of Government Ethics with respect to the issuance of Certificates of Divestiture pursuant to section 1043 of the Internal Revenue Code of 1986 (hereinafter in this subpart referred to as "section 1043").

(b) Scope. Section 1043 and the rules of this subpart provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of this subpart relate to the issuance of Certificates of Divestiture and the permitted property into which a rollover (as such reinvestment are called) must be made in order for nonrecognition to be permitted. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service. Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 must be followed by eligible persons wishing to make such an election.

(c) Policy. The Federal purpose reflected in section 1043 of the Internal Revenue Code and these rules is to minimize the burden of Government service resulting from gain on the sale of assets for which divestiture is reasonably necessary because of the conflict of interest laws, in order to attract and retain highly qualified personnel in the executive branch and to ensure the confidence of the public in the integrity of Government officials and decision-making processes.

Sec. 2634.1002 Issuance of Certificates of Divestiture.

(a) General rule. Pursuant to section 1043, a Certificate of Divestiture with respect to specific property shall be issued by the Director of the Office of Government Ethics pursuant to the procedures of paragraph (b) of this section upon a determination that such divestiture by an eligible person as defined in paragraph (c) of this section is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order, or pursuant to the request of a congressional committee as a condition of confirmation.

(b) Procedural requirements

(1) Required submissions. A determination to issue a Certificate of Divestiture may be made by the Director of the Office of Government Ethics only upon the submission by the designated agency ethics official of the agency of employment or proposed employment of the individual referred to in paragraph (c)(1) of this section of full and complete case materials to the Office of Government Ethics. Such case materials shall include:

(i) A copy of the written request from such individual to the designated agency ethics official to pursue certification in the case of the property to be divested;

(ii) In the case of an individual referred to in paragraph (c)(1) of this section who is required by the rules of this part, or part 735 (subpart D) or part 2633 or this title, to file a financial disclosure report, a copy of the latest report which has been filed;

(iii) A detailed description of the specific property as to which divestiture is contemplated;

(iv) Complete statements of:

(A) The facts and circumstances relevant to whether there is a reasonable necessity for divestiture (including a description of the position or applicable statutory citation setting forth the duties of the subject position); and

(B) Analysis and opinion from such designated agency ethics official concerning the application of the rules of this subpart in the case of the proposed certification; and

(v) In lieu of the materials described in paragraph (b)(1)(iv) of this section, in the case of the contemplated divestiture of specific property pursuant to the request of a congressional committee as a condition of confirmation, such materials shall include the written acknowledgement of the Chairman of such committee of such request.

(2) Standards for issuance. Certification pursuant to the rules of this subpart relates to the reasonable necessity for the divestiture of specific property pursuant to section 1043. Divestiture is one of the standard remedial actions available to comply with conflict of interest statutes, regulations, rules, and executive orders (see 2634.604(b)(5)), and certification ameliorates the impact of a divestiture. In cases in which the

contemplated divestiture is not pursuant to the request of a congressional committee as a condition of confirmation, a Certificate of Divestiture will be issued by the Director of the Office of Government Ethics only if he concurs with the opinion of the designated agency ethics official referred to in paragraph (c)(1)(iv)(B) or this section that such divestiture is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order. Issues relating to whether the terms of a contemplated divestiture constitute a sale or other disposition of the property under Internal Revenue Service Rules and other tax matters are under the jurisdiction of the Internal Revenue Service. See 2634.1001(b).

(3) Documentation of the certification. Certification shall be indicated by a letter from the Director to the eligible party or his representative.

(c) Eligible person. For purposes of section 1043 and this subpart, the term "eligible person" includes:

(1) Any officer or employee of the Executive branch of the Federal government, except a person who is a special Government employee as defined in 18 U.S.C. 202; and

(2) The spouse and any minor or dependent child of an individual referred to in paragraph (c)(1) of this section whose ownership of property required to be divested is attributable to such person by 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order.

Sec. 2634.1003 Permitted property.

(a) In general. The categories of permitted property into which rollovers are permitted to be made have been drawn through the rules of this section so as to be neutral in respect of the vast majority of Federal programs and responsibilities. The Internal Revenue Service has jurisdiction with respect to determinations concerning the application of the rules of this section in specific cases (see 2634.1001(b)). However, the ethics program rules applicable to specific agencies and positions may further limit an eligible person's choices. The advice of the designated agency ethics official should be sought in this regard. For example, there are restrictions on the purchases of shares in regulated investment companies by some Securities and Exchange Commission personnel and on purchases of obligations of the United States by some officials of the Department of the Treasury. Additionally, it may not be appropriate for some officials of agencies having international responsibilities to invest in mutual funds which exclusively invest in securities outside of the United States.

(b) Definition of "permitted property". For purposes of section 1043 and this subpart, the term "permitted property" means:

(1) Any obligation of the United States; and

(2) Any "diversified investment fund", as defined in paragraph (c) of this section.

(c) Diversified investment fund

(1) Definition. The term "diversified investment fund" means any open-end mutual fund (which is a "regulated investment company", as defined by section 851 of the Internal Revenue Code of 1986), which by its prospectus, or any common trust fund maintained by a bank (which is a "common trust fund", as defined by section 584(a) of the Internal Revenue Code of 1986), which by the literature it distributes to prospective and current investors describing its objectives and practices, does not indicate the objective or practice of devoting its investments to particular or limited industrial, economic, or geographic sectors.

(2) Ownership limitation. Notwithstanding any other rule of this paragraph (c), a fund may not be considered to be a diversified investment fund in any case in which the ownership of more than one percent of the market value of the fund would be attributable to an individual referred to in 2634.1002(c)(1) immediately after a rollover.

Example 1: The Alpha Group is a family of funds which markets numerous open-end mutual funds which are typical of those generally available to the general public:

(i) The following funds of the Alpha Group would be presumed to be diversified investment funds for purposes of paragraph (c)(1) of this section, unless their prospectuses indicated an objective or practice of devoting their investments to particular or limited industrial, economic, or geographic sectors: the Common Stock Fund, the Growth Stock Fund, the S&P Index Fund, the Global Fund (investing in common stocks world-wide), the Blue Chip Fund, the Corporate Bond Fund, the Municipal Bond Fund, and the Government Bond Fund (which invests exclusively in obligations of the United States).

(ii) The following funds of the Alpha Group would not be presumed to qualify as diversified investment funds, unless their prospectuses indicated that they do not have an objective or practice of devoting their investments to particular or limited industrial, economic, or geographic sectors for purposes of paragraph (c)(1) of this section: The Pacific fund, the Mexico Fund, the New England Fund, the Gold Fund, the Commodity Futures Fund, the Venture Capital Fund, and the Drug Industry Sector Fund.

Example 2: The Omega Fund is a closed-end mutual fund which is listed on the New York Stock Exchange. The Omega Fund is not a diversified investment fund, as only open-end mutual funds are within the definition of that term pursuant to paragraph (c)(1) of this section.

Sec. 2634.1004 Special rule.

Public access to Certificates of Divestiture. The Certificates of Divestiture issued pursuant to the provisions of this part shall be available to the public in accordance with the rules of 2634.603 of this part.

SECTION 2. PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278)

7-200. Individuals Required to File

a. Covered Positions. For purposes of this section, the following individuals are in "covered positions" and are required by the Ethics in Government Act of 1978, Pub. L. 95-521 (reference (b)) to file an SF 278, Appendix C of this Regulation, with their DoD Component DAEO or designee as set out in subsection 7-205 of this Regulation, below:

- (1) Civilian Presidential appointees;
- (2) Regular and Reserve military officers whose pay grade is 0-7 or above;
- (3) Members of the Senior Executive Service;
- (4) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM-15 prescribed by 5 U.S.C. 5332 (reference (c)) or whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM-15;
- (5) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See subsection 7-200.d. of this Regulation, below;
- (6) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c));
- (7) Civilian individuals who are detailed to positions described in subsection 7-200.a.(3) through 7-200.a.(5) of this Regulation, above;
- (8) DoD Component DAEOs.

b. Waiver. An individual otherwise required to file an SF 278, Appendix C of this Regulation, but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above.

c. Exception. An individual who is nominated to or assumes a covered position is not required to file an SF 278, Appendix C of this Regulation, if the Secretary concerned or the DoD Component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the duties of the position for more than 60 days in a calendar year, an SF 278, Appendix C of this Regulation, shall be filed within 15 days after the 61st day of duty.

d. Exclusion. The Director, OGE, may exclude an individual who is in a covered position under subsection 7-200.a.(5) of this Regulation, above, from the requirement to file an SF 278, Appendix C of this Regulation, in accordance with 5 C.F.R. 2634.203 (reference (a)) in subsection 7-100 of this Regulation, above.

7-201. Information on Covered Positions. The directors of DoD Component personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees:

a. The name, position, grade, organization and entrance-on-duty or termination date of each individual assigned to the DoD Component who is required to file a new entrant or termination SF 278, Appendix C of this Regulation, immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, "Request for Personnel Action," August 1988, Appendix C of this Regulation, requesting approval of the retirement, resignation, or removal of the individual from such a position;

b. By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD Component who is required to file an annual SF 278, Appendix C of this Regulation.

7-202. Notification of Requirement to File. Each DoD Component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing.

7-203. Time of Filing

a. Nomination Reports

(1) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD Component DAEO shall ensure the nominee's SF 278, Appendix C of this Regulation, is filed with appropriate authorities.

(2) The report shall contain the information prescribed in the "Instructions for Completing SF 278" attached to the SF 278,

Appendix C of this Regulation. These reports shall be certified by the DoD Component DAEO, and processed as prescribed by OGE regulation, 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above.

(3) Unless otherwise required by the Senate, nomination reports are not required of individuals nominated to positions as military officers. Such individuals must file new entrant reports as prescribed below.

b. New Entrant Reports

(1) Within 30 days of assuming a covered position, a reporting individual shall submit an SF 278, Appendix C of this Regulation.

(2) The report shall contain the information prescribed for new entrant reports in the "Instructions for Completing SF 278" attached to the SF 278, Appendix C of this Regulation.

(3) No new entrant report is necessary if the reporting individual has, within 30 days prior to assuming a new position, left another covered position for which the reporting individual filed an SF 278, Appendix C of this Regulation.

(4) Notwithstanding subsection 7-200.c. of this Regulation, above, Reserve military officers shall file a new entrant report within 30 days of promotion to grade O-7, regardless of whether they are expected to perform active duty for more than 60 days.

c. Annual Reports. Any time after January 1 but not later than May 15, a reporting individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual SF 278, Appendix C of this Regulation. For Reserve military officers, only service pursuant to orders issued under title 10, United States Code, is counted.

d. Termination Reports. Not sooner than 15 days before but not later than 30 days after termination from a covered position, a reporting individual shall submit an SF 278, Appendix C of this Regulation. A termination report is not required of a reporting individual who, within 30 days of such termination, assumes another covered position. A termination report is not required of a Reserve military officer in the grade of O-7 or above who did not serve more than 60 days on active duty during the calendar year in which the military officer is transferred to the Retired Reserve.

e. Extension of Filing Deadlines. The DoD Component DAEO, in the case of civilian Presidential appointees, and the DoD Component DAEO or designee in other cases, may grant, for good cause, a filing extension up to 45 days. All requests for extensions shall be provided, in writing, by the reporting individual to the DoD Component DAEO or designee. The request shall contain a clear statement of the reasons for the request and shall be submitted in advance of the original filing deadline. Requests for additional time beyond the initial 45 day extension shall be forwarded by the appropriate DoD Component DAEO or designee with his comments to the Director, OGE, who may grant an additional 45 days extension. The reporting individual shall notify his supervisor of any extension granted.

f. Combined Annual and Termination Reports. Reporting individuals who anticipate terminating their DoD employment before June 30 may request an extension from the appropriate DoD Component DAEO or designee of up to 45 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment or service but not later than July 15.

g. Late Filing Fee

(1) Any reporting individual who is required to file an SF 278, Appendix C of this Regulation, and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 late filing fee. See 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation. Such fee shall be collected by the DoD Component DAEO or designee for deposit with the U.S. Treasury.

(2) If the reporting individual fails to remit the \$200 fee within 90 days, the fee shall be subject to DoD Component debt collection procedures.

(3) If extraordinary circumstances existed that caused the late submission of the report, a request for a waiver of the fee may be submitted by the reporting individual with supporting documentation to the DoD Component DAEO or designee. The DoD Component DAEO or designee shall review the request and forward it with a recommendation for approval or denial to OGE. OGE will grant or deny the waiver.

7-204. Content of Report

a. Instructions for completing the SF 278, Appendix C of this Regulation, are attached to the form. See detailed instructions at 5 C.F.R. 2634.301 through 2634.408 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

b. A complete report is required even if no changes have occurred since the last submission.

c. Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination from the covered position.

d. A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate even if it limits disclosure to the reporting individual.

7-205. Chain of Submission. A reporting individual shall submit his SF 278, Appendix C of this Regulation, as follows:

a. A civilian Presidential appointee shall file directly with his DoD Component DAEO or designee;

b. Any other reporting individual shall submit his SF 278, Appendix C of this Regulation, through his supervisor and through his Ethics Counselor to the DoD Component DAEO or designee. In some cases, the Ethics Counselor and the DoD Component DAEO or designee are the same person;

(1) A military officer serving in a DoD Component or in the Central Intelligence Agency shall submit his report through his supervisor directly with the DAEOs or designees of those agencies;

(2) A military officer serving in OSD or for the Chairman of the Joint Chiefs of Staff and Joint Staff, shall submit his report, through his supervisor, to the GC, DoD, as the DoD Component DAEO;

(3) A military officer serving in a joint, Unified, Specified or Combined Commands, other than a Commander in Chief, shall file through his supervisor directly with his DoD Component DAEO or designee. A Commander in Chief of such command shall file with the Legal Advisor to the Chairman of the Joint Chiefs of Staff.

c. A reporting individual who has more than one immediate supervisor shall submit his report through both supervisors prior to submitting it to the DoD Component DAEO or designee. Such a reporting individual may submit a copy of his report to one supervisor and the original to the other in order to expedite processing;

d. Reporting individuals on detail to other Executive or Legislative Branch Agencies shall follow the filing requirements and procedures of those agencies.

7-206. Review

a. Initial Supervisor Review. Upon receipt of an SF 278, Appendix C of this Regulation, the supervisor of the reporting individual shall review the report to determine if any of the reported financial interests reveal a conflict of interest with the reporting individual's current and future official duties. See 5 C.F.R. 2634.605(b) (reference (a)) in subsection 7-100 of this Regulation, above. The supervisor shall supplement the report with any required information or data, including comments on the existence of actual or apparent conflicts of interest, and forward the report with all attachments to the Ethics Counselor. If any review reveals a conflict or apparent conflict, the supervisor shall ensure that the matter is resolved in accordance with subsection 7-206.b.(7) of this Regulation, below.

b. Ethics Counselor Review

(1) When applicable, the Ethics Counselor shall review each report to determine that:

(a) Each item is completed; and

(b) No interest or position disclosed on the report violates or appears to violate:

1 Any applicable provision of Chapter 11 of title 18, United States Code (reference (d));

2 Pub. L. 95-521 (reference (b)), and implementing regulations;

3 E.O. 12674 (reference (e)), in subsection 12-100 of this Regulation and implementing regulations; or

4 Any other related laws or regulations applicable to DoD employees.

(2) The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, to ensure that there are no omissions, the previous report of each reporting individual, if applicable, shall be compared to the current submission.

(3) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(a) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an excepted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report, such as "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(b) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for evaluation in accordance with the standards set forth in subsection 7-206.b.(1) of this Regulation, above, with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(4) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist, and forward it to the appropriate DoD Component DAEO or designee.

(5) If the Ethics Counselor disagrees with the supervisor's evaluation, and concludes that the report does not comply with applicable laws and regulations, he shall do the following:

(a) Notify the reporting individual in writing of the preliminary determination;

(b) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(c) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist and dispose of the report in accordance with subsection 7-206.b.(4) of this Regulation, above. If the Ethics Counselor determines that it does not, he shall:

of the conclusion; 1 Notify the reporting individual

an opportunity for personal consultation, if practicable; 2 Afford the reporting individual

should be taken to bring the reporting individual into compliance; 3 Determine what remedial action

in writing, of the remedial action required, indicating a date by which that action must be taken; and 4 Notify the reporting individual,

the reporting individual is notified of the required remedial action and date by which that action must be taken. 5 Ensure that the supervisor of

(6) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within three months from the date the reporting individual was notified that the action is required.

(7) Remedial steps, in accordance with 5 C.F.R. 2634.605 et seq. (reference (a)) in subsection 7-100 of this Regulation, above, may include the following measures:

(a) Divestiture:

1 Any reporting individual or the spouse, minor or dependent child of a reporting individual, may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208 (reference (d)), or any other Federal Government conflict of interest statute, regulation, rule, or Executive Order, or pursuant to the request of the Senate as a condition of confirmation;

2 If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 C.F.R. 2634.1001 (reference (a)) in subsection 7-100 of this Regulation, above;

3 The following items must be submitted to the Director, OGE, by the DoD Component DAEO:

(i) A copy of the written request from the reporting individual to the DoD Component DAEO to seek certification in the case of the property to be divested;

(ii) A copy of the latest SF 278 or SF 450, Appendix C of this Regulation;

(iii) A detailed description of the specific property for which divestiture is contemplated;

(iv) A complete statement by the DoD Component DAEO or designee of the facts and circumstances relevant to the requirement for divestiture and an explanation of the rules that apply to the requirement for divestiture;

(v) An analysis and recommendation as to whether the certificate should be granted.

4 The Director, OGE, will issue a Certificate of Divestiture when divestiture is a condition for Senate confirmation or is reasonably necessary to comply with conflict of interest requirements.

(b) Disqualification in accordance with subsection 2-204 of this Regulation;

(c) Limitation of duties;

(d) Transfer or reassignment;

(e) Resignation;

or (b)(3) (reference (d));

(g) Establishment of a qualified blind

trust.

(8) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the SF 278, Appendix C of this Regulation. The Ethics Counselor shall then follow the procedures set forth in subsection 7-206.b.(4) of this Regulation, above.

(9) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor

shall report the matter to the Agency Designee for appropriate action, with an information copy to the DoD Component DAEO.

c. DoD Component DAEO Review

(1) The DoD Component DAEO or designee shall review the report in accordance with the standards set forth in subsections 7-206.b.(1) and 7-206.b.(2) of this Regulation, above.

(2) Additional information required by the DoD Component DAEO or designee shall be collected in accordance with subsection 7-206.b.(3) of this Regulation, above.

(3) The DoD Component DAEO or designee shall notify the reporting individual of any necessary remedial action in accordance with procedures set forth in subsection 7-206.b.(5) of this Regulation, above.

(4) When the DoD Component DAEO or designee determines that no item violates, or appears to violate, any applicable law or regulation, or when the DoD Component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, the DoD Component DAEO or designee shall sign and date the report.

(5) If steps ensuring compliance with applicable laws or regulations are not taken by the date established, the DoD Component DAEO or designee shall report the matter to the Head of the DoD Component for remedial action, with an information copy to the Director, OGE.

(6) If the DoD Component DAEO or designee concludes that no item violates, or appears to violate, any applicable law or regulation, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the DoD Component DAEO or designee may issue a memorandum of caution to the reporting individual.

(7) All reports shall be reviewed within 60 days after the date of filing. The DoD Component DAEO or designee shall record the date of the review and ensure that all reports are reviewed within the 60 day period. After review, the DoD Component DAEO or designee may proceed to obtain additional information, seek remedial action, or sign and date the report.

d. Special Reviewing Requirements of O-9 and O-10 Flag and General Officer Nominees

(1) As part of the process for approving nominees for appointment to O-9 and O-10 Flag or General officer positions, the Secretaries of the Military Departments shall ensure that the nominee has a current SF 278, Appendix C of this Regulation, on file and that the report has been

reviewed by the appropriate DoD Component DAEO or designee in relation to the position for which he is being considered.

(2) Secretaries of Military Departments shall cause a review of all relevant systems of records maintained by their departments including investigative files, to determine if there is any evidence that the nominee has violated the rules or standards of conduct.

(3) Each nomination forwarded to the Secretary of Defense shall be accompanied by a certification by the Secretary of the Military Department concerned that the required review has been conducted and has or has not disclosed a violation of the rules or standards of conduct.

7-207. Disposition

a. Designation of Certifying Official. Only the Head of the DoD Component or the DoD Component DAEO may certify nomination reports required to be filed by a reporting individual who is nominated by the President to a position requiring the advice and consent of the Senate. For all other reports, the DoD Component DAEO may delegate this responsibility to other officials within the DoD Component.

b. Disposition. The SF 278, Appendix C of this Regulation, and a complete record of all action taken thereon shall be retained for a period of six years by the DoD Component DAEO or designee, and a copy of the report shall be forwarded to OGE, when required. After the six-year period, the report shall be destroyed, unless needed in an ongoing investigation. In the case of a reporting individual who filed a report as a nominee and was not subsequently confirmed by the Senate, the report shall be destroyed one year after the reporting individual is no longer under consideration by the Senate.

7-208. Public Availability of Reports. SF 278s, Appendix C of this Regulation, must be made available for public inspection 30 days after the reports are filed unless otherwise exempted under law. OGE Form 201, "Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report," Appendix C of this Regulation, shall be filed by a requestor before inspecting an SF 278, Appendix C of this Regulation.

7-209. Penalties

a. Action within a DoD Component. The Head of the DoD Component may take appropriate action, including adverse action, in accordance with applicable laws or regulations, against any reporting individual who fails to file an SF 278, Appendix C of this Regulation, or who falsifies or fails to report required information.

b. Action by the U.S. Attorney General. The U.S. Attorney General may bring a civil action in the U.S. District Court against any individual who knowingly and willfully falsifies or fails to file or report information required to be reported. The court may assess a civil penalty. Knowing and willful falsification of information required to be filed may also result in criminal prosecution under 18 U.S.C. 1001 (reference (d)), leading to a fine or imprisonment of not more than five years, or both.

c. Misuse of Reports

(1) The U.S. Attorney General may bring a civil action against an individual who obtains or uses an SF 278, Appendix C of this Regulation, filed under Pub. L. 95-521 (reference (b)), for the following reasons:

- (a) Any unlawful purpose;
- (b) Any commercial purpose other than by news and communications media for dissemination to the general public;
- (c) Determining or establishing the credit rating of any individual;
- (d) Directly or indirectly, for the solicitation of money for any political, charitable or other purpose.

(2) The court in which the action is brought may assess a penalty against a person in any amount, not to exceed \$10,000. This shall be in addition to any other remedy available under statutory or common law.

SECTION 3. CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (SF 450)

7-300. Individuals Required to File

a. Covered Positions. For purposes of this section, unless required to file an SF 278, Appendix C of this Regulation, or unless expressly exempted, the following individuals are in "covered positions" and are required by 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above, to file initial and annual SF 450, Appendix C of this Regulation, through their supervisor to their Ethics Counselor as set out in subsection 7-305 of this Regulation, below:

- (1) Commanding officers, heads and deputy heads, and executive officers of:

(a) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect hire personnel regularly attached but excluding personnel attached for temporary duty); and

(b) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(2) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(a) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(b) Veterinarians providing only veterinary services;

(c) Lecturers participating only in educational activities;

(d) Chaplains performing only religious services;

(e) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(f) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(g) Members of selection panels for ROTC candidates.

(3) DoD employees classified at GS/GM-15 or below under 5 U.S.C. 5332 (reference (c)) or a comparable pay level under other authority, and members of the military below the grade of O-7 as follows:

(a) When the official responsibilities of such DoD employees require them to participate personally and substantially though decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(b) Any DoD employees serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(4) Individuals who are detailed to positions described in subsection 7-300.a.(3) of this Regulation, above.

(5) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c)).

b. Exclusion. Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD Component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE.

7-301. Information on Covered Positions

a. The directors of personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees they service:

(1) Immediately upon the appointment of covered DoD employees, the name, position, organization and entrance-on-duty date of DoD employees required by their supervisor to file a new entrant SF 450, Appendix C of this Regulation;

(2) By October 3 of each year, a list of the names, positions and organizations, when applicable, of DoD employees who are required to file an annual SF 450, Appendix C of this Regulation.

b. Coordination is required as follows:

(1) Administrative Officers (or equivalent) of each organization shall coordinate with the supervisors within their organization, in consultation with the DoD Component DAEO or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In

addition, it is the Administrative Officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(2) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in subsection 7-300 of this Regulation, above, contain a statement that an SF 450, Appendix C of this Regulation must be filed. All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

7-302. Notification of Requirement to File. DoD Component DAEOs or designees shall provide appropriate notices and instructions to ensure the timely preparation of the reports and submission to their supervisors and their Ethics Counselors for review and filing.

7-303. Time of Filing

a. New Entrant Reports

(1) Except for a special Government employee, a reporting individual shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(2) A special Government employee shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

b. Annual Reports. A reporting individual (except a special Government employee) who was employed at least 61 days during the preceding reporting period must submit an SF 450, Appendix C of this Regulation, to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for 61 days.

c. Extension of Filing Deadline

(1) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual, the DoD Component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(2) Requests for extensions shall be submitted in writing.

(3) Each annual reporting individual is automatically granted a 30 day extension by this Regulation to make the reporting deadline November 30 as stated in subsection 7-303.b. of this Regulation, above. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

7-304. Content of Report

a. Instructions for completing the SF 450, Appendix C of this Regulation, are included on the report. See instructions at 5 C.F.R. 2634.907 and 908 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

b. A complete report is required even though no changes have occurred since the last submission.

c. A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

7-305. Chain of Submission. A reporting individual shall submit his SF 450, Appendix C of this Regulation, through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

7-306. Review

a. Upon receipt of an SF 450, Appendix C of this Regulation, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in subsection 7-306.b. of this Regulation, below, and forward it with any comments to the local Ethics Counselor for further review.

b. The Ethics Counselor shall review each report to determine that:

- (1) Each item is completed; and
- (2) No interest or position disclosed on the report violates or appears to violate:
 - (a) Any applicable provision of Chapter 11 of title 18, United States Code (reference (d));
 - (b) Pub. L. 95-521 (reference (b)), and implementing regulations;
 - (c) E.O. 12674 (reference (e)) in subsection 12-100 of this Regulation, and implementing regulations; or
 - (d) Any other related laws or regulations applicable to DoD employees of the Agency.

c. The Ethics Counselor shall not sign and date the report until the determinations described in subsection 7-306.b. of this Regulation, above, are made. The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report.

d. If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(1) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an excepted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report such as, "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(2) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for his evaluation in accordance with the standards set forth in subsection 7-306.b. of this Regulation,

above, with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

e. If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then the Ethics Counselor shall sign and date the report.

f. If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the Ethics Counselor may issue a memorandum of caution to the reporting individual and shall sign and date the report.

g. If the Ethics Counselor disagrees with the supervisor's evaluation that no item violates or appears to violate applicable laws or regulations, then the Ethics Counselor shall do the following:

(1) Notify the reporting individual, in writing, of the preliminary determination;

(2) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(3) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall sign and date the report. If the Ethics Counselor determines that it does not, he shall:

(a) Notify the reporting individual of the conclusion;

(b) Afford the reporting individual an opportunity for personal consultation, if practicable;

(c) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(d) Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken;

(e) Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

h. Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

i. Remedial steps, in accordance with 5 C.F.R. 2634.605 et seq. (reference (a)) in subsection 7-100 of this Regulation, above, may include the following measures:

(1) Divestiture:

(a) Any DoD employee or the spouse, minor or dependent child of a DoD employee may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208 (reference (d)), or any other Federal Government conflict of interest statute, regulation, rule, or Executive order;

(b) If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 C.F.R. 2634.1001 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance;

(c) The following items must be submitted to the Director, OGE, by the DoD Component DAEO:

1 A copy of the written request from the individual to the DoD Component DAEO to seek certification in the case of the property to be divested;

2 A copy of the latest SF 278 or SF 450, Appendix C of this Regulation;

3 A detailed description of the specific property in which divestiture is contemplated;

4 A complete statement by the DoD Component DAEO or designee of the facts and circumstances relevant to the requirement for divestiture and an explanation of the rules that apply to the requirement for divestiture;

5 An analysis and recommendation as to whether the certificate should be granted.

(d) The Director, OGE, will issue a Certificate of Divestiture when divestiture is reasonably necessary to comply with conflict of interest requirements.

- (2) Disqualification in accordance with subsection 2-204 of this Regulation;
- (3) Limitation of duties;
- (4) Transfer or reassignment;
- (5) Resignation;
- (6) Exemption under 18 U.S.C. 208(b)(1) or (b)(3) (reference (d));
- (7) Establishment of a qualified blind trust.

j. When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made on the SF 450, Appendix C of this Regulation. The Ethics Counselor shall then sign and date the SF 450, Appendix C of this Regulation, and dispose of it in accordance with subsection 7-307 of this Regulation, below.

k. If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the Agency Designee for appropriate action, with an information copy to the DoD Component DAEO.

l. All reports shall be reviewed within 60 days after the date of filing and the Ethics Counselor shall record the date of the initial review. After the initial review, the Ethics Counselor shall obtain additional information, as necessary, seek remedial action, or sign and date the report.

7-307. Disposition. The SF 450, Appendix C of this Regulation, and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the agency, command or activity to which the reporting individual was assigned at the time of filing, after which they shall be destroyed, unless needed in an ongoing investigation.

7-308. Privacy Act. The SF 450, Appendix C of this Regulation, is a confidential report. Accordingly, the reports are protected by the Privacy Act, 5 U.S.C. 552 (reference (c)), and are exempt from being released to the public under the Freedom of Information Act, 5 U.S.C. 552(b)(3)(A) and (B), (b)(4) and (b)(6) (reference (c)).

7-309. Status Reports

a. Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450, Appendix C of this Regulation. The status report shall be sent through the head of the DoD Component command or organization to the respective DoD Component DAEO or designee and shall contain the following information:

(1) The number of individuals required to file an annual SF 450, Appendix C of this Regulation; and

(2) The number of individuals who have not filed an SF 450 as of November 30.

b. Subsequent to December 15, monthly reports may be required by the DoD Component DAEO to be filed for those organizations which have not received an SF 450, Appendix C of this Regulation, from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in subsection 7-309.a., above.

7-310. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

b. Criminal Liability. Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

SECTION 4. REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT (DD FORM 1787)

7-400. Individuals Required to File. Each civilian DoD employee of a DoD Component who meets the statutory criteria is required by 10 U.S.C. 2397 (reference (f)) to file a DD Form 1787, "Report of DoD and Defense Related Employment," July 1992, Appendix C of this Regulation, with his Ethics Counselors. A DoD employee meets the criteria if he:

a. Is employed at a pay rate equal to or greater than the minimum rate for a GS/GM-13;

b. Within the two-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

c. Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more at any time during employment.

(1) Compensation is received by an individual if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that individual.

(2) A rate of \$25,000 per year equates to \$12 per hour.

7-401. Time of Filing. DoD employees shall file a DD Form 1787, Appendix C of this Regulation, with their local Ethics Counselors within 30 days of entering on duty with the DoD Component.

7-402. Review

a. When a report is filed, the Ethics Counselor shall review the DD Form 1787 to determine whether:

(1) Each item is completed and sufficient information is provided; and

(2) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, or related laws and regulations.

b. The Ethics Counselor need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the Ethics Counselor will resolve any apparent violations to ensure there are no actual violations.

c. If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

d. When the Ethics Counselor has completed the review and accomplished any necessary remedial action, the Ethics Counselor shall sign and date the report and dispose of it in accordance with subsection 7-403 of this Regulation, below.

e. If the Ethics Counselor concludes that the reporting individual is not in compliance with applicable laws or regulations, the Ethics Counselor shall:

(1) Notify the reporting individual, in writing, of the preliminary determination;

(2) Afford the reporting individual an opportunity for personal consultation, if practicable;

(3) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(4) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

f. When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. The Ethics Counselor shall sign and date the report as the reviewing official and dispose of it in accordance with subsection 7-403 of this Regulation, below.

7-403. Disposition

a. After the Ethics Counselor signs and dates the report, the Ethics Counselor shall send the original to the DoD Component DAEO or designee, who shall forward it to SOCO not later than March 15.

b. The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787, Appendix C of this Regulation, is extracted and sent to the Defense Manpower Data Center where a consolidated report to Congress is compiled.

c. If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD Component DAEO and take whatever other action might be required in accordance with Chapter 10 of this Regulation.

d. DD Forms 1787, Appendix C of this Regulation, shall be retained by SOCO for six years from the date of filing with SOCO.

7-404. Public Availability of Reports. DD Forms 1787, Appendix C of this Regulation, must be made available for public examination upon request after the report is filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

7-405. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397 (reference (f)).

b. Criminal Liability. Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

SECTION 5. REFERENCES

7-500. References

- (a) Title 5, Code of Federal Regulations, Part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition
- (b) Public Law 95-521, "Ethics in Government Act of 1979," October 26, 1978, as amended
- (c) Title 5, United States Code, Sections 552, 552a, 3371-3376, and 5332
- (d) Title 18, United States Code, Chapter 11, Sections 208 and 1001
- (e) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989, as amended
- (f) Title 10, United States Code, Section 2397

CHAPTER 8SEEKING OTHER EMPLOYMENTSECTION 1. GENERAL RULES

8-100. Office of Government Ethics Regulation. 5 C.F.R. 2635, Subpart F (reference (a)) in subsection 2-100 of this Regulation, provides rules on seeking other employment that apply to all DoD employees.

SECTION 2. CONFLICT OF INTEREST - (18 U.S.C. 208) (reference (b))

8-200. Negotiating for Employment. See 5 C.F.R. 2635.603 (reference (a)) in subsection 2-100 of this Regulation for provisions on conflicts of interest in employment negotiations under 18 U.S.C. 208 (reference (b)). The provisions of 18 U.S.C. 208 (reference (b)) and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 (reference (b)) do apply to enlisted members as follows: *except as approved by the DoD Component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest.* See 18 U.S.C. 208 (reference (b)), subsections 1-300(b)(1)(a) and 5-301 of this Regulation, and 5 C.F.R. 2635.603 (reference (a)) in subsection 2-100 of this Regulation.

8-201. Penalties. Violation of 18 U.S.C. 208 (reference (b)) is punishable by a fine and imprisonment. The full range of administrative sanctions may also be imposed.

SECTION 3. PROCUREMENT INTEGRITY - (41 U.S.C. 423(b)) (reference (c))8-300. Soliciting, Accepting, or Discussing Employment

a. *During the conduct of a procurement, a procurement official may not knowingly, directly or indirectly, solicit or accept from, or discuss with, any officer, employee, representative, agent, or consultant of a competing contractor, any future employment or business opportunity.* See FAR 3.104-6 (reference (d)) in Appendix B of this Regulation.

(1) The request must provide the DoD Component DAEO or designee with sufficient information to make a determination.

(2) The DoD Component DAEO shall make his determination, in writing, within 30 days, or as soon thereafter as practicable.

(3) A copy of the request and the ethics advisory opinion shall be retained for six years, in accordance with DoD Component procedures.

8-301. Penalties. Violation of the provisions of 41 U.S.C. 423 (reference (c)) is punishable by the full range of sanctions, including the following:

a. Civil Penalties. Individual violators may be subject to a civil fine not to exceed \$100,000. Violators, other than individuals, may be subject to a civil fine not to exceed \$1 million.

b. Administrative Sanctions. See subsection 10-203 of this Regulation.

SECTION 4. REPORTING EMPLOYMENT CONTACTS (10 U.S.C. 2397a)
(reference (e))

8-400. Individuals Required to File. The following DoD employees are required by this Regulation and by 10 U.S.C. 2397a (reference (e)) to report, in writing, their employment contacts to their supervisor and DoD Component DAEO or designee:

a. Any military officer in grade 0-4 or above, or any civilian DoD employee serving in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS/GM-11 who;

b. At any time during his DoD service, performed a "procurement function" involving a defense contractor which received at least \$25,000 a year in DoD business; and

c. Who contacts or is contacted by that defense contractor regarding future employment.

8-401. Content of Report. Reports of employment contacts shall include:

a. The name, title, agency address, and telephone number of the reporting individual;

- b. The name of the defense contractor concerned;
- c. The date of each contact covered by the report; and
- d. A brief description of the substance of each contact.

8-402. Disqualification Statement

a. Individuals Required to File Disqualification

(1) Any DoD employee required to submit a report of an employment contact shall submit to his supervisor a written statement disqualifying himself from participating in any "procurement function" involving the defense contractor until such time as the possibility of future employment with that defense contractor has been rejected by either party.

(2) Procurement officials may be required to request recusal through formal procedures requiring written approval by the head of the contracting agency. See subsection 8-300 of this Regulation, above.

b. Distribution of Disqualification. The disqualification statement shall be given to the DoD employee's supervisor and the Ethics Counselor. It also should be provided to others who might contact the DoD employee regarding the defense contractor which is the subject of the disqualification.

c. Contents of Disqualification. The disqualification statement shall contain:

(1) The name, title, agency address, and telephone number of the DoD employee submitting the report;

(2) The extent of disqualification (i.e., a description of duties affecting the defense contractor the DoD employee may not perform as a result of the disqualification);

(3) Identification of the DoD employee or office that will handle duties during the disqualification period; and

(4) An explanation of any other steps required to avoid potential conflicts of interests;

(5) If the statement is necessary only because of a second contact which was rejected, information in accordance with subsections 8-402.c.(3) and 8-402.c.(4) of this Regulation, above, need not be included.

d. Withdrawal of Disqualification. A DoD employee may withdraw a disqualification if employment discussions conclude with no arrangement regarding future employment, or if such an arrangement is ended, by notifying, in writing, the same individuals who received copies of his disqualification statement.

e. Review and Retention of Disqualification. The supervisor, with the assistance of the Ethics Counselor, shall review the disqualification statement to make sure it will prevent any conflict of interest and to determine whether the DoD employee can still carry out his responsibilities adequately. Both the supervisor and the Ethics Counselor shall retain a copy of the disqualification statement for three years.

8-403. Exception. A DoD employee need not report the contact or disqualify himself from officially participating in a particular matter involving the defense contractor if the first contact was initiated by the defense contractor and the DoD employee immediately terminates the discussion and unequivocally rejects consideration of employment opportunities. If the contact is renewed by either the defense contractor or the DoD employee, all contacts must be reported.

8-404. Penalties. An individual who fails to report an employment contact or to disqualify himself as required by subsections 8-400 through 8-402 of this Regulation, above, may be subject to the following administrative penalties:

a. Prohibition of employment with the defense contractor concerned for up to ten years from the date of separation from DoD; and

b. An administrative penalty not to exceed \$10,000.

SECTION 5. DoD GUIDANCE

8-500. Appearances. DoD employees shall:

a. Ensure that the prospect of employment does not affect the performance or non-performance of their official duties;

b. Ensure that they do not communicate inside information to a prospective employer; and

c. Avoid any activity that would affect the public's confidence in the integrity of the Federal Government, even if it is not an actual violation of the law.

8-501. Written Guidance. DoD employees may obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor:

a. Although the counseling and advice are given by DoD attorneys and involve the interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

b. This counseling and advice is personal to the current or former DoD employee. It does not extend to the individual's business, employer, or prospective employer.

SECTION 6. REFERENCES

8-600. References

- (a) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (b) Title 18, United States Code, Section 208
- (c) Title 41, United States Code, Section 423
- (d) Federal Acquisition Regulation, Part 3.104, current edition
- (e) Title 10, United States Code, Section 2397a

CHAPTER 9

POST-GOVERNMENT SERVICE EMPLOYMENT

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

9-100. 5 C.F.R. 2637, "Regulations Concerning Post-Employment
Conflict of Interest" (reference (a))

[5 C.F.R. 2637 (reference (a)) applies only to DoD
employees who left Federal Government service
before 1991]

REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

5 CFR 2637¹

Table of Contents

SUBPART A: GENERAL PROVISIONS 3

 Sec. 2637.101 Purpose and policy 3
 Authority (3); Consultation with the Attorney General (3); Policy and limitations (3)

 Sec. 2637.102 Definitions 4
 Statutory definitions (4); Interpretative definitions (4)

SUBPART B: SUBSTANTIVE PROVISIONS 5

 Sec. 2637.201 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated 5
 Basic prohibition of 18 U.S.C. 207(a) (5); Representation (5); Particular matter involving a specific party or parties (6); Participate personally and substantially (8); Agency responsibility in complex cases (8)

 Sec. 2637.202 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility 8
 Basic prohibition of 18 U.S.C. 207(b)(1) (8); Official responsibility (8); Other essential requirements (9); Measurement of two-year restriction period (9)

 Sec. 2637.203 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially 10
 Basic prohibition of 18 U.S.C. 207(b)(2) (10); Limitation to "representational" assistance by "personal presence" at an appearance (10); Managerial and other off-scene assistance (10); Representational assistance (10); Measurement of restriction period (10); Other Essential Requirements (10); General Examples (11)

 Sec. 2637.204 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement 11
 Basic prohibition of 18 U.S.C. 207(c) (11); Transactions exempted from the basic prohibition of 18 U.S.C. 207(c) (11); No prior involvement required (12); Specific parties unnecessary (12); Element of controversy or influence required (12); Agency activity or interest in matter (13); Application or proposals for funding of research (13); Personal matters (13); Statements based on special knowledge (14)

 Sec. 2637.205 Limitation of restrictions of 18 U.S.C. 207(c) to less than that whole of a department or agency 14
 Authority (14); Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions (14); Separate Statutory Components (14); Separate Nonstatutory Components (15)

 Sec. 2637.206 Exemption for scientific and technological information 16
 Exemption (16); Necessary information (16); Intent to influence (16); Expert testimony (16); Agency responsibility for procedures (16)

 Sec. 2637.207 Exemption for persons with special qualification in a technical discipline 16
 Applicability (16); When appropriate (17); Certification authority (17); Agency registry (17)

 Sec. 2637.208 Testimony and statements under oath or subject to penalty of perjury 17
 Statutory basis (17); Applicability (17); Statements under penalty of perjury (17)

 Sec. 2637.209 Partners of present or former Government employees 17
 Scope (17); Imputation (17)

 Sec. 2637.210 Officials of a State; officials of corporations created by an Act of Congress and public international organizations 17

 Sec. 2637.211 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. 207(d) 17
 Definitions (18); Designation procedures (18); Differential designation (18); Fair notice of designation (18); "Acting" or temporary positions (19); Special Government Employee (19); Publication (19); Computation of time (19); Position shifting (19); Revocation of Designations (19)

 Sec. 2637.212 Administrative enforcement proceedings 19
 Basic procedures (19)

 Sec. 2637.213 Effective date of restrictions 20
 Persons affected (20); Fair notice of substantive changes (21)

 Sec. 2637.214 Separate statutory agencies: Designations 21
 Parent Agency: DEPARTMENT OF DEFENSE (21)

 Sec. 2637.215 Separate components of agencies or bureaus: Designations 21
 Parent Agency: DEPARTMENT OF DEFENSE (21)

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

SUBPART A: GENERAL PROVISIONS**Sec. 2637.101 Purpose and policy.**

(a) Authority. Section 401(a) of the Ethics in Government Act of 1978 (the "Act"), as amended by Public Law 100-598 (Nov. 3, 1988), established the Office of Government Ethics ("OGE") as a separate agency in the executive branch, effective October 1, 1989. (OGE was formerly a part of the Office of Personnel Management ("OPM")). Sections 402 (a) and (b) of the Act, as amended, provide that the Director of the Office of Government Ethics ("the Director") shall provide, in consultation with OPM, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency as defined in section 105 of title 5, United States Code, and shall propose, in consultation with the Attorney General and OPM, rules and regulations to be promulgated by the President or by OGE pertaining to conflicts of interest and ethics in the executive branch. The purpose of this part is to issue regulations prepared by the Director which give content to the restrictions on post employment activity established by title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) Consultation with the Attorney General. In proposing these regulations, the Director consulted with the Attorney General as to the content of regulations governing substantive prohibitions as well as other matters. The Attorney General has advised that such regulations are consistent with his opinion as to the interpretation of the Act.

(c) Policy and limitations. These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

(1) When a former Government employee who has been involved with a particular matter decides to act as the representative for another person on that matter, such "switching of sides" undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

(2) Similarly, when a former high-level employee assists in representing another by personal presence at an appearance before the Government regarding a matter which is in dispute, such assistance suggests an attempt to use personal influence and the possible unfair use of information unavailable to others. Different considerations are involved, however, with respect to assistance given as part of customary supervisory participation in a project funded by a Government contract or grant, since a former employee's knowledge may benefit the project and thus the Government, and regular communications with associates may properly be regarded as inherent in managerial responsibility. Such assistance, when not rendered by personal presence during an appearance, is not covered by the statute.

(3) When a former Senior Employee returns to argue a particular matter to the employee's former agency in the period immediately following the termination of official employment, it appears that Government-based relationships are being used for private ends.

(4) Former officers and employees may fairly be required to avoid such activities in the circumstances specified by statute and in these regulations.

(5) The provisions of 18 U.S.C. 207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States and includes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government, to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs. Instead, only certain acts which are detrimental to public confidence in the Government are prohibited.

(6) Departments and agencies have primary responsibility for the administrative enforcement of the post employment restrictions found in the Act. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances; agency heads are required to report substantiated allegations of violations of 18 U.S.C. 207 to the Department of Justice and the Director, OGE. It is essential that Title V of the Act be enforced so as to advance its objectives, which include improvement in government efficiency, equal treatment for equal claims, greater public confidence in the integrity of their government, elimination of the use of public office for private gain, and securing the integrity of the government's policy-making processes. Departments and agencies should avoid enforcement actions that do not advance these objectives but instead frustrate the

Government's ability to employ the skilled persons who are needed to make the programs of the Federal Government succeed. Special attention should be given to the need to preserve the free flow of expertise, especially in scientific, technological and other technical areas, from private activities to the government.

(7) The examples contained in these regulations are intended to give guidance, but are illustrative, not comprehensive. Each agency may provide additional illustration and guidance in its own regulations, consistent with that contained herein, in order to address specific problems arising in the context of a particular agency's operations.

(8) Agencies have the responsibility to provide assistance promptly to former Government employees who seek advice on specific problems. The Office of Government Ethics will provide advice, promptly, upon request, to designated agency ethics officials in such situations, but will first coordinate with the Department of Justice on unresolved or difficult issues.

(9) These regulations do not supplant restrictions that may be contained in laws other than 18 U.S.C. 207 and do not incorporate restrictions contained in the code of conduct of a profession of which an employee may be a member.

Note: The post-employment conflict of interest restrictions of 18 U.S.C. 207 were substantially revised effective January 1, 1991, by the Ethics Reform Act of 1989, Public Law No. 101-194, 103 Stat. 1716, with technical amendments enacted by Public Law No. 101-280, 104 Stat. 149 (1990). The Office of Government Ethics has published substantive guidance for the executive branch concerning the amended version of 18 U.S.C. 207 in part 2641 of this subchapter. This part 2637 will continue to provide guidance concerning the previous version of section 207, which will continue to apply to individuals terminating Government service prior to January 1, 1991.

Sec. 2637.102 Definitions.

(a) Statutory definitions. The following are defined terms which largely repeat portions of the text of the statute. They are set out here to permit a simplified presentation of statutory requirements in the regulations which follow. Other definitions, which supplement the statutory language, are listed in paragraph (b) of this section and are set forth in detail in the substantive regulations.

(1) "United States" or "Government" means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(2) "Agency" includes an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes an independent commission. (See 18 U.S.C. 6.)

(3) "Government Employee" includes any officer or employee of the Executive Branch (as defined in 18 U.S.C. 202 and, e.g., 5 U.S.C. 2104 and 2105); those appointed or detailed under 5 U.S.C. 3374, and a Special Government Employee, but shall not include an individual performing services for the United States as an independent contractor under a personal service contract.

(4) "Former Government Employee" means one who was, and is no longer, a Government employee.

(5) "Special Government Employee" means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty five consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202).

(6) "Senior Employee" means an officer or employee named in, or designated by the Director pursuant to, section 207(d) of title 18 U.S.C. to whom 207(b)(ii) and (c) shall apply (See 2637.211 of this part.)

(7) "Particular Government matter involving a specific party" 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 involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

(b) Interpretative definitions. Other terms defined and interpreted in the substantive regulations are:

(1) "Acting as Agent or Attorney": (See 2637.201(b).)

(2) "Actually Pending": (See 2637.202(c).)

(3) "Communicating with Intent to Influence": (See 2637.201(b).)

(4) "Direct and Substantial Interest": (See 2637.204(f).)

- (5) "Participate Personally and Substantially": (See 2637.201(d).)
- (6) "Particular Matter Involving a Specific Party or Parties": (See 2637.201(c).)
- (7) "Particular Matter" (without parties): (See 2637.204(d).)
- (8) "Official Responsibility": (See 2637.202(b).)
- (9) "Rate of Pay": (See 2637.211(b)(4).)

SUBPART B: SUBSTANTIVE PROVISIONS

Sec. 2637.201 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) Basic prohibition of 18 U.S.C. 207(a). No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person

- (1) to the United States,
- (2) in connection with any particular Government matter involving a specific party,
- (3) in which matter such employee participated personally and substantially as a Government employee.

(b) Representation: Acting as agent or attorney, or other representative in an appearance, or communicating with intent to influence.

(1) Attorneys and agents. The target of this provision is the former employee who participates in a particular matter while employed by the Government and later "switches sides" by representing another person on the same matter.

Note: The examples in these regulations do not incorporate the special statutory restrictions on Senior Employees, except where the terms 'Senior Employee' or 'Senior' are expressly used.

Example. A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

(2) Others. The statutory prohibition covers any other former employee, including managerial and technical personnel, who represents another person in an appearance or, by other communication, attempts to influence the Government concerning a particular matter in which he or she was involved. For example, a former technical employee may not act as a manufacturer's promotional or contract representative to the Government on a particular matter in which he or she participated. Nor could such employee appear as an expert witness against the Government in connection with such a matter. (See 2637.208 for specific rules relating to expert witnesses.)

(3) Appearances; communications made with intent to influence. An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes for example, correspondence, or telephone calls.

Example 1. An appearance occurs when a former employee meets with an agency employee personally to discuss a matter; or when he submits a brief in an agency administrative proceeding in his own name.

Example 2. A former employee makes a telephone call to a present employee to discuss a particular matter that is not the subject of a formal proceeding. She has made a communication.

(4) Government visits to others premises. Neither a prohibited appearance nor communication occurs when a former Government employee communicates with a Government employee who, at the instance of the United States, visits or is assigned to premises leased to, or owned or occupied by, a person other than the United States which are or may be used for performance under an actual or proposed contract or grant, when such communication concerns work performed or to be performed and occurs in the ordinary course of evaluation, administration, or performance of the actual or proposed contract or grant.

(5) Elements of "influence" and potential controversy required. Communications which do not include an "intent to influence" are not prohibited. Moreover, acting as agent or attorney in connection with a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited:

a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information. (See also 2637.204(d) of this part.)

Example. A Government employee, who participated in writing the specifications of a contract awarded to Q Company for the design of certain education testing programs, joins Q Company and does work under the contract. She is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when she provides the information to her former agency. During the meeting a dispute arises as to some terms of the contract, and she is called upon to support Q Company's position. She may not do so. If she had reason to believe that the contractual dispute would be a subject of the meeting, she should not have attended.

(6) Assistance. A former employee is not prohibited from providing in-house assistance in connection with the representation of another person.

Example. A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice-president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort to increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause. She may do so.

(7) Project responses not included. In a context not involving a potential controversy involving the United States no finding of a "intent to influence" shall be based upon whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example. The employee of Q Company in the previous example is asked to design an educational testing program, which she does and transmits it to the Government. This is not prohibited despite the fact that her well-designed program may be inherently influential on a question of additional funding under the contract. She may not argue for its acceptance.

(c) "Particular matter involving a specific party or parties"--

(1) Specific matters vs. policy matters. The prohibitions of subsections (a) and (b) of 18 U.S.C. 207, are based on the former Government employee's prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insalable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1. A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

Example 2. A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

Example 3. An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4. An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5. An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee.

(2) Technical matters. In connection with technical work, participation in projects generally involving one or more scientific or engineering concepts, in feasibility studies, or in proposed programs prior to the formulation of a contract will not restrict former Government employees with respect to a contract or specific programs entered into at a later date.

Example 1. A Government employee participates significantly in formulating the "mission need" of a project pursuant to OMB Circular No. A-109, and the award of a contract to Z Company, the purpose of which is to propose alternative technical approaches. He is not barred, after leaving Government service, from representing Q Company which later seeks a contract to manufacture one of the systems suggested by the Z Company.

Example 2. A Government employee, who has worked for years on the design of a new satellite communications system, joins C Company. Later, the Government issues a "request for proposals" ("rfp") to construct the new system, which is circulated generally to industry. The employee proposes to act as C Company's representative in connection with its anticipated proposals for the contract. He may do so. The satellite contract became a particular matter when the rfp was being formulated; it would ordinarily not become one involving a specific party or parties until initial proposals or indications of interest therein by contractors were first received. Moreover, if the employee's work for C Company were limited to the formulation and communication of a proposal in response to the rfp, it would not be prohibited to the extent it involved a communication for the purpose of furnishing scientific or technological information to the Government, exempt under 18 U.S.C. 207(f). See 2637.206 below. (See paragraph (3) below as to a case where the employee's own participation may cause a different result.)

(3) Relationship of personal participation to specificity. In certain cases, whether a matter should be treated as a "particular matter involving specific parties" may depend on the employee's own participation in events which give particularity and specificity to the matter in question. For example, if a Government employee

(i) personally participated in that stage of the formulation of a proposed contract where significant requirements were discussed and one or more persons was identified to perform services thereunder and

(ii) actively urged that such a contract be awarded, but the contract was actually awarded only after the employee left, the contract may nevertheless be a particular matter involving a specific party as to such former Government employee.

Example. A Government employee advises her agency that it needs certain work done and meets with private firm X to discuss and develop requirements and operating procedures. Thereafter, the employee meets with agency officials and persuades them of the need for a project along the lines discussed with X. She leaves the Government and the project is awarded by other employees to firm X. The employee is asked by X to represent it on the contract. She may not do so.

(4) The same particular matter must be involved. The requirement of a "particular matter involving a specific party" applies both at the time that the Government employee acts in an official capacity and at the time in question after Government service. The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

Example 1. A Government employee was substantially involved in the award of a long-term contract to Z Company for the development of alternative energy sources. Six years after he terminates Government employment, the contract is still in effect, but much of the technology has changed as have many of the personnel. The Government proposes to award a "follow on" contract, involving the same objective, after competitive bidding. The employee may represent Q Company in its proposals for the follow-on contract, since Q Company's proposed contract is a different matter from the contract with Z Company. He may also represent Z Company in its efforts to continue as contractor, if the agency determines on the basis of facts referred to above, that the new contract is significantly different in its particulars from the old. The former employee should first consult his agency and request a written determination before undertaking any representation in the matter.

Example 2. A Government employee reviewed and approved certain wiretap applications. The prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the initial wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved. Other examples: See 2637.201(b)(1), Example 1, and (c), Example 2.

(5) United States must be a party or have an interest. The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter.

Example 1. An attorney participated in preparing the Government's antitrust action against Z Company. After leaving the Government, she may not represent Z Company in a private antitrust action brought against it by X Company on the same facts involved in the Government action. Nor may she represent X Company in that

matter. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party, Z Company, is direct and substantial. However, if the Government's antitrust investigation or case is closed, the United States no longer has a direct and substantial interest in the case.

Example 2. A member of a Government team providing technical assistance to a foreign country leaves and seeks to represent a private contractor in making arrangements with the Government to perform the same service. The proposed new contract may or may not be considered a separate matter, depending upon whether the United States has a national interest in maintaining the original contract. The agency involved must be consulted by the former employee before the representation can be undertaken.

(d) "Participate personally and substantially"--

(1) Basic requirements. The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also 2637.203(f) of this part.)

Example 1. If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former Government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former Government employee may, however, have official responsibility for such matters. (See 2637.202(b).)

Example 2. A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

(2) Participation on ancillary matters. An employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial," even if it is time-consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (See 2637.202(b)(3) of this part.) Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

(3) Role of official responsibility in determining substantial participation. "Official responsibility" is defined in 2637.202(b)(1). "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an employee's participation. For example, ordinarily an employee's forbearance on a matter is not substantial participation. If, however, an employee is charged with responsibility for review of a matter and action cannot be undertaken over his or her objection, the result may be different. If the employee reviews a matter and passes it on, his or her participation may be regarded as "substantial" even if he or she claims merely to have engaged in inaction.

(e) Agency responsibility in complex cases. In certain complex factual cases, the agency with which the former Government employee was associated is likely to be in the best position to make a determination as to certain issues, for example, the identity or existence of a particular matter. Designated agency ethics officials should provide advice promptly to former Government employees who make inquiry on any matter arising under these regulations.

Sec. 2637.202 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) Basic prohibition of 18 U.S.C. 207(b)(1). No former Government employee, within two years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party (3) if such matter was actually pending under the employee's responsibility as an officer or employee within period of one year prior to the termination of such responsibility.

(b) "Official responsibility"--

(1) Definition. "Official responsibility" is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(2) Determining official responsibility. Ordinarily, the scope of an employee's "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. All particular matters under consideration in an agency are under the "official responsibility" of the agency head, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties.

(3) Ancillary matters and official responsibility. "Administrative" authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1. An agency's comptroller would not have official responsibility for all programs in the agency, even though she must review the budget, and all such programs are contained in the budget.

Example 2. Within two years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

(4) Knowledge of matter pending required. In order for a former employee to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Government, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former agency. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt.

(5) Self-disqualification. A former employee cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, self-disqualification is effective to eliminate the restriction of section 207(a).

(c) "Actually pending." "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

Example. A staff lawyer in a department's Office of General Counsel is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to the Office of the General Counsel. The General Counsel has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(d) Other essential requirements. All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the existence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under 2637.201 of this part.

Example. During her tenure as head of an agency, an officer's subordinates undertook major changes in agency enforcement standards involving occupational safety. Eighteen months after terminating Government employment, she is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the agency head terminated her employment. She may represent Z Company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed.)

(e) Measurement of two-year restriction period. The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

Example 1. The Director, Import/Export Division of A Agency retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters which were actually pending under his official responsibility in the year before his retirement.

Example 2. An employee transfers from a position in A Agency to a position in B Agency, and she leaves B Agency for private employment 9 months later. In 15 months she will be free of restriction, insofar as matters which were pending under her responsibility in A Agency in the year before her transfer. She will be restricted for two years in respect of B Agency matters which were pending in the year before her departure for private employment.

Sec. 2637.203 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) Basic prohibition of 18 U.S.C. 207(b)(ii). No former Senior Employee (see 2637.102(6)), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance,

- (1) before the United States,
- (2) in connection with any particular Government matter involving a specific party,
- (3) in which matter he or she participated personally and substantially.

(b) Limitation to "representational" assistance by "personal presence" at an appearance. Section 207(b)(ii) is limited to assistance "in representing" another person by "personal presence" at an "appearance" before the United States. Different in scope from sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the Government or a Government employee. The provision is designed to prevent the former Senior Employee from playing any auxiliary role during a negotiation proceeding or similar transaction with the Government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

Example. A former Senior Employee makes suggestions as to the content of a letter to be sent to the Government on a matter in which he had participated. No violation occurs.

(c) Managerial and other off-scene assistance. The statute does not prohibit a former Senior Employee's advice and assistance to his or her organization's representatives which does not involve his or her personal presence at an appearance before the Government. The former Senior Employee's preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

Example 1. A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the Government. She speaks with the representative of a private party during the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

Example 2. A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z Company on that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) Representational assistance. The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the representation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) Measurement of restriction period. The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. 2637.202(e))

(i) Other Essential Requirements. All conditions of the statutory prohibition must be met. Specifically, the former employee,

- (1) must have been a "Senior Employee,"
- (2) who "participated personally and substantially" (See 2637.201(d) of this part) in

(3) a "particular matter involving a specific party." (See subpart 2637.201(c) of this part.)

(g) General Examples:

Example 1. A Senior Federal Trade Commission Employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers' office to advise them. Such conduct violates the statute.

Example 2. A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by Government grants. After leaving the Government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, as is likely, communicated to her former Department by the graduate school's representatives. (See 2637.204.)

Example 3. A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with Government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

Example 4. A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving, the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not involving the allegations in the Government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

Example 5. A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from assistance in negotiations with respect to such contracts, because the restriction applies only to those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. 207(b)(i) as described in 2637.202 of this part. (But see 2637.204.)

Example 6. A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such assistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the Government. (See 18 U.S.C. 207(f) and 2637.206 of this part.)

Example 7. A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes Government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities.

Sec. 2637.204 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

(a) Basic prohibition of 18 U.S.C. 207(c). For a period of one year after terminating employment by the United States, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to

(1) his or her former department or agency, or any of its officers or employees,

(2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such department or agency, or in which it has a direct and substantial interest.

(b) Transactions exempted from the basic prohibition of 18 U.S.C. 207(c). The prohibition set forth above shall not apply to an appearance, a communication, or representation by a former Senior Employee, who is:

(1) An elected official of a State or local government, acting on behalf of such government, or

(2) Whose principal occupation or employment is with

(i) an agency or instrumentality of a State or local government,

(ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or

(iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital or organization.

Example 1. A former Senior Employee of the Federal Highway Administration is appointed to the position of Secretary of Transportation for the State of Kansas. He would not be prohibited from transacting business with his former agency concerning new matters on behalf of the State. He would, however, be restricted as to 207(a) and 207(b) matters.

Example 2. A former Senior Employee of the Department of Housing and Urban Development establishes a consulting firm and is engaged by the City of Los Angeles to aid it in procuring a particular grant. He may not represent Los Angeles before his former Department because his "principal occupation or employment" is not with such city.

Example 3. A former Senior Employee of the Department of Education founds a vocational school for the training of legal paraprofessionals and associated staff. He desires to communicate with officials at his former Department for the purpose of establishing a program of assistance to such institutions. He may not do so, since the vocational school is not an "accredited, degree granting institution of higher education."

(c) No prior involvement required. The prohibition contained in this section applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Government service. The section aims at the possible use of personal influence based upon past Governmental affiliations to facilitate the transaction of business.

(d) Specific parties unnecessary. The particular matter in which the former Senior Employee proposes to act before his or her former agency need not be one "involving specific parties," and thus is not limited to disputed proceedings or contracts in which a party has already been identified. However, the restriction does not encompass every kind of matter, but only a particular one similar to those cited in the statutory language, i.e., any judicial or other proceeding, application, request for a ruling or determination, contract, claim, controversy, investigation, charge, accusation, or arrest. Rulemaking is specifically included. Thus such matters as the proposed adoption of a regulation or interpretive ruling, or an agency's determination to undertake a particular project or to open such a project to competitive bidding are covered. Not included are broad technical areas and policy issues and conceptual work done before a program has become particularized into one or more specific projects. The particular matter must be pending before the agency or be one in which the agency has a "direct and substantial interest."

Note: Each post employment activity in the examples in this section is assumed to take place within one year of termination of Government employment.

Example 1. A Senior Employee of the Department of Health and Human Services leaves Government employment for private practice, and shortly thereafter telephones a former associate urging that the Department (a) adopt a new procedure to put a ceiling on hospital costs; (b) not adopt a particular rule proposed for drug testing; and (c) oppose a bill pending in Congress relating to such drug testing. He is prohibited from attempting to influence his former co-worker on any of these matters. The first, not yet pending, is of interest to the Department; the second is pending in the Department; and the third is pending elsewhere, and is of interest to the Department. Note that the former Senior Employee may, however, communicate the same views to Congress, other agencies, the public or the press.

Example 2. A recently retired Senior Employee of the Department of Defense believes that the Department's general emphasis on manned aircraft is not in the national interest. After his departure, he may continue to argue the point to the Department.

(e) Element of controversy or influence required. The prohibition on acting as a representative or attempting to influence applies to situations in which there is an appreciable element of actual or potential dispute or an application or submission to obtain Government rulings, benefits or approvals, and not to a situation merely involving, for example: the transmission or filing of a document that does not involve an application for Government benefit, approval or ruling; a request for information; purely social or informational communications; or those required by law or regulations (in situations other than adversary proceedings). Each agency should, after consulting with the Director or the Attorney General, as appropriate, give guidance on the kinds of applications, filings and other matters which are not prohibited by section 207(c).

Example 1. A former Senior Employee of the Internal Revenue Service prepares and mails a client's tax return. This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Example 2. A former Senior Employee of the Securities and Exchange Commission prepared and transmitted for filing to the Commission a client's annual report on form 10-K. This is not a violation, because the 10-K is a disclosure report, not intended to obtain a Government benefit or ruling.

Example 3. A former Senior Employee of the Securities and Exchange Commission becomes executive vice-president of a major industrial corporation, registered under the Securities Exchange Act of 1934. Pursuant to Commission regulations, the officers of the corporation are required to sign certain filings on behalf of the corporation, which are transmitted to the Commission. The employee may review, concur or request changes in, and sign any such filing required to be transmitted to the Commission.

(f) Agency activity or interest in matter. The restriction applies to the former employee's contacts with his or her former agency in connection with a matter before or of "direct and substantial interest" to the agency.

Example 1. A former Senior Employee of the Securities and Exchange Commission is asked to represent Z Company in a new matter before the Commission, one in which the former employee had no prior involvement. He may not do so.

Example 2. The matter in the foregoing example is referred to the Department of Justice for prosecution, and the former employee is asked for the first time to represent Z Company in the criminal proceeding. The matter is likely to be of direct and substantial interest to the Commission. If so, the former employee may not communicate with the Commission in the matter. However, the former Senior Employee may communicate with the Commission in order to determine whether it asserts a direct and substantial interest in the criminal proceeding. In the event of a negative answer to the question, the former Senior Employee may communicate with the Commission.

Example 3. In connection with an entirely new matter a former Senior Employee of the Securities and Exchange Commission undertakes the representation of Z Company in private litigation brought by Q Company, (e.g., a private action arising under the Securities Exchange Act of 1934). Before the suit was commenced, there was no actual expression of interest by the Commission in the matter. As the litigation develops, an important question of statutory interpretation is raised, and the Commission files a brief as amicus curiae (friend of the court). The former Senior Employee may respond to the brief and need not withdraw from representation of Z Company, but he may not otherwise communicate with the Commission in the matter. If the Commission were to commence a proceeding or investigation again, Z Company on the basis of the same facts involved in the private litigation, the former employee could continue his representation in the private litigation, but could not represent Z Company in the Commission's proceeding until after the expiration of one year from the termination of his employment with the Commission.

Note: Where an agency becomes a party to a proceeding subsequent to its commencement, the question whether a former Senior Employee may continue representation should ordinarily be decided by the court on a motion for disqualification in the particular circumstances.

Example 4. In connection with a new matter, a former Senior Employee of the Federal Food and Drug Administration, since retired to private law practice, is asked to consult and assist in the preparation of briefs to be filed with the Administration on a new particular matter. He may do so, but he should not sign briefs or other communications or take any other action that might constitute an appearance.

(g) Application or proposals for funding of research. In connection with any application or proposal for Government funding of research, the restrictions of this section do not prevent a former Senior Employee from assuming responsibility for the direction or conduct of such research and from providing scientific or technological information to the Senior Employee's former agency regarding such research. The former Senior Employee may not, however, submit the application on behalf of the applicant or argue for its approval or funding by the agency.

Example. A former Senior Employee of the National Institute of Health (NIH), employed by a non-exempt research institute, prepares an application to NIH for a research contract. The application is submitted to NIH by the institute and lists the Senior Employee as principal investigator. The Senior Employee does not violate 18 U.S.C. 207(c) by preparing the application or by being listed as principal investigator, since these are not representational activities. He may also sign an assurance to NIH, as part of the application, that he will be responsible for the scientific and technical direction and conduct of the project if an award is made. He may also communicate with NIH to provide scientific or technical information on the application, including presentation to NIH personnel at the research site, so long as he does not argue for approval or funding of the application.

(h) Personal matters. Unlike the provisions of subsections 207(a) and (b) the restrictions of this section apply when the former Senior Employee seeks to represent himself or herself. However, they do not apply to appearances or communications concerning matters of a personal and individual nature, such as personal income

taxes, pension benefits, or the application of any provision of these regulations to an undertaking proposed by a Senior Employee. (See 18 U.S.C. 207(i).) A former Senior Employee may also appear pro se (on his or her own behalf) in any litigation or administrative proceeding, involving the individual's former agency. The former employee may not contact his or her former agency in order to secure an item of business, except for (1) discussions in contemplation of being employed by the agency as a consultant or otherwise; or (2) a proposal to furnish scientific or technological information to the Government.

Example. Any former Government Employee may contact his or her former agency to seek information or determinations as to matters in question under these regulations or under 18 U.S.C. 207, such as whether a particular matter is considered to have been under the employee's official responsibility, whether a matter is one in which the agency asserts a direct and substantial interest, or whether a current matter is considered to be the same as that in which the employee had been involved.

(i) **Statements based on special knowledge.** The restrictions of the section do not prevent a former Senior Employee from making or providing a statement, which is based on the former Senior Employee's own special knowledge in the particular area that is the subject matter of the statement, provided that no compensation is thereby received, other than that regularly provided by law or regulation for witnesses. (See 18 U.S.C. 207(i).)

Example 1. A former Senior Employee may make any statement of his own views to his former agency on any subject matter in which he has no substantial pecuniary interests, acting on his own behalf.

Example 2. A former Senior Employee is called by his successor at the agency for the purpose of eliciting some information on a matter in which he had been involved in an official capacity. His response is not prohibited.

Example 3. A former Senior Employee may recommend an individual to her former agency for employment, based on her own personal knowledge of the individual's qualifications and character.

(j) **Measurement of one-year restriction period.** The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously. (See 2637.202(e).)

Sec. 2637.205 Limitation of restrictions of 18 U.S.C. 207(c) to less than that whole of a department or agency.

(a) **Authority.** There are two methods by which the application of the one-year "cooling-off" prohibition of 18 U.S.C. 207(c) may be limited to less than the entirety of a department or agency. First, 18 U.S.C. 207(e) provides that the Director may by rule designate as "separate" a statutory agency or bureau which exercises functions that are distinct and separate from the remaining functions of the parent department or agency of which it is part. (see 2637.214) Second, under the provisions of 18 U.S.C. 207(d)(1)(C), the Director may restrict the application of the prohibition as to a former employee (other than one who served in an Executive Level position or at a uniformed service grade level of 0-9 and above) insofar as it affects his or her communications with persons in an unrelated agency or bureau within his former parent department or agency which has separate and distinct subject matter jurisdiction from the agency or bureau in which he or she served. (see 2637.215)

(b) **Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions.**

(1) The authority granted by 18 U.S.C. 207(e) is applicable solely to a separate statutory agency or bureau, that is, one created by statute or the functions of which are expressly referred to by statute in such a way that it appears that Congress intended that its functions were to be separable. A determination made under this 18 U.S.C. 207(e) does not, however, benefit former heads of the separate statutory agency or bureau. Such a determination does, however, work to the benefit of other employees at Executive Level or at uniformed service grade level of 0-9 or above.

(2) The determination made pursuant to 18 U.S.C. 207(d)(1)(C) is intended to provide similar recognition of separability where the subordinate agency or bureau has been administratively created. A determination of such separability does inure to the benefit of the head of the separate component if he is a Senior Employee designated by the Director. However, the determination is not beneficial to persons, including the head of a separate component, in positions at Executive Level or serving at uniformed service grade level of 0-9 above.

(c) **Separate Statutory Components**

(1) **Procedure.** Each agency shall notify the Director, in writing, of any separate statutory agency or bureau which it desires to submit for such designation under 18 U.S.C. 207(e), providing:

(i) A description of the functions of the agency or bureau, indicating the basis on which such functions are claimed to be distinct and separate from the parent organization;

(ii) The separate statutory basis of the agency or bureau; and

(iii) Identification of those positions in the parent agency with official responsibility for supervision of such separate statutory agency or bureau.

(2) Standards. A parent agency may propose as a "separate" statutory agency an agency or bureau

(i) created specifically by statute,

(ii) the functions of which are expressly referred to by statute in such a way as to indicate that a separate component was intended or (iii) which is the successor to either of the foregoing; but a decision as to the sufficiency of the statutory authority as well as the separability of functions shall be reserved to the Director, OGE.

(3) Effect of designation. If a subordinate part of an agency is designated as "separate" by the Director, then Senior Employees of such separate agency and those of the parent agency are not subject to the restrictions of section 207(c) as to each others' agencies--except that the prohibition of section 207(c) remains applicable to the former head of a "separate" subordinate agency and to former Senior Employees of the parent agency whose official responsibility included supervision of the subordinate agency.

Example. A former Senior Employee of the Product Agency in Executive Department leaves and joins a law firm which represents Q Corporation. Product Agency has been designated by the Director as separate from Executive Department. The former employee is not restricted from representing the Q Corporation on a new matter before the Executive Department.

(d) Separate Nonstatutory Components--

(1) Procedure. Each agency may notify the Director, in writing, of a component agency, bureau or office having separate and distinct subject matter jurisdiction which it desires to submit for designation under 18 U.S.C. 207(d)(1)(C), providing:

(i) A description of the subject matter jurisdiction of such component, indicating the basis on which such jurisdiction is claimed to be separate and distinct from certain other agencies, bureaus and offices of the parent agency;

(ii) A description of the nature of the connections and interactions between such component and certain other agencies, bureaus or offices of the parent agency indicating the basis on which the component is claimed to be unrelated;

(iii) A statement of the basis on which it is claimed that no potential exists for use by former Senior Employees of such component of undue influence or unfair advantage with respect to the named other agencies, bureaus or offices of the parent agency, based on past Government service; and

(iv) Identification of those organizational units of the parent agency having administrative or operational authority over such component agency, bureau or office.

(2) Standards.

(i) A parent agency may propose as "separate" from other parts of a department or agency any agency or bureau having subject matter jurisdiction separate and distinct from one or more other portions of the department or agency accompanied by a showing that there would be no potential for use of undue influence or unfair advantage based upon past Government service if a former employee of one such subordinate agency or bureau communicated with employees of such other portions of the department or agency.

(ii) A determination under this section rests solely with the Director, OGE, and is available only for those subordinate components which would, but for the lack of a statutory basis, qualify for separate agency treatment under 18 U.S.C. 207(e).

(iii) Where one component has supervisory authority over another, the two components may not be considered separate and distinct for purposes of this section.

(iv) The requirement of "separate and distinct subject matter jurisdiction" may be met in at least two ways. First, the substantive areas of coverage may be distinct. For example, an office or bureau within the parent agency may handle only maritime matters. Second, the regional area of coverage may be different. For example, one regional office may, on appropriate facts, be considered separate and distinct from other regional offices and from the parent agency--except for the bureau or office in the parent agency which is responsible for its supervision.

(v) It is necessary to specify the "unrelated agency or bureau within the same department or agency" as to which it is recommended that post employment communication be permitted. For example, one

bureau may involve a subject matter distinct from some, but not all, parts of the parent department. Attempts to fractionalize a department could, however, become deeply complicated and involve difficult judgments and fact-finding. OGE will not usually act on such cases, and submissions should be confined to relatively clear cases.

(3) Effect of determination. If a component agency, bureau or office is determined to be separate by the Director, then Senior Employees of such component are not subject to the restrictions of 18 U.S.C. 207(c) and 2637.204 as to the remaining agencies, bureaus or offices of the parent agency (except certain such agencies, bureaus or offices as specified in 2637.215)-- except that the prohibition of section 207(c) and 2637.204 shall remain applicable

(i) to those former Senior Employees of such component who served in positions designated by 18 U.S.C. 207(d)(1)(A) and (B) and

(ii) to former Senior Employees of such component with respect to the parent agency (as defined in 2637.205(e)). Such limited application of 18 U.S.C. 207(c) may be available for the head of a separate component, unlike the limitation of 18 U.S.C. 207(e), as determined by the Director.

Example. In the Department of Justice, while the Antitrust Division may be "separate" from other Divisions, it is not separate from the immediate office of the Attorney General.

Sec. 2637.206 Exemption for scientific and technological information.

(a) Exemption. The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in 2637.201-2637.204 of these regulations (subsections (a), (b), and (c) of 18 U.S.C. 207). This exemption allows the free exchange of such information regardless of a former Government employee's prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited to communications constituting the furnishing of information, but includes those "for the purpose of" doing so. No violation occurs when, for example, a former Government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

Example. A project manager, regardless of prior involvement in a particular matter, may contact the Government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the Government; advise and supervise others who are involved as to such matters; and meet with Government technical experts for such purpose; provided in each case that there is compliance with such agency regulations as have been issued.

(b) Necessary information. Scientific and technological information includes feasibility, risk, cost, and speed of implementation, when necessary to appreciate fairly the practical significance of the information. The Government may and should be fully informed of the significance of scientific and technological alternatives.

(c) Intent to influence. The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See 2637.201(b)(7) of this part.)

(d) Expert testimony. This exemption does not include testimony as an "expert" in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in 2637.208. As to assistance as an expert or consultant, see 2637.203(g), Example 7.

(e) Agency responsibility for procedures. The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take into consideration: Limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

Sec. 2637.207 Exemption for persons with special qualification in a technical discipline.

(a) Applicability. A former Government employee may be exempted from the restrictions on post employment practices if the head of the agency concerned with the particular matter, in consultation with the Director, executes a certification published in the Federal Register that such former Government employee has outstanding qualifications in a scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee's participation.

(b) When appropriate. This exemption should generally be utilized only where the former Government employee's involvement is needed on so continuous and comprehensive a basis that compliance with the procedures adopted for the communication of technical information (see 2637.206), or other actions to isolate the former Government employee from other aspects of the matter, would be burdensome and impractical.

(c) Certification authority. Certification should take place at no lower level than the head of the agency, the deputy thereof, or in the absence of both, the acting agency head. Consultation with the Director shall precede any certification. The exemption takes place upon the execution of the certification, provided that it is transmitted to the Federal Register for publication.

(d) Agency registry. An agency may establish a registry for current employees, wherein the nature of their qualifications in one or more technical fields is certified after review by a supervisor, as a basis for establishing such qualifications in connection with, and to expedite, a later request for certification, should the necessity for such request arise.

Sec. 2637.208 Testimony and statements under oath or subject to penalty of perjury.

(a) Statutory basis. Section 207(h) provides: "Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury."

(b) Applicability. A former Government employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Government employee. This provision does not, however, allow a former Government employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c) to testify on behalf of another as an expert witness except:

(1) To the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the former Government employee participated, utilizing his or her expertise, or

(2) in any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Government employee's testimony is required in the interest of justice.

(c) Statements under penalty of perjury. A former Government employee may make any statement required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

Sec. 2637.209 Partners of present or former Government employees.

(a) Scope. Section 207(g) of 18 U.S.C. prohibits a partner of a current Government employee from acting as agent or attorney before the United States in a particular Government matter in which such Government employee participates, or did participate, personally and substantially. To the extent such section involves the activities of current Government employees and their partners, it is beyond the scope of these regulations.

(b) Imputation. Neither the Act nor these regulations impute the restrictions on former employees to partners or associates of such employees. Imputation of the restrictions of sections 207 (b)(ii) and (c) to partners of former employees would be inappropriate for the additional reason that section 207(b)(ii) itself restricts secondary-level activity, and section 207(c) is directed at the exercise of influence personal to the former Senior Employee.

Sec. 2637.210 Officials of a State; officials of corporations created by an Act of Congress and public international organizations.

For purposes of sections 207 (a), (b) and (c) of title 18 U.S.C.:

(a) An official whose powers are established by the constitution of any State of the United States does not act on behalf of "any other person" or "anyone" when acting in his or her official capacity, but rather constitutes the official authority of the State; and

(b) A former employee does not engage in unlawful activity when he or she acts on behalf of (1) a corporation specifically created by an Act of Congress if any of its directors is currently appointed by the United States; or (2) any public international organization if he or she serves by nomination or request of the United States on temporary assignment from any agency.

Sec. 2637.211 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. 207(d).

(a) **Definitions.** As used in these regulations, "Senior Employee" refers to any person specified in or designated pursuant to 18 U.S.C. 207(d)(1); that is, employed by the United States:

(1) At a rate of pay specified or fixed according to subchapter II of chapter 53 of title 5, U.S.C., generally known as "Executive Level;" or

(2) On active duty as a commissioned officer of a uniformed service in a pay grade of 0-9 or above as described in 37 U.S.C. 201; or

(3) In a position in any pay system for which the basic rate of pay is equal to or greater than that for GS-17 as prescribed by 5 U.S.C. 5332 or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1973, or positions of active duty commissioned officers of the uniformed services assigned to pay grade 0-7 and 0-8, as described in 37 U.S.C. 201, and who has significant decision-making or supervisory responsibilities, as designated by the Director, pursuant to paragraph (b) of this section.

(b) **Designation procedures.** The following procedures will be followed in designation of Senior Employee positions pursuant to 18 U.S.C. 207(d)(1)(C):

(1) Positions at GS-17 and 18 level, Senior Executive Service, and pay grades 0-7 and 0-8 of the uniformed services. The following are designated effective February 28, 1980, unless exempted as provided in paragraph (b)(2) of this section: All positions classified at GS-17 or above in the General Schedule; those in any other pay system, the rate of pay for which is at least that of grade GS-17; those in the Senior Executive Service; and those active duty uniformed service officers serving in pay grades 0-7 and 0-8. Each agency head shall submit to the Director, by May 15, 1979 and on every May 15 thereafter, a report consisting of:

(i) a description of all positions as set forth in this paragraph;

(ii) the agency's recommendation as to those positions that should not be designated, based on standards established in these regulations or any other reason; and

(iii) the basis and reasons for each such recommendation. After making such additional inquiries as appear desirable, the Director will determine which positions should be exempt. Notwithstanding the foregoing, the effective date for Executive Level positions, whether or not included in the Senior Executive Service, is July 1, 1979.

(2) **Standards for designation and exemption.** Positions, or classes of positions, which do not have significant decision-making or supervisory responsibility will be exempted from designation. Initial exemptions will be retroactive. Classes of positions which may be considered for exemption are those in which decision-making responsibility does not regularly extend to major policy issues within the agency or in which supervisory responsibility extends to less than all of a directorate, bureau or department which has major policy or operational responsibility. The foregoing may include, without limitation, special assistants, technical and professional advisors to persons who make policy decisions, those involved primarily in research and technical work, and administrative law judges.

(3) **Senior Executive Service.** The establishment of positions within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 is the responsibility of the Office of Personnel Management. The choice of an individual to enter or not to enter the Senior Executive Service is not a relevant factor in the designation under these regulations of a position held by such person.

(4) **"Rate of pay."** As used in the definition of Senior Employee, the "rate of pay" is that specified by or pursuant to law without regard to the ceiling limitations of section 5308 or section 5373 of title 5 U.S.C.; except that an individual in an executive level or GS-17 or 18 position is deemed to be employed at the rate of pay specified for that position. Increases in pay due to "steps" are not considered in determining pay grade or level.

(c) **Differential designation.** Where appropriate, the Director may designate positions for purposes of 18 U.S.C. 207(c) without designating the positions for purposes of 18 U.S.C. 207(b)(ii).

Example. It may be determined that a given position or class of positions will be restricted as to contact in the first post employment year, but not as to assisting in representation.

(d) **Fair notice of designation.** No Senior Employee designation made pursuant to 18 U.S.C. 207(d)(1)(C) will be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director of intention to designate; except as indicated in paragraph (i) of this section, and as to a person first occupying the position after such notice is published. The designation in paragraph (b)(1) of this section and the comparable designation in the interim regulations of April 3, 1979 (44 FR 19974) constitutes notice.

(e) "Acting" or temporary positions. An individual may serve in a position designated pursuant to 18 U.S.C. 207(d) for up to 60 days in an "acting" or temporary capacity without being subject to those restrictions which specially apply to such positions, unless such individual:

- (1) was transferred or detailed from another designated position, or
- (2) without a significant break in continuity, is named permanently to such position.

(f) Special Government Employee. A Special Government Employee who serves on 60 days or less in a given calendar year may serve in a designated position without being subject to the restrictions which specially apply to such position. A Special Government Employee is deemed to serve only on those days actually engaged in work for the Government under his or her Special Government Employee arrangement.

(g) Publication. Positions designated by the Director pursuant to 18 U.S.C. 207(d)(1)(C) and not exempted will be published in the Federal Register.

(h) Computation of time. An individual who transfers from a designated position to one that is not designated shall compute the commencement of the time periods contained in 18 U.S.C. 207 (b)(ii) and (c) from the time of such transfer, except as indicated in paragraph (i) of this section. (See 2637.202(e).)

(i) Position shifting. In any case where a person transfers from a designated position to one that is not, the agency head shall within one month transmit to the Director a report reciting the functions of each position, the reason for the transfer, and the identities of the prior holder of the position assumed and the successor, if any, to the position departed. If the Director designates the newly assumed position pursuant to section 207(d)(1)(C) of title 18 U.S.C., such designation shall be effective retroactively to the date of transfer notwithstanding paragraph (d) of this section.

(j) Revocation of Designations. In the event the Director determines that a position previously designated should not have been, the designation will be revoked. Except for designations made under paragraph (i) of this section, the revocation may be made retroactive if the initial designation is determined to have been erroneous or if there is a change in standards for designation applicable to the position. Retroactive effect will not be given where the basis for revocation is a change in the functions or importance of a position.

Sec. 2637.212 Administrative enforcement proceedings.

(a) Basic procedures. The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director as required pursuant to section 207(j) of title 18 U.S.C.

- (1) Delegation. The head of an agency may delegate his or her authority under this subpart.
- (2) Initiation of administrative disciplinary hearing.

(i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the agency head shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. The agency should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Agency that it does not intend to initiate criminal prosecution.

(ii) Whenever an agency has determined after appropriate review that there is reasonable cause to believe that a former Government employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Government employee with notice as defined in paragraph (a)(3) of this section. Agencies may establish procedures to protect the privacy of former employees as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

- (3) Adequate notice.

(i) An agency must provide a former Government employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Government employee must include:

- (A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;
- (B) Notification of the right to a hearing; and
- (C) An explanation of the method by which a hearing may be requested.

- (4) Presiding official.

(i) The presiding official at proceedings under this subpart shall be the agency head or an individual to whom the agency head has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) Appropriate qualifications shall be established for examiners.

(iii) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(5) Time, date and place.

(i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Government employee's need for:

(A) Adequate time to prepare a defense properly, and
(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) Hearing rights. A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel,

(ii) To introduce and examine witnesses and to submit physical evidence,

(iii) To confront and cross-examine adverse witnesses,

(iv) To present oral argument, and

(v) To receive a transcript or recording of the proceedings, on request.

(7) Burden of proof. In any hearing under this subpart, the agency has the burden of proof and must establish substantial evidence of a violation.

(8) Hearing decision.

(i) The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the agency, either party may appeal the decision to the agency head. The agency head shall base his or her decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the agency head modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) Administrative sanctions. The agency head may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) Judicial review. Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations may seek judicial review of the administrative determination.

(11) Consultation and review. Each agency shall submit a copy of its procedures for administrative enforcement to the Director.

Sec. 2637.213 Effective date of restrictions.

(a) Persons affected. Any person who holds a Government position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207

as set forth in these regulations. Restrictions which depend on the designation of a position by the Director shall become applicable on the date such designation becomes effective.

(b) Fair notice of substantive changes. No change in the substance of these regulations shall become effective with respect to a Government employee who is adversely affected by such change until and unless such employee remains in a position to which such change is applicable for a period of five months following the first publication of a regulation in final form, reflecting or prescribing such change, or unless such employee accepts such a position after the publication.

Sec. 2637.214 Separate statutory agencies: Designations.

Parent Agency: DEPARTMENT OF DEFENSE

Separate Statutory Components:

Department of the Army
Department of the Navy
Department of the Air Force
Defense Mapping Agency

Sec. 2637.215 Separate components of agencies or bureaus: Designations.

In accordance with the provisions of 18 U.S.C. 207(d)(1)(C) and 5 CFR 2637.205, each of the component agencies or bureaus as set forth below is determined, for purposes of 18 U.S.C. 207(c) and this part 2637, to be separate from the remaining agencies and bureaus of its parent agency (except such agencies and bureaus as specified):

Parent Agency: DEPARTMENT OF DEFENSE

Separate Components:

Defense Communications Agency
Defense Intelligence Agency
Defense Nuclear Agency
National Security Agency
Defense Logistics Agency

SECTION 2. OFFICE OF GOVERNMENT ETHICS REGULATION

9-200. 5 C.F.R. 2641, "Post-Employment Conflict of Interest Restrictions" (reference (b))

[5 C.F.R. 2641 (reference (b)) applies to DoD employees who left Federal Government service on or after January 1, 1991]

POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

5 CFR 2641¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	3
Sec. 2641.101 Definitions.	3
Agency (3); Department (3); Designated agency ethics official (3); Employee (3); Executive branch (3); Former employee, former senior employee, or former very senior employee (3); Senior employee (3); Special Government employee (3); Very senior employee (3)	
SUBPART B: SUBSTANTIVE PROVISION	3
Sec. 2641.201 One-year restriction on a former senior employee's representations to employees of former agency concerning matter, regardless of prior involvement.	4
Basic Prohibition of 18 U.S.C. 207(c) (4); Applicability (4); Measurement of Restriction (4); Waiver of 18 U.S.C. 207(c) (4)	
Appendix A	6
Appendix B	6

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

SUBPART A: GENERAL PROVISIONS

Sec. 2641.101 Definitions.

The following terms are defined for purposes of this part:

"Agency" includes any department, independent establishment, commission, administration, authority, board, or bureau of the United States, and includes a Government corporation. 18 U.S.C. 202(e)(1); 5 U.S.C. 105.

"Department" means one of the executive departments enumerated in 5 U.S.C. 101.

"Designated agency ethics official" means an officer or employee who is designated by the head of an agency to coordinate and manage an agency's ethics program in accordance with 2638.203 of this subchapter. 5 CFR 2638.202.

"Employee" means any officer or employee of the executive branch as that term is defined in this section. Unless otherwise indicated, the term does not include the President or the Vice President. 18 U.S.C. 202(c). It does not include an individual performing services for the United States as an independent contractor under a personal services contract or an enlisted member of the armed forces as defined in 5 U.S.C. 2101(2). 18 U.S.C. 202(a). Unless otherwise indicated, the term encompasses senior employees, very senior employees, and special Government employees as defined in this section.

"Executive branch" includes each executive agency as defined in 5 U.S.C. 105, other than the General Accounting Office, and also includes any other entity or administrative unit in the executive branch. 18 U.S.C. 202(e)(1).

"Former employee, former senior employee, or former very senior employee" means one who was, and is no longer, an employee, senior employee, or very senior employee.

"Senior employee" means an employee, other than a very senior employee, who is:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311-5318 (the Executive Schedule);

(2) Employed in a position for which the basic rate of pay, exclusive of any locality-based pay adjustment under 5 U.S.C. 5302 (or any comparable adjustment pursuant to interim authority of the President) is equal to or greater than the rate of basic pay payable for Level V of the Executive Schedule (including any such position in the Senior Executive Service or other SES-type systems, e.g., the Senior Foreign Service);

(3) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B);

(4) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B);

(5) Employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in 37 U.S.C. 201) is pay grade O-7 or above; or

(6) Detailed to any such position.

"Special Government employee" includes an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis. See 18 U.S.C. 202(a).

"Very senior employee" means an employee who is:

(1) Serving in the position of Vice President of the United States;

(2) Employed in a position at a rate of pay payable for Level I of the Executive Schedule;

(3) Employed in a position in the Executive Office of the President at a rate of pay payable for Level II of the Executive Schedule;

(4) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(A);

(5) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(A); or

(6) Detailed to any such position.

SUBPART B: SUBSTANTIVE PROVISION

Sec. 2641.201 One-year restriction on a former senior employee's representations to employees of former agency concerning matter, regardless of prior involvement.

(a) **Basic Prohibition of 18 U.S.C. 207(c).** For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior" service, if that communication or appearance is made on behalf of any other person (except the United States) in connection with any matter on which he seeks official action by any employee.

(b) **Applicability.** 18 U.S.C. 207(c) applies to all former "senior employees" as defined in 2641.101 of this part. Certain individuals who served in "very senior" positions are subject to the one-year bar set forth in section 207(d) in lieu of that set forth in section 207(c). See definition of "very senior employee" in 2641.101.

(1) **Special Government Employees.** 18 U.S.C. 207(c) does not apply to an individual as a result of service as a special Government employee unless the individual:

(i) Served in a senior employee position while serving as a special Government employee;
and

(ii) Served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

(2) **Exemption from 18 U.S.C. 207(c).** 18 U.S.C. 207(c) does not apply to an individual as a result of service in a senior position if that position has been exempted from section 207(c) pursuant to the waiver procedures set forth in 2641.201(d) of this part.

(c) **Measurement of Restriction.** 18 U.S.C. 207(c) is a one-year restriction. The one-year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously.

(d) **Waiver of 18 U.S.C. 207(c).** Certain positions or categories of positions can be exempted from 18 U.S.C. 207(c) through the grant of a waiver by the Director of the Office of Government Ethics. 18 U.S.C. 207(c)(2)(C).

(1) **Effect of Exemption.** When an eligible position is exempted from 18 U.S.C. 207(c) by the Director of the Office of Government Ethics, the one-year restriction of section 207(c) will not be triggered upon any employee's termination from the position.

(2) **Eligible Senior Employee Positions.** Any senior employee position is eligible for exemption except the following:

(i) Positions for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311-5318 (the Executive Schedule);

(ii) Positions whose occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); or

(iii) Positions whose occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B).

(3) **Procedure.** An exemption shall be granted in accordance with the following procedure:

(i) **Initial Exemption.** An agency's designated agency ethics official shall forward to the Director of the Office of Government Ethics a written request that a certain senior employee position or category of positions be exempted from 18 U.S.C. 207(c). Any such request shall address the criteria set forth in paragraph (d)(5) of this section. A designated agency ethics official may also request that a current exemption be revoked.

(ii) **Agency Update.** Designated agency ethics officials shall by November 30 of each year forward to the Office of Government Ethics a letter stating whether positions or categories of positions currently exempted should remain exempt from the application of 18 U.S.C. 207(c) in light of the criteria set forth in paragraph (d)(5) of this section.

(iii) **Action by Office of Government Ethics.** The Director of the Office of Government Ethics shall promptly provide to the designated agency ethics official a written response to each initial request for exemption or revocation. The Director shall annually publish in appendix A to this part an updated compilation of all exempted positions or categories of positions. The Director shall publish notice in the Federal Register when

he determines to revoke an exemption based on his finding that the position or positions no longer qualify for exemption.

(4) **Effective Date of Exemption.** Exemptions issued under paragraph (d) of this section shall be effective as of the date of the Director's written response to the designated agency ethics official indicating that the request for exemption has been granted. An exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption. Revocation of an exemption shall be effective 90 days after the date that the Director publishes notice of the revocation in the Federal Register. Individuals who formerly served in an exempted position will not become subject to 18 U.S.C. 207(c) in the event the position's exempted status is revoked subsequent to the individual's termination from the position.

(5) **Criteria for Exemption.** Before exempting a position or positions from 18 U.S.C. 207(c), the Director of the Office of Government Ethics must find that with respect to the position or category of positions:

(i) The granting of the exemption would not create the potential for use by former senior employees of undue influence or unfair advantage based on past Government service; and

(ii) The imposition of the restrictions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions as shown by relevant factors which may include, but are not limited to:

(A) The payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority; or

(B) The requirement that the incumbent of the position have outstanding qualifications in a scientific, technological, or other technical discipline.

(e) **Separate Departmental or Agency Components.** For purposes of 18 U.S.C. 207(c) only, the Director of the Office of Government Ethics is authorized by 18 U.S.C. 207(h) to designate departmental and agency "components" that are distinct and separate from the "parent" department or agency and from each other. Absent such designation, the representational bar of section 207(c) extends to the whole of the department or agency in which the former senior employee served.

(1) **Effect of Designation.** An eligible former senior employee who served in a "parent" department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employee of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been designated. An eligible former senior employee who served in an designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

(2) **Eligible Senior Employees.** All former senior employees are eligible to benefit from this procedure except those who were senior employees by virtue of having been:

(i) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311-5318 (the Executive Schedule);

(ii) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B); or

(iii) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

(3) **Procedure.** Distinct and separate components shall be designated in accordance with the following procedure:

(i) **Initial Designation.** Initial designations of departmental and agency components are set forth in appendix B to this part and are effective as of January 1, 1991.

(ii) **Agency Update.** A designated agency ethics official may at any time recommend the designation of an additional component or the revocation of a current designation by forwarding a written request to the Director addressing the criteria set forth in paragraph (e)(6) of this section. Designated agency ethics officials shall by November 30 of each year forward to the Office of Government Ethics a letter stating whether components currently designated should remain designated in light of the criteria set forth in paragraph (e)(6).

(iii) **Action of Office of Government Ethics.** The Director of the Office of Government Ethics shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official. The Director shall annually publish in appendix B to this part an updated compilation of all designated departmental or agency components.

(4) **Effective Date of Designation.** Initial component designations shall be effective as of January 1, 1991. Any subsequent designation shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date. Revocation of a component designation shall be effective 90 days after the effective date of the rule that revokes the designation, but shall not be effective as to individuals who terminated senior service prior to the expiration of such 90-days period.

(5) **Unauthorized Designations.** No agency or bureau within the Executive Office of the President may be designated as a separate departmental or agency component.

(6) **Criteria for Designation.** Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director of the Office of Government Ethics must find that:

(i) There exists no potential for use by former senior employees of undue influence or unfair advantage based on past Government service; and

(ii) The component is an agency or bureau, within a department or agency, that exercises functions which are distinct and separate from the functions of the parent department or agency and from the functions of other components of that parent as shown by relevant factors which may include, but are not limited to:

(A) The component's creation by statute or a statutory reference indicating that it exercises functions which are distinct and separate; or

(B) The component's exercise of separate and distinct subject matter or geographical jurisdiction.

(7) **Supervisory Relationship.** Provided that a component has a separate statutory basis or exercises distinct and separate subject matter or geographical jurisdiction, the parent will generally be deemed by the Director of the Office of Government Ethics to be distinct and separate from that component notwithstanding that the parent may exercise general supervisory authority over the component. However, the degree of a parent's supervision over a component will be a factor in determining whether subject matter or geographical jurisdiction is in fact distinct and separate. The Director will not ordinarily consider two components as distinct and separate from one another where one component exercises supervisory authority over another.

Appendix A not relevant

Appendix B to 5 CFR 2641--Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it distinct and separate components as set forth below:

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Defense

Components:

Department of the Air Force
Department of the Army
Department of the Navy
Defense Information Systems Agency
Defense Intelligence Agency
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency

SECTION 3. OGE GUIDANCE ON 18 U.S.C. 207 (reference (c))

9-300 Office of Government Ethics Memorandum, "Revised
Materials Relating to 18 U.S.C. 207," November 5, 1992 (reference (d))

OFFICE OF GOVERNMENT ETHICS MEMORANDUM

November 5, 1992

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS
GENERAL COUNSELS
INSPECTORS GENERAL

FROM: STEPHEN D. POTTS
DIRECTOR

SUBJECT: Revised Materials Relating to 18 U.S.C. § 207¹

Anticipating an increased demand for post-employment counseling during the Presidential transition, we are providing some revised written materials that should facilitate advice and training concerning 18 U.S.C. § 207.

Statute. We have in the past distributed copies of the statutory language of 18 U.S.C. § 207, most recently in January 1991. The revised handout incorporates all amendments made to the statute since its revision by the Ethics Reform Act of 1989, including the addition of new section 207(k) and the amendment of section 207(f) as applied to the United States Trade Representative.

Revised Summary. Shortly before the effective date of the Ethics Reform Act amendments, we distributed a 14-page summary of 18 U.S.C. § 207 as amended by that Act. We have revised that summary's introductory material to reflect the passage of time and the publication of 5 CFR Part 2641. We have also incorporated post-Ethics Reform Act amendments by including the Executive Level V threshold relating to the definition of "senior employee," by adding a brief description of the Presidential waiver authority in new section 207(k), and by revising the discussion of section 207(f) in relation to the United States Trade Representative. Also, in order to ensure consistency with Part 2641, we have changed certain language in the summary concerning the application of section 207(c) to special Government employees and the designation of components for purposes of that section. (As before, the summary does not discuss 18 U.S.C. § 208 or other provisions applicable when an employee seeks or negotiates for employment in the private sector.)

We hope these materials prove useful.

Attachments

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

November 4, 1992

SUMMARY OF POST-EMPLOYMENT RESTRICTIONS OF 18 U.S.C. § 207

I. INTRODUCTION

Since its enactment in 1962, 18 U.S.C. § 207 has remained the primary source of post-employment restrictions applicable to officers and employees of the executive branch. Unlike certain other post-employment laws, the provisions of section 207 apply to individuals regardless of the executive department or agency in which they served while employed by the Government and regardless of the particular duties they performed.

Section 207 has been amended several times over the years. Recently, for example, section 207 was substantially revised by the Ethics Reform Act of 1989. As a consequence of these amendments, former employees are subject to varying post-employment restrictions depending upon the date of their termination from Government service or from certain high-level positions.

Individuals who terminated service prior to January 1, 1991, should continue to consult the regulations published at Part 2637 of title 5, Code of Federal Regulations, for guidance concerning applicable provisions of section 207. Individuals terminating service on or after January 1, 1991, should consult this summary pending completion of revised regulatory guidance at 5 C.F.R. Part 2641. As of this date, Part 2641 contains guidance concerning 18 U.S.C. § 207(c) only. (Except where the underlying statutory provision has changed, Part 2637 remains persuasive concerning the interpretation of the newer version of 18 U.S.C. § 207.)

This summary was prepared by the U.S. Office of Government Ethics. While it has been coordinated with the Department of Justice, employees are cautioned that it reflects only a preliminary interpretation of the amendments to 18 U.S.C. § 207 enacted by the Ethics Reform Act of 1989 and thereafter.

II. SUMMARY OF RESTRICTIONS

Effective January 1, 1991, section 207 of title 18 sets forth six substantive prohibitions restricting the activities of individuals who leave Government service or who leave certain high-level positions in the executive branch. Each of these restrictions is discussed separately below, followed by a discussion of several statutory exceptions.

None of the provisions bar any individual, regardless of rank or position, from accepting employment with any private or public employer after Government service. Section 207 only prohibits individuals from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation. None of the restrictions bar self representation.

A. APPLICABILITY

The first three restrictions [207(a)(1), (a)(2), and (b)] are applicable to former officers or employees of the executive branch. They also apply to former senior or very senior employees as those terms are described below, and to former special Government employees. According to 18 U.S.C. 202, a "special Government employee" includes an individual who is "retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis" (Enlisted personnel of the uniformed services are not "officers" or "employees" for purposes of section 207.)

The fourth restriction [207(c)] is applicable only to former senior personnel, (hereinafter referred to as "senior employees"). A senior employee is any employee (other than an individual covered by the fifth restriction) who was employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, in a position for which the rate of basic pay is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule, or in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is O-7 or above. The term includes those individuals appointed by the President to a position under 3 U.S.C. 105(a) (2) (B) or by the Vice President to a position under 3 U.S.C. 105(a) (1) (B). An individual is subject to section 207(c) as a result of service as a special Government employee only if the individual served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

The fifth restriction [207(d)] applies only to former very senior personnel (hereinafter referred to as "very senior employees"). A very senior employee is any employee who was employed in a position at the rate of pay payable for level I of the Executive Schedule, or in a position in the Executive office of the President at a rate of pay equal to or greater than the rate of pay payable for level II of the Executive Schedule. The term includes the Vice President and those individuals appointed by the President to a position under 3 U.S.C. 105 (a) (2) (A) or by the Vice President to a position under 3 U.S.C. 105(a)(1)(A).

The sixth restriction [207(f)] applies to individuals who formerly served in either a senior or very senior position.

B. SUBSTANTIVE RESTRICTIONS

1. Basic Prohibition of 18 U.S.C. § 207(a)(1). No former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest.

Discussion. This is a lifetime restriction that commences upon an employee's termination from Government service. The target of this provision is the former employee who participates in a matter while employed by the Government and who later "switches sides" by representing another person on the same matter before the United States. The restriction is measured by the duration of the matter in which the former employee participated.

The restriction does not apply unless a former employee communicates to or makes an appearance before the United States on behalf of some other person. For these purposes, the "United States" refers to any employee of any department, agency, court, or court-martial of the United States (but not of the District of Columbia). The term does not include the Congress, and therefore communications to or appearances before Members of Congress and legislative staff are not prohibited by this provision.

A former employee is not prohibited by this restriction from providing "behind-the-scenes" assistance in connection with the representation of another person. Moreover, the restriction prohibits only those communications and appearances that are made with the intent to influence. A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An "intent to influence" the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

A communication to or appearance before the United States is not prohibited unless it concerns the same particular matter involving a specific party or parties in which the former employee participated personally and substantially while employed by the Government. An employee can participate "personally" in a matter even though he merely directs a subordinate's participation. He participates "substantially" if his involvement is of significance to the matter. Thus, while a series of peripheral involvements may be insubstantial, participation in a single critical step may be substantial. The term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. In determining whether two situations are part of the same particular matter, one should consider all relevant factors, including the amount of time elapsed and the extent to which the matters involve the same basic facts or issues and the same or related parties. Even if a post-employment communication or appearance would concern the same particular matter, however, the representational bar will not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

The provision requires that an employee's official participation in a particular matter have taken place at a time when the matter involved a specific party (or parties). It also requires that the matter involve some specific party or parties at the time of the post-employment communication or appearance (although these can be different parties than were involved with the matter at the time of the employee's participation). General rulemakings do not usually involve specific parties. Consequently, it is quite possible that an employee who participated in a rulemaking while employed by the Government will, after leaving Government service, be able to appear before his former agency concerning the application of that rule to his new private sector employer without violating the lifetime restriction. Contracts, on the other hand, are always particular matters involving specific parties. A Government procurement has specific parties identified to it when a bid or proposal is received in response to a solicitation, if not before.

The provision does not prohibit a former employee from representing himself before the United States (as distinguished from a corporation or consulting firm). Moreover, a former employee is not prohibited from acting on behalf of the United States (or the Congress). Thus, even though an individual may once have worked on a matter while employed by the Government, he will not, while subsequently reemployed by the Government, be barred from communicating with any employee of the United States concerning that matter if he does so as part of his official duties. A former employee does not act on behalf of the United States, however, merely because the United States may share the same objective as the person whom the former employee is representing.

2. Basic Prohibition of 18 U.S.C. § 207(a)(2). For two years after his Government service terminates, no former employee may knowingly make, with the intent to influence, any communication to or appearance before an

employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one year period prior to the termination of his employment with the United States.

Discussion. This is a two-year restriction that commences upon an employee's termination from Government service.

This provision is identical to the lifetime restriction discussed above except that it is of shorter duration and requires only that an individual have had official responsibility for a matter while employed by the Government, not that he have participated personally and substantially in that matter. Like the lifetime restriction, it prohibits certain communications and appearances made on behalf of any other person or entity except the United States (or the Congress). The communications and appearances prohibited are those made, with the intent to influence, to or before any employee of a department, agency, court, or court-martial of the United States. The representational bar applies with respect to any particular matter involving a specific party or parties that was actually pending under the former employee's official responsibility at some time during his last year of Government service.

"Official responsibility" is defined in 18 U.S.C. 202 as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." The scope of an employee's official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description. All particular matters under consideration in an agency are under the official responsibility of the agency head, and each is under that of any intermediate supervisor having responsibility for the activities of a subordinate employee who actually participates in the matter. An employee's recusal from or other non-participation in a matter does not remove it from his official responsibility.

A matter was "actually pending" under a former employee's official responsibility if the matter was in fact referred to or under consideration by persons within the employee's area of responsibility. A former employee is not subject to the restriction, however, unless at the time of the proposed representation of another he knows or reasonably should know that the matter had been under his responsibility during his last year of Government service.

3. Basic Prohibition of 18 U.S.C. 5 207(b). For one year after his Government service terminates, no former employee may knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee.

Discussion. This is a one-year restriction that commences upon an employee's termination from Government service. Extending to certain "behind-the-scenes" assistance, this provision can serve to augment the representational bar provided for in the lifetime restriction discussed above.

The restriction set forth in section 207(b) does not apply unless, during the one-year period before he left Government, an employee participated personally and substantially in an "ongoing" trade or treaty negotiation that is covered by the statute. It is not necessary that a former employee have had actual contact with foreign parties in order to have participated personally and substantially in a trade or treaty negotiation. An employee is covered by this restriction even though his participation in an ongoing negotiation may have occurred prior to January 1, 1991, the effective date of section 207(b).

Trade negotiations covered by the statute are those that the President determines to undertake pursuant to section 1102 of the omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902). Unless there is an earlier public announcement of a determination by the President, a trade negotiation commences to be "ongoing" when, at least 90 days before entering into a trade agreement, the President notifies both the House of Representatives and the Senate of his intention to enter into an agreement. 19 U.S.C. 2903 (a)(1)(A). Whether an employee participated personally and substantially in an "ongoing" trade negotiation is determined by reviewing an employee's participation after trade negotiations commenced. A treaty is an international agreement made by the President that requires the advice and consent of the Senate. A negotiation on a treaty commences to be "ongoing" at the point when both (1) the determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text. Trade and treaty negotiations both cease to be ongoing when an agreement or treaty enters into force or when all parties to the negotiation cease discussion based on a mutual understanding that the agreement or treaty will not be consummated.

Once he has participated in an ongoing negotiation, section 207(b) prohibits a former employee from representing, aiding, or advising any other person concerning a trade or treaty negotiation (that is still ongoing) on the basis of certain "covered" information. "Covered" information refers to agency records which were accessible to the employee, which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (e.g., documents that were marked as subject to a national security classification or those otherwise designated in a manner that made it clear they were exempt from release under FOIA), and which concern a negotiation in which the employee participated personally and substantially during his last year of Government service. A former employee is not prohibited from utilizing information from an agency record which, at the time of his post-employment activity, is no longer exempt from disclosure under the Freedom of Information

Act.

Only activities that are undertaken on behalf of "any other person" are prohibited by this restriction. Action taken on behalf of the United States (or the Congress) or on behalf of the former employee himself are not prohibited. A former employee "represents" another person when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that person to or before any third party. For this purpose, a third party includes any employee of the executive, legislative, or judicial branch of the Federal Government, including a Member of Congress. A former employee "aids or advises" another person when he assists that person other than by communicating to or appearing before a third party. A former employee represents, aids, or advises another person "on the basis of" covered information if the former employee's representation, aid, or advice either involves a disclosure of covered information to any person, or could not have been made or rendered had the former employee not had actual knowledge of covered information.

It is important to note that although a post-employment activity may not be prohibited by section 207(b), a former employee must still be careful to comply with other statutory restrictions. For example, even though a trade or treaty negotiation may not yet have become "ongoing" at the time of an employee's official participation, the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1).

4. Basic Prohibition of 18 U.S.C. 5 207(c). For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. The purpose of this one-year "cooling off" period is to allow for a period of adjustment to new roles for the former senior employee and the agency he served, and to diminish any appearance that Government decisions might be affected by the improper use by an individual of his former senior position. As already noted, this provision is applicable to "senior" employees, but not to "very senior,, employees.

Like the lifetime restriction discussed above, this provision prohibits communications to and appearances before the Government and does not prohibit "behind-the-scenes" assistance. Unlike the lifetime restriction, however, this one-year restriction applies only to a "senior,, employee, does not require that the former employee have ever been in any way involved in the matter that is the subject of the communication or appearance, and only prohibits communications to or appearances before employees of any department or agency in which he formerly served in any capacity during the one-year period prior to his termination from senior service. The representational bar applies with respect to any matter, whether or not involving a specific party, concerning which the former senior employee is seeking official action by a current employee of such department or agency on behalf of any other person except the United States (or the Congress).

As described below, section 207 provides for two methods by which the restrictions of section 207(c) can be narrowed or eliminated. The first is through the designation of separate departmental or agency components and the second is through the exemption of a position or category of positions from coverage. Not all senior employees are eligible to benefit from either or both of these procedures. A former senior employee is ineligible to benefit from these procedures if he is subject to section 207(c) by virtue of having served in a position for which the rate of pay is specified in or fixed according to the Executive Schedule or by virtue of having been appointed by the President to a position under 3 U. S.C. 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

As has been noted, the representational bar usually extends to any department or agency in which the former senior employee served in any capacity during the year prior to his termination from senior service. However, certain senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. For example, although it may not by statute be a separate component, OGE could designate the Defense Logistics Agency as an agency that exercises functions which are separate and distinct from its "parent" department, the Department of Defense. An individual formerly serving in a parent department or agency would be barred by section 207(c) from making communications to or appearances before any employee of that parent, but would not be barred as to employees of any designated component of that parent. An individual formerly serving in a designated component of a parent department or agency would be barred from communicating to or making an appearance before any employee of that component, but would not be barred as to any employee of the parent or of any other component. The statute now provides that no agency within the Executive Office of the President may be designated as a separate component.

The restrictions of section 207(c) can be waived altogether as to certain senior employee positions or categories of positions. As a consequence of such exemption, the one-year restriction of section 207 (c) will not begin to run upon an employee's termination from such a position. In order to grant an exemption, OGE must receive a request to do so from a department or agency. After review of the request, OGE can grant an exemption or exemptions based upon its determination that as to a particular position or category of positions, the imposition

of section 207(c) would create an undue hardship on the department or agency in obtaining qualified personnel and that the granting of the exemption would not create the potential for use of undue influence or advantage.

5. Basic Prohibition of 18 U.S.C. § 207(d). For one year after service in a 'very senior' position terminates, no former "very senior" employee may knowingly make, with the intent to influence, any communication to or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a "very senior" employee during the one-year period prior to termination from Government service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that individual or employee.

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

This provision, applicable only to 'very' senior employees, is very similar to the one-year restriction of section 207(c) discussed above. It too prohibits communications to or appearances before employees of certain governmental departments and agencies, unless on behalf of the United States (or the Congress). A former very senior employee is prohibited by section 207(d) from representing another before any current employee of any department or agency in which he served as a very senior employee during the one-year period prior to his termination from Government service. (Compare section 207(c) which prohibits communications and appearances to current employees of any department or agency in which a former "senior" employee served in any capacity during the one-year period prior to termination from senior service.) A former very senior employee is also prohibited by section 207(d), however, from representing another person before any individual currently appointed to an Executive Schedule position listed in 5 U.S.C. 5312-5216, whether or not that individual is serving in the very senior employee's former department or agency. The representational bar applies to any matter, whether or not involving a specific party, concerning which the former very senior employee is seeking official action by any current officer or employee of the executive branch.

Section 207 does not authorize OGE to designate separate and distinct components within a department or agency as a means of narrowing the scope of section 207(d). Moreover, no very senior employee's position is eligible for exemption from the application of section 207(d).

6. Basic Prohibition of 18 U.S.C. § 207(f). For one year after his service in a "senior" or "very senior" position terminates, no former "senior" employee or former "very senior" employee may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States in carrying out his official duties, represent a foreign entity before any department or agency of the United States or aid or advise a foreign entity.

Discussion. This is a one-year restriction, except that it lasts for three years as applied to any individual who becomes the United States Trade Representative after October 6, 1992. The restriction is measured from the date when an employee ceases to be a senior employee or a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

The restriction prohibits a former senior or very senior employee from representing, aiding, or advising a foreign entity with the intent to influence certain governmental officials. A "foreign entity," means the "government of a foreign country" as defined in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611), as amended, or a "foreign political party" as defined in section 1(f) of that Act. The government of a foreign country includes --

any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or any part of such country, and includes, any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

A foreign political party includes --

any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, - having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof.

A foreign commercial corporation will not generally be considered a "foreign entity" for purposes of section 207(f) unless it exercises the functions of a sovereign.

A former senior or very senior employee "represents" a foreign entity when he acts as an agent or attorney

for or otherwise communicates or makes an appearance on behalf of that entity to or before any employee of a department or agency. He "aids or advises" a foreign entity when he assists the entity other than by making such a communication or appearance. Such "behind the scenes" assistance to a foreign entity could, for example, include drafting a proposed communication to an agency, advising on an appearance before a department, or consulting on other strategies designed to persuade departmental or agency decision makers to take certain action. A former senior or very senior employee's representation, aid, or advice is only prohibited if made or rendered with the intent to influence an official discretionary decision of a current departmental or agency employee.

C. EXCEPTIONS

Sections 207(j) and (k) set forth several exceptions to the statute's substantive prohibitions. As noted below, some exceptions do not avoid application of all of the six substantive restrictions of 18 U.S.C. § 207.

Performing official Government Duties. A former employee is not restricted by any of the substantive provisions of section 207 from engaging in post-employment activities performed in carrying out official duties on behalf of the United States. This exception also extends to activities undertaken in carrying out official duties as an elected official of a state or local Government.

Representing Certain entities. A former senior or very senior employee will not violate section 207(c) or (d) if his communication or appearance is made in carrying out official duties as an employee of and is made on behalf of (1) an agency or instrumentality of a State or local Government, (2) an accredited degree-granting institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141 (a)), or (3) a hospital or medical research organization exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

Representing or Assisting International organizations. A former employee is not restricted by any of the substantive provisions of section 207 from representing, aiding, or advising an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States.

Imparting Special Knowledge. A former senior or very senior employee will not violate section 207(c) or (d) if he makes a statement that is based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

Scientific or Technological Information or Expertise. A former employee will not violate section 207(a)(1), (a)(2), (c), or (d) if he makes a communication solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved. Alternatively, a former employee may make a communication if the head of the agency concerned publishes a certification in the Federal Register stating that the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, that he is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation.

Testimony. A former employee is not restricted by any of the substantive restrictions of section 207 from giving testimony under oath or from making statements required to be made under penalty of perjury, subject to a special rule with respect to expert opinion testimony. Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the United States (or the Congress) if he is subject to the lifetime prohibition contained in section 207(a)(1) relating to that matter.

Employment with certain Prior Employers. A former employee is not restricted by any of the substantive restrictions of section 207 if granted one of 25 Presidential waivers in connection with his reemployment at a Government-owned, contractor operated entity.

REVISED MATERIALS RELATING TO 18 U.S.C. 207

SECTION 4. DoD GUIDANCE ON 18 U.S.C. 207 (reference (c))

9-400. Exceptions to Restrictions of 18 U.S.C. 207 (reference (c)). The restrictions imposed by 18 U.S.C. 207(a), (c) and (d) (reference (c)) do not apply to communications made solely to furnish scientific and technical information that are authorized by the Head of the DoD Component.

a. To obtain such an authorization in the case of former DoD employees:

(1) The head of the DoD Component command or organization involved shall submit, in writing, to the Head of the DoD Component a request that the former DoD employee be permitted to participate in a particular matter from which he would ordinarily be barred under 18 U.S.C. 207 (reference (c));

(2) The Head of the DoD Component or designee may determine in writing that such participation is appropriate if:

(a) The former DoD employee has outstanding scientific or technological qualifications;

(b) The national interest of the United States would be served by such participation;

(c) The former DoD employee has qualifications that are otherwise unavailable; and

(d) The Head of the DoD Component or designee has consulted with the DoD Component DAEO.

b. In cases involving former Federal Government employees other than former DoD employees, authorization may be obtained in accordance with procedures in 18 U.S.C. 207(j)(5) (reference (c)).

SECTION 5. POST-EMPLOYMENT COUNSELING AND ADVICE

9-500. Written Advice. Current and former DoD employees may obtain counseling and written advice concerning post-employment restrictions from the Ethics Counselor of the DoD Component command or organization from which they are leaving, or have left, Federal Government service. Current and former DoD employees are, by statute, entitled to written advice from the DoD Component DAEO or designee under 10 U.S.C. 2397b (reference (e)) and 41 U.S.C. 423 (reference (f)). See subsections 9-600.c. and 9-601.c. of this Regulation, below.

a. Although ethics counseling and advice are given by DoD attorneys and involve interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

b. Ethics counseling and advice are personal to the current or former DoD employee. They do not extend to anyone else, including his business, employer, or prospective employer.

9-501. Delegation of Authority. The DoD Component DAEO may specifically delegate authority in writing for Ethics Counselors within the DoD Component to provide written advice under 10 U.S.C. 2397b (reference (e)) and 41 U.S.C. 423 (reference (f)). In any case where the local Ethics Counselor does not have the authority by written delegation, he shall provide the counseling and obtain the request for advice and necessary supporting information from the DoD employee and forward it to the DoD Component DAEO or designee who has been specifically delegated the authority in writing to issue the written advice.

SECTION 6. RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES

9-600. 10 U.S.C. 2397b (reference (e))

a. Restrictions. This statute prohibits the following three categories of former DoD employees from accepting compensation from the concerned defense contractor during the two-year period after separation from DoD:

(1) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of a GS/GM-13, who:

- (a) On a majority of their working days during a two-year period prior to separation;
- (b) Performed a procurement function relating to a defense contract;
- (c) At a site or plant owned or operated by the defense contractor and which was the DoD employee's principal work location.

(2) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a GS/GM-13, who:

- (a) On a majority of their working days during the two-year period prior to separation;
- (b) Performed a procurement function related to a major defense system and;
- (c) In the performance of the procurement function, participated personally and substantially on any occasion and in a manner involving decision-making responsibilities with respect to a contract for the system;
- (d) Through contact with the defense contractor; and

(3) O-7s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a Senior Executive Service position, who during the two-year period prior to separation, acted as a "primary representative of the United States" in negotiation of a defense contract in an amount in excess of \$10 million or settlement of an unresolved claim exceeding \$10 million. An unresolved claim is valued by the greater of the amount of the claim or the amount of the settlement.

b. Penalties and Effective Dates. Former DoD employees who knowingly violate this statute are subject to a civil fine up to \$250,000. Defense contractors who knowingly offer or provide any compensation to individuals in violation of this statute are subject to a civil fine up to \$500,000.

(1) The effective date of this law was April 16, 1987. The law does not prohibit the continuation of defense contractor employment begun or compensation accepted before then. If an employee separated from DoD prior to April 16, 1987, the statute does not apply. However, former DoD employees who were still employed or on active duty on or after April 16, 1987 must comply fully with its provisions, if within its scope.

(2) For the period of December 1, 1989 until May 31, 1991, the statute was suspended and employment or acceptance of compensation during that period could not violate the statute. Questions about the effect of the suspension should be referred to the local Ethics Counselor.

c. Written Opinion

(1) Before accepting compensation from a defense contractor, a DoD employee or former DoD employee is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such written opinion shall be submitted in writing to the Ethics Counselor serving the DoD Component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request.

(2) Ethics Counselors who have not been delegated authority in writing to issue 10 U.S.C. 2397b (reference (e)) written opinions shall promptly forward the request to the DoD Component DAEO or designee who has such authority.

(3) Written opinions shall be issued within 30 days of receiving the request and all necessary information.

(4) A written opinion that this statute is not applicable to a specific situation, if based on a complete disclosure of all relevant information, creates a conclusive presumption that the receipt of compensation from a particular defense contractor is not a violation of the law.

(5) A copy of each 10 U.S.C. 2397b (reference (e)) written opinion shall be retained by the DoD Component DAEO or designee for three years.

d. DoD Interpretation of 10 U.S.C. 2397b
(reference (e))

(1) If a DoD employee had been conducting all negotiations with a \$10 million defense contractor on a major defense contract action of \$10 million or more, but a superior DoD employee intervened directly in the negotiating process, both DoD employees would be considered "primary" representatives for that defense contract action.

(2) 10 U.S.C. 2397b (reference (e)) does not prohibit any former DoD employee from accepting compensation from any defense contractor that, during the fiscal year preceding the fiscal year in which compensation is accepted, was not a defense contractor or was a defense contractor whose contracts totalled less than \$10 million.

(3) 10 U.S.C. 2397b (reference (e)) prohibits employment with particular defense contractors, not subcontractors, but former DoD employees cannot avoid its consequences merely by forming their own company and then "subcontracting" themselves to otherwise prohibited defense contractors.

9-601. 41 U.S.C. 423 (reference (f))

a. Restrictions. This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(1) Participating in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a defense contract for such procurement; or

(2) Participating personally and substantially on behalf of the competing contractor in the performance of such defense contract.

b. Period of Restrictions. Both restrictions apply for a period of two years from the date of the former DoD employee's last personal and substantial participation in the procurement on behalf of the Federal Government. Neither applies unless the individual was a DoD employee of the Federal Government at the time he served as a procurement official.

c. Written Opinion

(1) A DoD employee or former DoD employee who is or was a procurement official is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such an opinion shall be submitted in writing to the Ethics Counselor serving the DoD Component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request. See FAR 3.104-8(e) (reference (g)) in Appendix B of this Regulation.

(2) Ethics Counselors who have not been delegated specific authority in writing to issue 41 U.S.C. 423 (reference (f)) written opinions shall promptly forward the request to the DoD Component DAEO or designee who has such authority.

(3) Written opinions shall be issued within 30 days of receiving the request, together with all necessary information.

(4) Where the DoD employee or former DoD employee relies in good faith on a written opinion that this statute is not applicable to a specific situation, the DoD employee or former DoD employee shall not be found to have knowingly violated the restrictions of the statute.

(5) A copy of each 41 U.S.C. 423 (reference (f)) opinion shall be retained by the DoD Component DAEO or designee for three years.

SECTION 7. RESTRICTIONS ON RETIRED MILITARY MEMBERS

9-700. 18 U.S.C. 281(a) and 37 U.S.C. 801 (references (c) and (h)), respectively). Two statutes restrict the selling activities of retired military officers, 18 U.S.C. 281(a) (reference (c)) and 37 U.S.C. 801 (reference (h)).

a. Restrictions

(1) A criminal statute, 18 U.S.C. 281(a) (reference (c)), provides that for a period of two years after retiring, no retired military officer may receive compensation for representing any other individual in the sale of anything to the Federal Government through the department in which he holds a retired status.

(a) The term "department" refers to individual DoD Components, not DoD as a whole, insofar as it concerns retired military officers. For example, this statute does not prohibit retired Navy and Marine Corps officers from selling to the Departments of the Army or Air Force.

(b) The term "anything" in the phrase "sale of anything" has been construed by DoJ to encompass both goods and services.

(c) DoJ has determined that this statute does not prohibit the sale of personal services when the retiree is only representing himself. However, sale of personal services may not include the work product of a closely held corporation where individuals other than the retiree contribute to the services provided.

(2) A civil statute, 37 U.S.C. 801 (reference (h)), provides for a loss of entitlement to retired pay by retired Regular military officers if they engage in certain employment activities involving sales of supplies and war materials (tangible property) to DoD, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service during the three years immediately following retirement.

(a) This does not prohibit employment with a particular employer but does affect a retired Regular military officer's direct and personal involvement in sales to the agencies listed above.

(b) The prohibition is against engaging, personally or for others, in selling, or contracting or negotiating to sell, supplies or war materials.

(c) Unlike the criminal selling statute, however, the sale of services is not prohibited.

b. Definition of "Selling"

(1) For the purpose of these two statutes, "selling" means:

(a) Signing a bid, proposal, or contract;

(b) Negotiating a contract;

(c) Contacting a DoD employee to obtain or negotiate defense contracts, negotiate or discuss changes in specifications, price, cost allowances, or other terms of a defense contract, or settle disputes concerning performance of a defense contract; or

(d) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual defense contract is negotiated subsequently by another person.

(2) Activities which are not considered "selling" include:

(a) Purely social contacts, as long as there is an independent basis for the social relationship and no promotion of a product or attempt to influence a procurement;

(b) Technical contacts for the purpose of conferring with non-contracting technical specialists to acquire information that is available to all prospective defense contractors, provided that these contacts do not otherwise involve "selling" as discussed in subsection 9-700.b.(1) of this Regulation, above. See 42 Comp. Gen. 236, 241 (reference (i));

(c) Contacts subsequent to the execution of a defense contract relating to performance or progress, if they do not include modification of the defense contract or "selling" as discussed in subsection 9-700.b.(1) of this Regulation, above.

c. Sale of Services

(1) The Comptroller General has ruled that the sale of services does not require the withholding of retired pay pursuant to 37 U.S.C. 801 (reference (h)), and that the sale of services may include tangible

goods if the primary purpose of the sale is to provide services. See 42 Comp. Gen. 87, 92 (reference (j)) (contract to provide television service where parts and supplies were incidental to the contract does not run afoul of 37 U.S.C. 801 (reference (h))).

(2) When the restrictions of 18 U.S.C. 281(a) (reference (c)) are combined with those of 37 U.S.C. 801 (reference (h)), the one significant area of selling activity which remains open to military retirees is the sale of services and other non-tangibles to uniformed services, other than the DoD Component from which the individual retired, for the first two years after retirement.

9-701. 18 U.S.C. 281(b) (reference (c)). For a period of two years after terminating service with the Federal Government, a retired military officer may not act as an agent or attorney for the prosecution or assist in the prosecution of any claim against the United States involving the department in which he holds a retired status or which concerns a subject with which the military officer was directly connected while on active duty. A violation of this statute is punishable by a \$10,000 fine and one year imprisonment.

9-702. Restrictions on Federal Government Employment

a. Dual Compensation Laws. A retired member of any uniformed service who holds a civilian position with the Federal Government is subject to reduction of retired pay while receiving pay from a Federal Government civilian position. The term "retired member" means anyone, officer or enlisted, entitled to receive retired pay. The term "retired pay" includes both retired and retainer pay. The current law generally applies to retired Regular officers, retired at any time, and to all former members of the uniformed services who left active duty after January 11, 1979. See 5 U.S.C. 5532 (reference (k)) for exceptions to this general rule.

(1) The Dual Compensation Reduction Formulas. There are two provisions in the current dual compensation law which may operate to reduce the retired pay of retired members of the uniformed services who hold Federal Government civilian positions.

(a) The First Reduction Provision. The first reduction provision applies only to retired Regular officers who retired at any time. This provision operates to reduce the retired pay of a retired Regular military officer receiving pay from a Federal Government civilian position regardless of the amount of salary from that civilian position. It provides that such retired military officer is entitled to receive the full pay of the civilian position, but retired pay will be reduced to an annual rate equal to a base amount plus one-half of the remainder of the retired pay, if any. The base amount is increased periodically to reflect changes in the Consumer Price Index. See 5 U.S.C. 5532(b) (reference (k)).

(b) The Second Reduction Provision. The second reduction provision applies, in general, to all retired military members who first received retired pay after January 11, 1979. The reduction depends upon the amount of pay received from the Federal Government civilian position. This provision operates to reduce the retired pay of a retired member when the annual rate of pay for the civilian position combined with the annual rate of retired pay (reduced in the case of retired Regular officers as discussed in subsection 9-702.a.(1)(a) of this Regulation, above) exceeds the annual rate of basic pay for level V of the Executive Schedule. Reductions are computed as follows:

1 If the combination of pay from the civilian position and retired pay exceeds the amount currently paid for level V of the Executive Schedule, the retired pay will be reduced to keep the total at the level V limit.

2 Reductions to retired pay are made per pay period whenever the combination of the two salaries for the pay period exceeds the pay for a level V position for that pay period. Reductions made in such pay periods are not refundable even when the combined pay amounts for the total year is less than the annual rate for level V of the Executive Schedule;

3 The amount of retired pay may not be reduced to an amount less than the amount deducted from the retired pay as a result of participation in any survivor's benefits in connection with retired pay or veterans insurance programs and no reductions shall be made to retired pay based, in whole or in part, upon disability incurred in the line of duty as a direct result of armed conflict or during a period of war.

(2) Waivers

(a) A retired member may, in certain limited circumstances, obtain a waiver so that his retired pay would not be reduced while holding a Federal Government civilian position. See 5 U.S.C. 5532(g) (reference (k)). The circumstances under which a waiver may be granted are:

1 On a case-by-case basis for a retired member holding a Federal Government civilian position for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

2 For temporary employment that is necessary due to an emergency involving a direct threat to life or property, or under other unusual circumstances.

(b) The Director, OPM, may grant a waiver at the request of the Head of an Executive Agency. Additionally, the Director, OPM, may delegate to an agency the authority to grant waivers for the temporary employment of retired members during emergencies or other unusual circumstances, but not for employment necessitated by exceptional difficulties in recruiting or retaining qualified individuals. The Director, OPM, has delegated to DoD authority to approve dual compensation restriction waivers in certain circumstances at installations scheduled for closure.

(c) Waivers are to be the exception, not the rule. If appropriate, however, a waiver may be obtained for either or both of the dual compensation reductions. See 5 C.F.R. 553 (reference (l)) for procedures for obtaining a waiver.

b. Post-Military Service Employment in DoD under 5 U.S.C. 3326 (reference (k)). As of November 6, 1992, the suspension of this provision ended. See DoD Directive 1402.1 (reference (m)). To avoid appearances of favoritism or preferential treatment, retired military members may not be selected to fill civil service positions in DoD (including non-appropriated fund instrumentalities) within 180 days following retirement unless:

(1) The appointment is authorized by the Secretary of a Military Department or designee, or by OPM if the position is in the competitive service;

(2) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305 (reference (k)); or

(3) A state of national emergency exists.

9-703. Foreign Employment Restrictions

a. Article I, Section 9, Clause 8, of the Constitution of the United States (reference (n)), prohibits any person holding any office of profit or trust under the Federal Government from accepting any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state without the consent of Congress.

(1) This provision prohibits employment of all retired military members, both officer and enlisted and both Regular and Reserve, by a foreign government unless Congressional consent is first granted. See 44 Comp. Gen. 130 (reference (o)).

(2) Employment by educational or commercial institutions owned, operated, or controlled by a foreign government is included within the scope of this restriction.

(3) The penalty for violation is withholding the retired military member's retired pay in an amount equal to the foreign salary illegally received. See 61 Comp. Gen. 306 (reference (p)).

b. Congress has consented to the acceptance of civil employment with a foreign government by, among others, retired Regular military members and Reserve military members, if both the Secretary of the Military Department and the Secretary of State approve the employment. See 37 U.S.C. 908 (reference (h)). Because approval is prospective only, foreign civil employment should not be accepted until approval has been obtained. Retired military members who wish to accept such employment should submit a written request for approval to the Secretary of their Military Department through appropriate channels. The request must fully describe the contemplated employment and the nature and extent of the involvement with the foreign government.

c. A former military member desiring employment with a foreign government or any foreign business interest may be required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 et. seq. (reference (q)). Any person who acts as an agent of a foreign principal must file a registration statement with the U.S. Attorney General.

SECTION 8. RESTRICTIONS ON FORMER SENIOR APPOINTEES

9-800. Executive Order 12834. E.O. 12834 (reference (r)), in subsection 12-200 of this Regulation, requires contractual ethics commitments regarding post-Government service employment from full-time, non-career Presidential, Vice-Presidential or Agency Head appointees in an Executive Agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule, except for those appointed as members of the senior foreign service or solely as uniformed service commissioned officers. See E.O. 12834 (reference (r)) in subsection 12-200 of this Regulation and OGE Form 203, "Senior Appointee Pledge," January 1993, and OGE Form 204, "Trade Negotiation Pledge," January 1993, Appendix C of this Regulation.

SECTION 9. RESTRICTIONS ON DEALING WITH CURRENT OR FORMER DoD EMPLOYEES

9-900. General Rule. Current DoD employees shall not knowingly deal, on behalf of the Federal Government, with current or former DoD employees whose participation in the transaction violates any statute or DoD directive, regulation or policy.

9-901. Terminal Leave

a. Military members on terminal leave may accept civilian employment with the Federal Government and are entitled to the pay of that civilian position in addition to the pay and allowances to which entitled while on terminal leave. See 5 U.S.C. 5534a (reference (k)).

b. Military officer on active duty may not accept a civil office with a State or local government, nor may he perform the duties of such an office. See 10 U.S.C. 973(b)(3) (reference (e)). This applies while the military officer is on terminal leave. See 56 Comp. Gen 855 (reference (s)).

SECTION 10. REPORTS OF DoD AND DEFENSE RELATED EMPLOYMENT
(DD FORM 1787)

9-1000. Individuals Required to File. The following former DoD employees are required by 10 U.S.C. 2397 (reference (e)) to file DD Form 1787, Appendix C of this Regulation, with their former DoD Component:

a. Each former DoD employee of a DoD Component who:

(1) Served at a pay rate equal to or greater than the minimum rate for a GS/GM-13, or served on active duty at least ten years and held the grade of 0-4 or above at any time during his service;

(2) Within the two-year period immediately following termination of service or employment with the DoD Component, is employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

(3) Is employed by or performs services for the defense contractor and receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor.

b. Compensation is received by a reporting individual if it is paid to a business entity with which the reporting individual is affiliated in exchange for services rendered by that reporting individual;

c. A rate of \$25,000 per year equates to \$12 per hour.

9-1001. Time of Filing. A former DoD employee shall file a report with his former DoD Component DAEO or designee within 90 days of entering on duty with the defense contractor.

9-1002. Review

a. When the report is filed, the DoD Component DAEO or designee shall review the report to determine whether:

(1) Each item is completed and sufficient information is provided; and

(2) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, and related laws and regulations.

b. The DoD Component DAEO or designee need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the DoD Component DAEO or designee will resolve any apparent violations to ensure there are no actual violations.

c. If the DoD Component DAEO or designee believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the DoD Component DAEO or designee.

d. When the DoD Component DAEO or designee has completed the review and accomplished any necessary remedial action, he shall sign and date the report and dispose of it in accordance with subsection 9-1003.b. of this Regulation, below.

e. If the DoD Component DAEO or designee concludes that the reporting individual is not in compliance with applicable laws or regulations, the DoD Component DAEO or designee shall:

(1) Notify the reporting individual of the preliminary determination;

(2) Afford the reporting individual an opportunity for personal consultation, if practicable;

(3) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(4) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

f. When the DoD Component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. Then the DoD Component DAEO or designee shall sign and date the report as the reviewing official and dispose of it in accordance with subsection 9-1003.b. of this Regulation, below.

9-1003. Disposition

a. The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787, Appendix C of this Regulation, is extracted and sent to the Defense Manpower Data Center where a consolidated report to Congress is compiled.

b. After the DoD Component DAEO or designee signs and dates the report, he shall send it to SOCO.

c. If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the DoD Component DAEO or designee shall take whatever other action might be required in accordance with Chapter 10 of this Regulation.

d. DD Forms 1787, Appendix C of this Regulation, shall be retained by SOCO for six years from the date of filing with SOCO.

9-1004. Public Availability of Reports. DD Forms 1787, Appendix C of this Regulation, must be made available for public examination upon request after the reports are filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

9-1005. Penalties

a. Administrative Penalties. Anyone failing to file a report or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397 (reference (e)).

b. Criminal Liability. Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (c)).

SECTION 11. REFERENCES**9-1100. References**

- (a) Title 5, Code of Federal Regulations, Part 2637, "Regulations Concerning Post-Employment Conflict of Interest," current edition
- (b) Title 5, Code of Federal Regulations, Part 2641, "Post-Employment Conflict of Interest Restrictions," current edition
- (c) Title 18, United States Code, Sections 207, 281, and 1001
- (d) Office of Government Ethics Memorandum, "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992
- (e) Title 10, United States Code, Sections 973, 2397, and 2397b
- (f) Title 41, United States Code, Section 423
- (g) Federal Acquisition Regulation, Part 3.104, current edition
- (h) Title 37, United States Code, Sections 801, 908
- (i) Decision of the Comptroller General, Volume 42, page 236 (1962)
- (j) Decision of the Comptroller General, Volume 42, page 87 (1962)
- (k) Title 5, United States Code, Sections 3326, 5305, 5532, and 5534
- (l) Title 5, Code of Federal Regulations, Part 553, "Reemployment of Military and Civilian Retirees to Meet Exceptional Employment Needs," current edition
- (m) DoD Directive 1402.1, "Employment of Retired Members of the Armed Forces (NOTAL)," January 21, 1982
- (n) United States Constitution, Article I, Section 9, Clause 8
- (o) Decision of the Comptroller General, Volume 44, page 130 (1964)
- (p) Decision of the Comptroller General, Volume 61, page 306 (1982)
- (q) Title 22, United States Code, Section 611 et seq
- (r) Executive Order 12834, "Ethics Commitments by Executive Branch Appointees," January 20, 1993
- (s) Decision of the Comptroller General, Volume 56, page 855 (1977)

CHAPTER 10

ENFORCEMENT

SECTION 1. ENFORCEMENT OF THE PROVISIONS OF THE JOINT ETHICS REGULATION

10-100. Penalties. Penalties for violation of the rules republished in, and prescribed by, this Regulation include the full range of applicable criminal, civil and administrative sanctions for current DoD employees, including punishment under the UCMJ (reference (a)) for military members. Many of the statutes that regulate the post-Government service employment activities of former or retired DoD employees also provide for specific criminal and administrative sanctions. This Chapter sets out the requirements for reporting and inquiry to ensure that ethics-related laws and regulations are properly enforced and that appropriate administrative or disciplinary action is taken.

SECTION 2. REPORTING PROCEDURES

10-200. Reporting Suspected Violations. With the exception of the provisions of 41 U.S.C. 423 (reference (b)) that are addressed in subsection 10-202 of this Regulation, below, DoD employees who suspect that a violation of this Regulation has occurred shall report the matter to any of the following:

- a. The DoD employee's Agency Designee;
- b. The suspected violator's Agency Designee;
- c. The head of the DoD Component command or organization;
- d. Any Ethics Counselor;
- e. The DoD Component's IG;
- f. The DoD Component's criminal investigative office;
or
- g. The DoD hotline or DoD Component hotline.

10-201. Receipt of Report

a. DoD Component investigative offices shall consult local Ethics Counselors as appropriate to ensure that up-to-date expertise is

applied in the investigation of each suspected violation of this Regulation in recognition of rapidly changing rules and statutes in the ethics area.

b. If a suspected violation is reported to some entity other than those named in 10-200.d. through g. of this Regulation, above, then the notified person shall promptly report the matter to his Ethics Counselor.

c. An Ethics Counselor who receives a report shall review the facts and, if the facts tend to support a violation, report the allegation to the appropriate investigative organization or, through the chain of command or supervision, to the head of the DoD Component command or organization of the suspected violator. In addition, the Ethics Counselor must ensure that the following is accomplished:

(1) If a violation of 18 U.S.C. 203, 205, 207, 208 or 209 (reference (c)) is suspected, the matter shall be reported to the DoD Component's criminal investigative organization. The investigative organization is responsible for investigating the allegation and notifying DoJ in accordance with DoD Directive 5525.7 (reference (d)). In addition, the Ethics Counselor shall:

- (a) Report to the DoD Component DAEO as follows:
 - 1 The name and position (optional) of the informant;
 - 2 The name and position of the suspect;
 - 3 The suspected offense;
 - 4 The facts, as known or believed;
 - 5 The status of any action being taken.
- (b) File periodic follow-up reports with the DoD Component DAEO until a final determination is made;
- (c) If the matter is referred to the DoJ or the U.S. Attorney, include OGE Form 202, "Notification of Conflict of Interest Referral," January 1992, Appendix C of this Regulation, in the referral packet and send a copy to the

DoD Component DAEO for
forwarding to OGE.

(2) If a violation of 18 U.S.C. 201 or 281 (reference (c)) is suspected, it shall be handled in the same manner as subsection 10-201.c.(1)(a) of this Regulation, above, except that OGE Form 202, Appendix C of this Regulation, is not used for referrals;

(3) If a violation of 10 U.S.C. 2397 (reference (a)) is suspected, the Ethics Counselor shall inquire into the matter and, if substantiated, attempt to obtain compliance. If these efforts fail, the Ethics Counselor shall forward a written report to the GC, DoD through the DoD Component DAEO with a recommendation for action by the Secretary of Defense pursuant to 10 U.S.C. 2397(f) (reference (a));

(a) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(b) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(4) If a violation of 10 U.S.C. 2397a (reference (a)) is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above. If the Ethics Counselor believes that the Secretary of Defense should take action pursuant to 10 U.S.C. 2397a(d) (reference (a)), the Ethics Counselor shall forward a written report to the GC, DoD through the DoD Component DAEO with a recommendation for action;

(a) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(b) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(5) If a violation of 10 U.S.C. 2397b (reference (a)) is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above;

(6) If it is suspected that an individual is receiving retired pay contrary to 37 U.S.C. 801 (reference (e)), a report of the matter shall be made to the Defense Finance and Accounting Service. A copy of that report shall be sent to the DoD Component DAEO;

(7) If a violation of 5 C.F.R. 2635 (reference (f)) in subsection 2-100 of this Regulation involving a loss to the Federal Government of \$5,000 or more is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above.

d. In addition, if any of the above violations fall within a DoD Component's procurement fraud program, the Ethics Counselor shall ensure that referrals, coordinations, and reports required by that program are accomplished. If the matter includes a suspected violation of the Gratuities Clause in a defense contract, the Ethics Counselor shall report the matter in accordance with DoD Component procedures issued pursuant to FAR 3.203 (reference (g)) in Appendix B of this Regulation. See subsection 10-202 of this Regulation, below.

e. For matters not handled within the DoD Component's procurement fraud program, any civil or criminal referrals to DoJ or the local U.S. Attorney of violations of this Regulation shall be coordinated with the DoD Component DAEO. The DoD Component DAEO shall be informed of referrals of violations of this Regulation handled within the DoD Component's procurement fraud program.

10-202. Violations of 41 U.S.C. 423 (reference (b))

a. Administrative Sanctions. Suspected violations of 41 U.S.C. 423 (reference (b)) shall be processed in accordance with FAR 3.104-11 (reference (g)) in Appendix B of this Regulation. See 41 U.S.C. 423(h)(2) (reference (b)).

b. Civil Sanctions. Suspected civil violations shall be referred through the DoD Component DAEO to DoJ. See 41 U.S.C. 423(i) (reference (b)).

c. Criminal Sanctions. Suspected violations that involve the improper release of source selection information should be referred to the appropriate criminal investigative organization. See 41 U.S.C. 423(j) (reference (b)).

d. Reporting. Any suspected violation of the provisions of 41 U.S.C. 423 (reference (b)) shall be reported as soon as practicable to the appropriate contracting officer. See 41 U.S.C. 423(h)(1) (reference (b)). Any actions taken as the result of the above referrals shall be reported to the DoD

Component DAEO in accordance with subsection 10-201.c.(1)(a) of this Regulation, above.

SECTION 3. ADMINISTRATIVE ENFORCEMENT PROCEDURES

10-300. Statutory Authority. 10 U.S.C. 2397 and 2397a (reference (a)) provide for administrative enforcement action and sanctions imposed by the Secretary of Defense against individuals and non-Federal entities not in compliance with these statutes.

10-301. Procedures for Pursuing Administrative Action. All recommendations for enforcement of 10 U.S.C. 2397 and 2397a (reference (a)) forwarded to the Secretary of Defense shall be initiated, investigated and processed in accordance with the requirements of the Administrative Procedure Act. See 5 U.S.C. 551 et seq. (reference (h)).

10-302. Hearing Examiners. In accordance with 5 U.S.C. 556 (reference (h)), DoD shall appoint hearing examiners from within DoD to preside at the taking of evidence and provide recommendations to DoD as to final action.

10-303. Administrative Sanctions

a. DoD may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397 and 2397a (reference (a)) by:

(1) Imposing an administrative penalty, not to exceed \$10,000;

(2) With respect to violations of 10 U.S.C. 2397a (reference (a)), imposing an additional administrative penalty of a particular amount if the individual is determined to have accepted or continued employment with a defense contractor during the ten-year period beginning with the date of separation from Federal Government service.

b. DoD may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

10-304. Judicial Review. Any individual or non-Federal entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.

SECTION 4. REFERENCES

10-400. References

- (a) Title 10, United States Code, Sections 801 through 940 (Uniform Code of Military Justice), 2397, 2397a and 2397b.
- (b) Title 41, United States Code, Section 423
- (c) Title 18, United States Code, Sections 201, 203, 205, 207, 208, 209 and 281
- (d) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes," January 22, 1985
- (e) Title 37, United States Code, Section 801
- (f) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (g) Federal Acquisition Regulation, Parts 3.104 and 3.203, current edition
- (h) Title 5, United States Code, Section 551 et seq.

CHAPTER 11

TRAINING

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

11-100. 5 C.F.R. Part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities" (reference (a))

**OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY
ETHICS PROGRAM RESPONSIBILITIES**

5 CFR 2638¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	3
Sec. 2638.103 Agency regulations	3
Sec. 2638.104 Definitions	3
Act (3); Agency (3); Designated agency ethics official (3); Director (3); Executive branch (3); Person (3)	
SUBPART B: DESIGNATED AGENCY ETHICS OFFICIAL	3
Sec. 2638.201 In general	3
Sec. 2638.202 Responsibilities of agency head	3
In general (3); Selection of a designated agency ethics official (3); Designation (4)	
Sec. 2638.203 Duties of the designated agency ethics official	4
In general (4); Program elements (4)	
Sec. 2638.204 Deputy ethics official.	5
Functions (5); Dual status (5)	
SUBPART G: EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS	5
Sec. 2638.701 Executive agency ethics training programs; generally	5
Sec. 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics	5
Sec. 2638.703 Initial agency ethics orientation	6
Sec. 2638.704 Annual agency ethics training	6
Annual ethics training (6); Course content (7); Course presentation (7)	

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

SUBPART A: GENERAL PROVISIONS**Sec. 2638.103 Agency regulations**

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations not inconsistent with this part.

Sec. 2638.104 Definitions

For the purposes of this part:

"Act" means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended).

"Agency" means any executive department, military department, Government corporation, independent establishment or agency, including the United States Postal Service and Postal Rate Commission.

"Designated agency ethics official" means an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program in accordance with the provisions of Sec. 2638.203 of this part.

"Director" means the Director of the Office of Government Ethics.

"Executive branch" includes each executive department, military department, Government corporation, independent establishment, and any other entity or administrative unit in the executive branch unless such agency, entity or unit is specifically included in the coverage of Title I (relating to the legislative branch) or Title III (relating to the judicial branch) of the Act.

"Person" includes an individual, partnership, corporation, association, government agency, or public or private organization.

SUBPART B: DESIGNATED AGENCY ETHICS OFFICIAL**Sec. 2638.201 In general**

Each agency shall have a designated agency ethics official who is the officer or employee designated by the head of the agency to administer the provisions of Title II of the Act within that agency, to coordinate and manage the agency's ethics program and to provide liaison to the Office of Government Ethics with regard to all aspects of such ethics program. The agency's ethics program shall be designed to implement Titles II, IV and V of the Act and regulations promulgated thereunder, Executive Order 11222 (relating to standards of conduct for officers and employees within the executive branch) and regulations promulgated thereunder, and other statutes and regulations applicable to agency ethics matters.

Sec. 2638.202 Responsibilities of agency head

(a) In general. The head of each agency is responsible for and shall exercise personal leadership in establishing, maintaining, and carrying out the agency's ethics program. He or she shall make available to the ethics program sufficient resources (including investigative, audit, legal, and administrative staff as necessary) to enable the agency to administer its program in a positive and effective manner.

(b) Selection of a designated agency ethics official. The head of each agency shall appoint an individual to serve as the designated agency ethics official and an individual to serve in an acting capacity in the absence of the primary designated agency ethics official (alternate agency ethics official). In selecting these two individuals the head of an agency should ensure that the experience of such appointees in administrative, legal, managerial, or analytical work demonstrates the ability to--

(1) Review the financial disclosure reports submitted by officers or employees within the agency, assessing the application of conflict of interest laws and regulations to the information reported and counseling those officers or employees with regard to resolving actual or potential conflicts of interests, or appearances thereof;

(2) Review the financial disclosure reports submitted by Presidential appointees for confirmation, purposes and counsel those appointees with regard to resolving potential conflicts of interest, or appearances thereof, before the confirmation hearing;

(3) Counsel agency personnel concerning ethics standards and programs;

(4) Counsel departing and former agency officials on post-employment conflict of interest standards;

(5) Assist managers and supervisors in understanding and implementing agency ethics programs;

- (6) Administer a system for periodic evaluation of the ethics program; and
- (7) Select deputy ethics officials if necessary and manage the ethics program through them.

(c) Designation. The head of each agency shall formally delegate functional authority to coordinate and manage the ethics program as set forth in Sec. 2638.203 to the designated and alternate agency ethics officials. Within 30 days of any such delegation of authority the head of the agency shall submit to the Office of Government Ethics a formal written designation. The designation shall include:

- (1) The names of the individuals so designated;
- (2) The title of the position held by each designee; and
- (3) A copy of the delegation of authority.

Sec. 2638.203 Duties of the designated agency ethics official

(a) In general. The designated agency ethics official shall coordinate and manage the agency's ethics program. The program consists generally of:

- (1) Liaison with the Office of Government Ethics;
- (2) Review of financial disclosure reports;
- (3) Initiation and maintenance of ethics education and training programs; and
- (4) Monitoring administrative actions and sanctions.

(b) Program elements. In carrying out this program on behalf of the head of the agency, the designated agency ethics official shall ensure that:

- (1) Close liaison with the Office of Government Ethics concerning the agency's ethics program is developed and maintained;
- (2) An effective system and procedure for the collection, filing, review, and, when applicable, public inspection of the financial disclosure reports as required by Title II of the Act, Executive Order 11222, and other applicable statutes and regulations is developed and properly administered;
- (3) The financial disclosure reports of Presidential nominees to agency positions submitted prior to Senate confirmation hearings pursuant to Sec. 2634.604(c) of Part 2634 are certified personally by him or herself or alternate designated agency ethics official in his or her absence;
- (4) All financial disclosure reports submitted by employees and filed in bureaus and regional offices, as well as those submitted and filed at the agency's headquarters, are properly maintained and effectively and consistently reviewed for conformance with all applicable laws and statutes;
- (5) A list of those circumstances or situations which have resulted or may result in noncompliance with ethics laws and regulations is developed, maintained and published within the agency as required by Sec. 206(b)(7) of the Act and made available for public inspection;
- (6) An education program for agency employees concerning all ethics and standards of conduct matters, including post employment matters, is developed and conducted in cooperation with the education program of the Office of Government Ethics;
- (7) A counseling program for agency employees concerning all ethics and standards of conduct matters including post employment matters, is developed and conducted;
- (8) Records are kept, when appropriate, on advice rendered;
- (9) Prompt and effective action including administrative action is undertaken to remedy:
 - (i) Violations or potential violations, or appearances thereof, of the agency's standards of conduct including post employment regulations;
 - (ii) The failure to file a financial disclosure report or portions thereof;
 - (iii) Potential or actual conflicts of interests, or appearances thereof, which were disclosed on a financial disclosure report; and

(iv) Potential or actual violations of other laws governing the conduct or financial holdings of officers or employees of that agency, and that a follow-up is made to ensure that actions ordered, including divestiture and disqualification, have been taken;

(10) The agency's standards of conduct regulations, financial disclosure systems, and post employment enforcement systems are evaluated periodically to determine their adequacy and effectiveness in relation to current agency responsibilities;

(11) Information developed by internal audit and review staff, the Office of the Inspector General, if any, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations;

(12) The services of the agency's Office of Inspector General, if any, are utilized when appropriate, including referral of matters to and acceptance of matters from that Office;

(13) A list of those persons to whom delegations of authority are made pursuant to 2638.204(a) is maintained and made available to the Office of Government Ethics, upon request; and

(14) Information required by the Act or requested by the Office of Government Ethics in the performance of its responsibilities is provided in a complete and timely manner.

Sec. 2638.204 Deputy ethics official.

(a) Functions. A designated agency ethics official may, if necessary, delegate to one or more deputy ethics officials any of the duties referred to in 2638.203, except for those functions set forth in 2634.604(c)(2) of Part 2634 and referred to in 2638.203(b)(3)(certification of nominee statements). A deputy ethics official shall work under the supervision of the designated agency ethics official in carrying out such delegated functions.

(b) Dual status. A deputy ethics official may also be designated pursuant to 2638.202 to serve as the alternate agency ethics official. During the absence of the designated agency ethics official a deputy ethics official who has been designated as the alternate ethics official shall perform the functions set forth in 2634.604(c)(2) of Part 2634 and referred to in 2638.203(b)(3).

SUBPART G: EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS

Sec. 2638.701 Executive agency ethics training programs; generally

Each executive branch agency shall maintain a program of ethics training designed to ensure that all of its employees are aware of the Federal conflict of interest statutes and principles of ethical conduct. As a minimum, each agency program shall consist of initial ethics orientation required by Sec. 2638.703 of this subpart and annual ethics training required by Sec. 2638.704 of this subpart. For purposes of this subpart, the term "employee" shall include special Government employees (as defined in 18 U.S.C. 202(a)) and officers of the uniformed services.

Sec. 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics

(a) It shall be the responsibility of the designated agency ethics official of each executive agency or his or her designee to make any written determinations provided for in this subpart and to:

(1) Direct the agency ethics training program to ensure that it meets the requirements of E.O. 12674 (as modified by E.O. 12731) and of this subpart and that the course content is legally correct;

(2) Ensure the availability of qualified individuals to provide the annual training required by Sec. 2638.704 of this subpart. For the purposes of this subpart, the following shall be considered qualified individuals:

(i) The designated agency ethics official described in Sec. 2638.201;

(ii) The alternate agency ethics official described in Sec. 2638.202(b);

(iii) A deputy ethics official described in Sec. 2638.204;

(iv) Any employee of the Office of Government Ethics whose services are made available by the Office of Government Ethics; and

(v) An individual determined by the designated agency ethics official or his or her designee to possess sufficient familiarity with the conflict of interest statutes and standards of ethical conduct regulations applicable to agency employees to respond to routine questions raised during training; and

(3) Furnish to the Office of Government Ethics by August 31 of each year a written plan for annual ethics training by the agency for the following calendar year. The first written plan for annual ethics training for calendar year 1993 shall be submitted by August 31, 1992. Each training plan shall include:

(i) An estimate of the total number of agency employees described in Sec. 2638.704(b) of this subpart who must be provided annual ethics training;

(ii) An estimate of the number of agency employees to whom the annual ethics training course will be presented without the presence of a qualified individual under the exception provided at Sec. 2638.704(d)(2)(i) of this subpart, together with a written description of the basis for allowing an exception;

(iii) Estimates of the number of special Government employees and the number of officers in the uniformed services to whom the annual ethics training course will be presented without the presence of a qualified individual under the exceptions provided at Sec. 2638.704 (d)(2) (ii) and (iii) of this subpart;

(iv) An estimate of the number of training classes to be provided during the calendar year;

(v) An estimate of the average class size; and

(vi) Any other information that the designated agency ethics official believes will facilitate OGE's review of the agency's planned program of ethics training.

(b) Each agency's annual ethics training plan will be reviewed by the Office of Government Ethics and any deficiencies shall be communicated in writing to the designated agency ethics official concerned by November 15 of each year, or 75 days after receipt of the agency plan, whichever occurs later.

Sec. 2638.703 Initial agency ethics orientation

(a) Each agency employee shall, on or before January 2, 1993, be provided:

(1) A copy of part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989, as amended by E.O. 12731, 3 CFR, 1990 Comp., p. 306;

(2) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(3) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. Where, within the period specified, the agency provides an ethics training course during official duty time, including annual ethics training provided in accordance with Sec. 2638.704 of this subpart, or a new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in such training.

(b) Each new agency employee who enters on duty after May 7, 1992, shall, within 90 days of the date of his or her entrance on duty, or on or before January 2, 1993, whichever is later, be provided with the materials and time specified in paragraph (a) of this section.

(c) When copies of the material described in paragraph (a)(1) of this section are retained and readily accessible in the employee's immediate office for use by several employees, the requirement of paragraph (a)(1) of this section may be met by furnishing each employee a copy for the purpose of review.

Sec. 2638.704 Annual agency ethics training

(a) Annual ethics training. Beginning in calendar year 1993, and in every year thereafter, each employee identified in paragraph (b) of this section shall be provided a minimum of one hour of official duty time for ethics training consisting of a course the content of which is described in paragraph (c) of this section and which is presented in accordance with the requirements of paragraph (d) of this section.

(b) Employees covered. Executive branch agency employees to whom this section applies include all of the following:

(1) Employees appointed by the President;

(2) Employees employed within the Executive Office of the President;

- (3) Employees required to file public financial disclosure reports under part 2634 of this chapter;
- (4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart D of part 735 of this title, and any implementing agency regulations thereunder;
- (5) Contracting officers within the meaning of 41 U.S.C. 423(p)(4);
- (6) Procurement officials within the meaning of 41 U.S.C. 423(p)(3); and (7) Other agency employees designated by the head of the agency or his or her designee based on a determination that such training is desirable in view of their particular official duties.

(c) Course content. Although the emphasis and course content of annual agency ethics training courses may change from year to year, each training course shall include, as a minimum:

(1) A review of the employees' responsibilities under part I of Executive Order 12674 and any supplemental agency regulations thereto. This review shall include examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulatory restrictions of the particular agency; and

(2) A review of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11.

(d) Course presentation. The training course shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by recorded means. A qualified individual, as defined in Sec. 2638.702(a)(2) of this subpart, shall be available during and immediately following the presentation.

(2) An agency may provide annual ethics training by means other than those specified in paragraph (d)(1) of this section under the following circumstances:

(i) Where the designated agency ethics official, or his or her designee, has made a written determination that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section. In such cases, annual ethics training may be presented by recorded means, without the presence of a qualified individual, or by means of written materials, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review written materials;

(ii) In the case of special Government employees covered by paragraph (b) of this section, an agency may meet the annual training requirement without the presence of a qualified individual by presenting the information verbally, as through a recording, by distribution of written materials, or by other means at the agency's discretion; and

(iii) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days and who are covered by paragraph (b) of this section, an agency may meet the annual training requirement without the presence of a qualified individual by presenting the information verbally as through a recording, by distribution of written materials, or by other means at the agency's discretion.

SECTION 2. DoD GUIDANCE

11-200. Initial and Annual Ethics Training

a. Overall responsibility for initial and annual ethics training programs rests with the Head of each DoD Component acting through his DAEO. The Head of the DoD Component shall ensure that adequate resources are available to implement the requirements of this Chapter. Support shall be provided by the DoD Component legal and personnel offices, as necessary.

b. In the Military Departments, responsibility for implementation of ethics training programs rests with the heads of DoD Component commands or organizations who shall ensure that ethics training is accomplished in accordance with this Chapter.

c. Training shall be accomplished using material authorized by the DoD Component DAEO or designee in meeting the requirements of this Chapter. Ethics Counselors may augment this material with additional training material needed to address specific ethics issues peculiar to their organization.

d. DoD Component Heads and DoD Component DAEOs have the authority to require that DoD employees other than the ones covered by 5 C.F.R. 2638 (reference (a)) in subsection 11-100 of this Regulation, above, receive annual ethics training.

11-201. Procurement Integrity Training

a. Each DoD Component shall establish, or insure that its DoD employees have access to, a procurement integrity training program. Such program shall be the responsibility of the DoD Component's official in charge of acquisition, with the assistance of the legal and personnel offices, under the overall guidance of the GC, DoD. The procurement integrity training program shall, at a minimum, comply with FAR 3.104-12 (reference (b)) in Appendix B of this Regulation.

b. Heads of DoD Components shall establish procedures to ensure that DoD employees receive (or have received) procurement integrity training and sign the Optional Form (OF) 333, "Procurement Integrity Training Certificate for Procurement Officials," Appendix C of this Regulation, or similar certificate. Out-processing procedures shall also be established to ensure that DoD employees who leave an organization verify their status with regard to the restrictions contained in the Procurement Integrity Act (41 U.S.C. 423 (reference (c))). An original copy of OF 333, Appendix C of this Regulation, or similar certificate should be placed in the appropriate personnel folder or other

permanent file as determined by the DoD Component. The individual executing the certificate should also retain a copy.

c. The following DoD employees should receive procurement integrity training and execute the required certificate:

(1) All DoD employees who are members of the acquisition workforce;

(2) All DoD employees who are engaged in, or who might become engaged in, procurement official activities, as set forth in 41 U.S.C. 423 (reference (c)) and FAR 3.104 (reference (b)) in Appendix B of this Regulation.

d. This requirement may be waived if the head of the DoD Component command or organization determines that the DoD employee will not act as a procurement official while assigned to the organization.

SECTION 3. PROCEDURES

11-300. Combined Initial and Annual Ethics Training (CIAET) for Calendar Year 1993

a. By December 31, 1993, all DoD employees, including those required to receive Annual Ethics Training (AET), non-appropriated fund instrumentality employees, and enlisted members, shall receive CIAET.

b. CIAET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish CIAET in the presence of a Qualified Individual, DoD employees who are not required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, provided that, with the exception of enlisted members, such training was completed by February 3, 1993;

(2) If the DoD Component DAEO determines it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then special Government employees and military officers serving on active duty fewer than 30 consecutive days annually may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above;

(3) If the DoD Component DAEO makes, with the approval of OGE, a written determination that it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's.

d. CIAET shall be a minimum of one hour.

e. Those DoD employees who are required to receive AET will satisfy their 1993 annual ethics training obligation if they attended CIAET in 1992 or 1993.

11-301. Initial Ethics Training (IET) for New DoD Employees
(IET)

a. Within 90 days of entering on duty, all DoD employees who did not receive CIAET, including those required to receive AET and enlisted members, shall receive IET for new DoD employees.

b. IET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, and such IET shall qualify as AET for the year the new DoD employees entered on duty, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish IET in the presence of a Qualified Individual, DoD employees who are not required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above;

(2) If the DoD Component DAEO determines that it is impractical to accomplish IET in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, provided that such DoD employees receive additional annual ethics training, either CIAET, IET or

AET, if more than three months remain of the calendar year in which those DoD employees entered on duty.

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's office.

d. IET shall be a minimum of one hour.

11-302. Annual Ethics Training (AET)

a. Beginning in calendar year 1994, all DoD employees who file an SF 278 or SF 450, Appendix C of this Regulation, contracting officers and procurement officials, shall receive ethics training annually.

b. AET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish AET in the presence of a Qualified Individual, then special Government employees and military officers serving fewer than 30 consecutive days annually, may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above;

(2) If the DoD Component DAEO makes a written determination that it is impractical to accomplish AET in the presence of a Qualified Individual, then DoD employees other than special Government employees and military members serving fewer than 30 days annually may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

c. AET shall be a minimum of one hour.

11-303. Annual Ethics Training Plans. DoD Agency (see definition of "Agency") ethics training plans for 1994 and subsequent ethics training plans in accordance with subsections 11-301 and 11-302 of this Regulation, above, shall be submitted by DoD Component DAEOs or designees directly to OGE with copies furnished to SOCO. DoD Components that are not Agencies shall submit annual ethics training plans to SOCO for approval and inclusion in the ethics training plan SOCO submits to OGE.

11-304. Ethics Training Assistance

a. SOCO shall make available ethics training for ethics trainers on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide ethics training.

b. SOCO shall distribute ethics training material to all DoD Component DAEOs for use in all types of ethics training.

c. Ethics training material shall include a training video with accompanying pamphlet, modular ethics training packages with copies of overhead slides, facilitator scripts, discussion hypotheticals, and handout material, and a programmed text. Other programmed texts, correspondence courses, and ethics computer games, and materials developed by DoD Components will be distributed as they are developed.

d. In the interest of Federal Government efficiency and economy, DoD Components that develop ethics training material independently shall provide a copy of the material to SOCO for distribution to other DoD Components.

e. At a minimum, all ethics training shall include a review of part I of E.O. 12674 (reference (d)) in subsection 12-100 of this Regulation, 5 C.F.R. Part 2635 (reference (e)) in subsection 2-100 of this Regulation, and this Regulation.

SECTION 4. RESPONSIBILITIES

11-400. The Head of Each DoD Component shall:

a. Exercise personal leadership and take personal responsibility through the DoD Component DAEO for establishing and maintaining the DoD Component's ethics and procurement integrity training program and shall be personally accountable for the DoD Component's compliance with the ethics and procurement integrity training requirements;

b. Provide sufficient resources to enable the DoD Component DAEO to implement and administer the DoD Component's ethics and procurement integrity training program.

11-401. Each DoD Component DAEO shall:

- a. Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;
- b. Provide periodic ethics and procurement integrity training for Ethics Counselors;
- c. Certify Qualified Individuals to conduct ethics training.

11-402. The head of each DoD Component command or organization shall:

- a. Exercise personal leadership and take personal responsibility for establishing and maintaining the command's or organization's ethics and procurement integrity training program;
- b. Be personally accountable for the command's or organization's ethics and procurement integrity program;
- c. Ensure that DoD employees of the command or organization attend required ethics and procurement integrity training; and
- d. Direct Administrative Officers (or equivalent) of the command or organization to coordinate with the DoD Component DAEO or designee to develop lists of all DoD employees of the command or organization who are required to receive ethics and procurement integrity training, schedule such training, annotate such lists to indicate when required training was accomplished and retain annotated lists for three years.

11-403. The DoD SOCO shall:

- a. Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;
- b. Distribute ethics and procurement integrity training material to all DoD Component DAEOs for use in all types of ethics and procurement integrity training;
- c. Certify Qualified Individuals to conduct ethics training who may be used by DoD Components.

11-404. The Director of each DoD Component Personnel Office shall, in coordination with the DoD Component DAEO or designee, establish

procedures in coordination with the DoD Component DAEO or designee to inform new DoD employees of their obligation to receive ethics and procurement integrity training as required.

11-405. The Administrative Officer (or equivalent) of each DoD Component command and organization shall:

a. In coordination with the DoD Component DAEO or designee, develop lists of all DoD employees within the DoD Component command or organization who are required to receive ethics and procurement integrity training;

b. In coordination with the DoD Component DAEO or designee, ensure that DoD employees with the DoD Component command or organization are scheduled to receive required ethics or procurement integrity training;

c. Annotate such lists to indicate when required training was accomplished and retain annotated lists for three years.

11-406. The DoD Employees shall attend ethics and procurement integrity training as required.

SECTION 5. REFERENCES

11-500. References

- (a) Title 5, Code of Federal Regulations, Part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities," current edition
- (b) Federal Acquisition Regulation, Part 3.104, current edition
- (c) Title 41, United States Code, Section 423
- (d) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989
- (e) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition

CHAPTER 12

ETHICAL CONDUCT

SECTION 1. EXECUTIVE ORDER 12674 (reference (a))

12-100. E.O. 12674 (reference (a))

EXECUTIVE ORDER 12674¹

April, 12, 1989

As ammended by

**EXECUTIVE ORDER 12731
55 Federal Register 42547
October 19, 1990**

Principles of Ethical Conduct for Government Officers and Employees

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered that Executive Order 12674 of April 12, 1989, is henceforth modified to read as follows:

Part i-Principles of Ethical Conduct

Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

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

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

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

(d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

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

(f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

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

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

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

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

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

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

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

(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this Order.

Sec. 102. Limitations on Outside Earned Income.

(a) No employee who is appointed by the President to a full-time noncareer position in the

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity performed during that Presidential appointment.

(b) The prohibition set forth in subsection (a) shall not apply to any fulltime noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS-9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

Part II-Office of Government Ethics Authority

Sec- 201. The Office of Government Ethics. The Office of Government Ethics shall be responsible for administering this order by:

(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive branch standards of conduct that shall be objective, reasonable, and enforceable.

(b) Developing, disseminating, and periodically updating an ethics manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18, United States Code; the general conflict-of-interest statute, section 208 of title 18, United States Code; and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

(e) Ensuring that any implementing regulation issued by agencies under this order are consistent with and promulgated in accordance with this order.

Sec. 202. Executive office of the President. In that the agencies within the executive Office of the President (EOP) currently exercise functions that are not distinct and separate, from each other within the meaning and for the purposes of section 207(e) of title 18, United States Code, those agencies shall be treated as one agency under section 207(c) of title 18, United States Code.

Part III-Agency Responsibilities

Sec. 301. Agency Responsibilities. Each agency head is directed to:

(a) Supplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.

(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program.

Support should include the provision of a separate budget line item for ethics activities, where practicable.

Part IV Delegations of Authority

Sec. 401 Delegations to Agency Heads. Except in the case of the head of an agency, the authority of the President under sections 203(d), 205(e), and 208(b) of title, 18, United States Code, to grant exemptions or approvals to individuals, is delegated to the head of the agency in which an individual requiring an exemption or approval is employed or to which the individual (or the committee, commission, board, or similar group employing the individual) is attached for purposes of administration.

Sec. 402. Delegations to the Counsel to the President.

(a) Except as provided in section 401, the authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals to individuals, is delegated to the head of the agency in which an individual requiring an exemption or approval is employed or to which the individual (or the committee, commission, board, or similar group employing the individual) is attached for purposes of administration.

(b) the authority of the President under sections 203(d), 204(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals for individuals appointed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) is delegated to the Counsel to the President.

Sec. 403. Delegation Regarding Civil Service. The Office of Personnel Management and the Office of Government Ethics, as appropriate, are delegated the authority vested in the President by 5 U.S.C. 7101 to establish general regulations for the implementation of this Executive Order.

Part V-General Provisions

Sec 501. Revocations. The following Executive orders are hereby revoked:

- (a) Executive Order No. 11222 of May 8, 1965.
- (b) Executive Order No. 12565 of September 25, 1986.

Sec 502. Savings Provision.

(a) All actions already taken by the President or by his delegates concerning matters affected by this order and in force when this order is issued, including any regulations issued under Executive Order 11222, Executive Order 12565, or statutory authority, shall, except as they are irreconcilable with the provisions of this order or terminate by operation of law or by Presidential action, remain in effect until properly amended, modified, or revoked pursuant to the authority conferred by this order or any regulations promulgated under this order. Notwithstanding, anything in section 102 of this order, employees may carry out preexisting contractual obligations entered into before April 12, 1989.

(b) Financial reports filed in confidence (pursuant to the authority of Executive Order No. 11222, 5 C.F.R. Part 735, and individual agency regulations) shall continue to be held in confidence.

Sec. 503. Definitions. For purposes of this order, the term:

(a) 'Contracting officers and procurement officials' means all such officers and officials as defined in the Office of Federal Procurement Policy Act Amendments of 1988.

(b) 'Employee' means any officer or employee of an agency, including a special Government employee.

(c) 'Agency' means any executive agency as defined in 5 U.S.C. 105, including any executive department as defined in 5 U.S.C. 101, Government corporation as defined in 5 U.S.C. 103, or an independent establishment in the executive branch as defined in 5 U.S.C. 104 (other than the General Accounting Office), and the United States Postal Service and Postal Rate Commission.

(d) 'Head of an agency' means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(e) 'Special Government employee' means a special Government employee as defined in 18 U.S.C. 202(a).

Sec. 504. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,
October 17, 1990

SECTION 2. EXECUTIVE ORDER 12834 (reference (b))

12-200. E.O. 12834 (reference (b))

EXECUTIVE ORDER 12831¹

58 Federal Register 5911
January 22, 1993

Ethics Commitments by Executive Branch Appointees

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledges.

(a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge ("senior appointee pledge") upon becoming a senior appointee:

"As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

"2. In the event that I serve as a senior appointee in the Executive Office of the President ('EOP'), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

"3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

"4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties. "5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge ("trade negotiator pledge"):

"As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government,

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foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

"2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. As used herein and in the pledges:

(a) "Senior appointee" means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) "Trade negotiator" means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) "Lobby" means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term "lobby" does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) "Administrative proceeding" means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, et. seq.).

(f) "Executive agency" and "agency" mean "Executive agency" as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, "executive agency" means the entire agency in which the senior appointee is appointed to serve, except that:

(1) with respect to those senior appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the senior appointee ceased to serve in that department or agency; and

(2) a senior appointee who is detailed from one executive agency to another for more than sixty days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(g) "Personal and substantial responsibility" "with respect to" an executive agency, as used in paragraph 2 of the senior appointee pledge, means ongoing oversight of, or significant ongoing decision-making involvement in, the agency's budget, major programs or personnel actions, when acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code).

(h) "Personal and substantial participation" and "personally and substantially participates" mean acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code) as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.

(i) "Trade negotiation" means a negotiation that the President determines to undertake to enter into a trade agreement with one or more foreign governments, and does not include any action taken before that determination.

(j) "Foreign Agents Registration Act of 1938, as amended" means sections 611-621 of title 22, United States Code.

(k) "Foreign government" means "the government of a foreign country," as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(e)).

(l) "Foreign political party" has the same meaning as that term in section 1(f) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(f)).

(m) "Foreign business entity" means a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(n) Terms that are used herein and in the pledges, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

Sec. 3. Waiver

(a) The President may grant to any person a waiver of any restrictions contained in the pledge signed by such person if, and to the extent that, the President certifies in writing that it is in the public interest to grant the waiver.

(b) A waiver shall take effect when the certification is signed by the President.

(c) The waiver certification shall be published in the Federal Register, identifying the name and executive agency position of the person covered by the waiver and the reasons for granting it.

(d) A copy of the waiver certification shall be furnished to the person covered by the waiver and filed with the head of the agency in which that person is or was appointed to serve.

Sec. 4. Administration.

(a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every senior appointee in the agency signs the senior appointee pledge upon assuming the appointed office or otherwise becoming a senior appointee;

(2) to ensure that every trade negotiator in the agency who is not a senior appointee signs the trade negotiator pledge prior to personally and substantially participating in a trade negotiation;

(3) to ensure that no senior appointee or trade negotiator in the agency personally and substantially participates in a trade negotiation prior to signing the pledge; and

(4) generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a), above, shall be the responsibility of the White House Counsel or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) subject to the prior approval of the White House Counsel, develop a form of the pledges to be completed by senior appointees and trade negotiators and see that the pledges and a copy of this Executive order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or White House Counsel, when appropriate, assist designated agency ethics officers in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges; and

(3) subject to the prior approval of the White House Counsel, adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate to carry out the foregoing responsibilities.

(d) In order to promote clarity and fairness in the application of paragraph 3 of the senior appointee pledge:

(1) the Attorney General shall, within six months after the issuance of this order, publish in the Federal Register a "Statement of Covered Activities," based on the statute, applicable regulations and published guidelines, and any other material reflecting the Attorney General's current interpretation of the law, describing in sufficient detail to provide adequate guidance the activities on behalf of a foreign government or foreign political party which, if undertaken as of January 20, 1993, would require a person to register as an agent for such foreign government or political party under the Foreign Agents Registration Act of 1938, as amended; and

(2) the Attorney General's "Statement of Covered Activities" shall be presumed to be the definitive statement of the activities in which the senior appointee agrees not to engage under paragraph 3 of the pledge.

(e) A senior appointee who has signed the senior appointee pledge is not required to sign the pledge again upon appointment to a different office, except that a person who has ceased to be a senior appointee, due to termination of employment in the executive branch or otherwise, shall sign the senior appointee pledge prior to thereafter assuming office as a senior appointee.

(f) A trade negotiator who is not also a senior appointee and who has once signed the trade negotiator pledge is not required to sign the pledge again prior to personally and substantially participating in a subsequent trade negotiation, except that a person who has ceased employment in the executive branch shall, after returning to such employment, be obligated to sign a pledge as provided herein notwithstanding the signing of any previous pledge.

(g) All pledges signed by senior appointees and trade negotiators, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement.

(a) The contractual, fiduciary and ethical commitments in the pledges provided for herein are enforceable by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive or monetary relief.

(b) Any former senior appointee or trade negotiator who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge not to lobby any officer or employee of that agency, or not to represent, aid or advise a foreign entity specified in the pledge with the intent to influence the official decision of that agency, may be barred from lobbying any officer or employee of that agency for up to five years in addition to the five-year time period covered by the pledge.

(1) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement the foregoing subsection, which shall conform as nearly as practicable to the procedures for debarment of former employees found to have violated section 207 of title 18, United States Code (1988 ed.), set forth in section 2637.212 of title 5, Code of Federal Regulations (revised as of January 1, 1992).

(2) Any person who is debarred from lobbying following an agency proceeding pursuant to the foregoing subsection may seek judicial review of the administrative determination, which shall be subject to established standards for judicial review of comparable agency actions.

(c) The Attorney General is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions.

(a) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Except as expressly provided in section 5(b)(2) of this order, nothing in the pledges or in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,
January 20, 1993.

SECTION 3. CODE OF ETHICS FOR GOVERNMENT SERVICE

12-300. Display of Code. In accordance with 5 U.S.C.A. 7301 note (reference (c)), each agency shall display, in appropriate areas of any Federal Government building in which at least 20 civilians are regularly employed by the agency, copies of the following Code of Ethics for Federal Government Service:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

- I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
- II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

SECTION 4. DoD HUMAN GOALS

12-400. DoD Human Goals. On April 17, 1990, DoD established human goals as follows:

DEPARTMENT OF DEFENSE

HUMAN GOALS

THE ATTAINMENT OF THESE GOALS REQUIRES THAT WE STRIVE

To attract to the Department of Defense people with ability, dedication, and capacity for growth;

To provide opportunity for everyone, military and civilian, to rise to as high a level of responsibility as possible, dependent only on individual talent and diligence;

To assure that equal opportunity and safety programs are an integral part of readiness;

To make military and civilian service in the Department of Defense a model of equal opportunity for all regardless of race, color, sex, religion, or national origin;

To provide equity in civilian employment for older persons and disabled individuals and to provide a safe environment that is accessible to and usable by them;

To hold those who do business with or receive assistance from the Department to full compliance with its policies of equal opportunity and safety;

To help each service member in leaving the service to readjust to civilian life;

To provide a safe and healthful work environment, free from recognized occupational hazards for all personnel; and

To contribute to the improvement of our society, including its disadvantaged members, by greater utilization of our human and physical resources while maintaining full effectiveness in the performance of our primary mission.

SECTION 5. ETHICAL VALUES

12-500. General. Ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Not all values are ethical values (integrity is; happiness is not). Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions. DoD employees should carefully consider ethical values when making decisions as part of official duties.

12-501. Primary Ethical Values

a. Honesty. Being truthful, straightforward and candid are aspects of honesty.

(1) Truthfulness is required. Deceptions are easily uncovered and usually are. Lies erode credibility and undermine public confidence. Untruths told for seemingly altruistic reasons (to prevent hurt feelings, to promote good will, etc.) are nonetheless resented by the recipients.

(2) Straightforwardness adds frankness to truthfulness and is usually necessary to promote public confidence and to ensure effective, efficient conduct of Federal Government operations. Truths that are presented in such a way as to lead recipients to confusion, misinterpretation or inaccurate conclusions are not productive. Such indirect deceptions can promote ill-will and erode openness, especially when there is an expectation of frankness.

(3) Candor is the forthright offering of unrequested information. It is necessary in accordance with the gravity of the situation and the nature of the relationships. Candor is required when a reasonable person would feel betrayed if the information were withheld. In some circumstances, silence is dishonest, yet in other circumstances, disclosing information would be wrong and perhaps unlawful.

b. Integrity. Being faithful to one's convictions is part of integrity. Following principles, acting with honor, maintaining independent judgment and performing duties with impartiality help to maintain integrity and avoid conflicts of interest and hypocrisy.

c. Loyalty. There are many synonyms for loyalty: fidelity, faithfulness, allegiance, devotion and fealty. Loyalty is the bond that holds the nation and the Federal Government together and the balm against dissension and conflict. It is not blind obedience or unquestioning acceptance of the status quo. Loyalty requires careful balancing among various interests, values and institutions in the interest of harmony and cohesion.

d. Accountability. DoD employees are required to accept responsibility for their decisions and the resulting consequences. This includes avoiding even the appearance of impropriety because appearances affect public confidence. Accountability promotes careful, well thought-out decision-making and limits thoughtless action.

e. Fairness. Open-mindedness and impartiality are important aspects of fairness. DoD employees must be committed to justice in the performance of their official duties. Decisions must not be arbitrary, capricious or biased. Individuals must be treated equally and with tolerance.

f. Caring. Compassion is an essential element of good government. Courtesy and kindness, both to those we serve and to those we work with, help to ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.

g. Respect. To treat people with dignity, to honor privacy and to allow self-determination are critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.

h. Promise Keeping. No government can function for long if its commitments are not kept. DoD employees are obligated to keep their promises in order to promote trust and cooperation. Because of the importance of promise keeping, it is critical that DoD employees only make commitments that are within their authority.

i. Responsible Citizenship. It is the civic duty of every citizen, and especially DoD employees, to exercise discretion. Public servants are expected to engage personal judgment in the performance of official duties within the limits of their authority so that the will of the people is respected in accordance with democratic principles. Justice must be pursued and injustice must be challenged through accepted means.

j. Pursuit of Excellence. In public service, competence is only the starting point. DoD employees are expected to set an example of superior diligence and commitment. They are expected to be all they can be and to strive beyond mediocrity.

SECTION 6. ETHICAL DECISION-MAKING

12-600. General. Virtually everyone in Federal Government service makes job-related decisions. Some of these decisions may seem more important than others, but all should be preceded by a consideration of ethical ramifications. In some cases, the ethical element of decision-making will go no further than to consciously acknowledge that there are no significant ethical ramifications to consider. In other cases, in-depth ethical analysis is called for in addition to application of ethics rules. The following plan for decision-making ensures careful review of ethical consequences when there are alternative solutions that seem proper under existing laws and regulations. DoD employees should consider incorporating the following plan in official decision-making.

12-601. Ethical Decision-Making Plan

a. Define the Problem. Proceed from a general statement of the problem to specific statements of the decisions to be made. As you take the following steps, such as identifying goals and naming stakeholders, new problems or needed decisions may become apparent. Be willing to add these to your problem list as you go.

b. Identify the Goal(s). Proceed from a general statement of an end result both long term and short term. Be prepared to add to this list as you take the following steps. Goals are something to strive toward. They are statements of the best possible results. The very best is not always achieved for everyone. Many problems do not allow for "win/win" outcomes. Be prepared to fall somewhat short of some goals for the sake of ethics and other considerations.

c. List Applicable Laws or Regulations. Laws and regulations are basic constraints within which official decisions are made. Until all relevant laws and regulations are considered, ethical decision-making is impossible. Although it is conceivable that an ethical decision could violate a law or regulation, such circumstances are rare.

d. List the Ethical Values at Stake. Listing the ethical values at stake can awaken you to problems and goals that you may not have otherwise considered. It may alert you to stakeholders you may not have recognized. Listing the values reminds you of your commitment to them at a time when the stress of the problem may cause you to forget.

e. Name All the Stakeholders. A stakeholder is anyone who is likely to be affected by a decision. Many stakeholders will be apparent because of the previous steps you already followed. More will occur to you as you give the matter a few minutes of thought. Do not forget to include yourself and the people who may depend on you for support, both at work and at home. As you list the stakeholders, try to note the way your decision could affect them. In other words, name what is at stake for the stakeholder.

f. Gather Additional Information. This step is frequently overlooked. The stress from the problem urges speedy solutions. However, hasty decisions usually create problems of their own. Take the time to gather all necessary information. Ask questions, demand proof when appropriate, check your assumptions.

g. State All Feasible Solutions. By this time, some feasible solutions will have presented themselves. Others may be found by sharing the lists and information you have pulled together and "brain storming." As you state the feasible solutions, note which stakeholders could be affected and what might be gained or lost.

h. Eliminate Unethical Options. There may be solutions that seem to resolve the problem and reach the goal but which are clearly unethical. Remember that short term solutions are not worth sacrificing our commitment to ethics. The long term problems of unethical solutions will not be worth the short term advantages. Eliminate the unethical solutions.

i. Rank Remaining Solutions. Other solutions may not be clearly unethical but may be questionable. You may have to rely on intuition or "gut feelings" to weed out these solutions. Put these possible solutions at the bottom of your list. Rank the remaining solutions, which are all ethical ones, in order of how close they bring you to your goal and solve the problem.

j. Commit To and Implement the Best Ethical Solution. Commitment and implementation are vital to the ethical decision-making process. Determining which solution is the best ethical one is a meaningless exercise unless implementation of the ethical solution follows. If the right decision is not implemented, the door is left wide open for others to implement unethical solutions.

SECTION 7. REFERENCES

12-700. References

- (a) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1988, as amended

- (b) Executive Order 12834, "Ethics Commitments by Executive Branch Appointees," January 20, 1993
- (c) Title 5, United States Code Annotated, Section 7301 note

APPENDIX A
DIGEST OF LAWS

SECTION 1. DoD-SPECIFIC STATUTES

A-100. Synopsis of Laws. DoD employees and former DoD employees are cautioned that the descriptions of the laws and regulations in this Regulation should not be the only source relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, the descriptions are not exhaustive and restrictions are dependent on the specific facts in a particular case. Accordingly, DoD employees and former DoD employees are encouraged to discuss specific cases with a DoD Component Ethics Counselor (no attorney-client privilege) or with private counsel.

A-101. 10 U.S.C. 2397a, "Requirements Relating to Private Employment Contacts Between Certain DoD Procurement Officials and Defense Contractors"

a. This statute applies to civilian DoD employees at pay rates of GS/GM-11 or above and to military officers in grades 0-4 or above. If such an individual has participated in the performance of a procurement function in connection with a DoD awarded defense contract and is contacted by the defense contractor to whom the defense contract was awarded regarding future employment opportunities with the defense contractor, the individual must:

(1) Promptly report the contact to his supervisor and to the DoD Component DAEO; and

(2) Disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor.

b. A DoD employee is not required to report an initial contact with a defense contractor or disqualify himself if he terminates the contact immediately and rejects any offer of employment. The individual must make a report and disqualify himself, however, if subsequent contacts are made.

A-102. 10 U.S.C. 2397, "Employees or Former Employees of Defense Contractors: Reports." This statute requires all former civilian DoD employees GS/GM-13 or above, or military officers 0-4 or above, to file DD Form 1787, Appendix C of this Regulation, for a period of two-years after leaving Federal Government service, if the former DoD employee is employed with a defense contractor who had been awarded \$10 million in defense contracts during the year preceding employment of the former DoD employee, and the former DoD

employee receives at least \$25,000 a year (\$12 per hour) from the defense contractor.

A-103. 10 U.S.C. 2397b, "Certain Former DoD Procurement Officials: Limitations on Employment by Contractors". This statute imposes a two year prohibition on former civilian DoD employees GS/GM-13 and above, and former military officers 0-4 and above, from accepting more than \$250 in payment, gift, benefit, reward, favor, or gratuity (i.e., compensation) from defense contractors who had defense contracts in a total amount greater than \$10 million during the fiscal year preceding the fiscal year that such compensation was accepted, if the individual:

a. Spent the majority of his working days during the two-year period prior to leaving Federal Government service performing a procurement function at a site or plant owned or operated by the defense contractor; or

b. Performed procurement functions relating to a major system, on a majority of the individual's working days during the two-year period prior to leaving Federal Government service, and in the performance of those functions participated personally and substantially in a manner involving decision-making responsibilities, through contact with the defense contractor; or

c. In the case of former DoD employees, Senior Executive Service and above, and former military officers 0-7 and above, acted as a primary representative of the United States during the two-year period prior to leaving Federal Government service, in the negotiation of a defense contract in an amount in excess of \$10 million with the defense contractor, or in the negotiation of an unresolved claim in excess of \$10 million.

A-104. 18 U.S.C. 281, "Restriction on Retired Military Officers Regarding Certain Matters Affecting the Government"

a. This statute prohibits a retired military officer of the Armed Forces from accepting any compensation, for a period of two-years after release from active duty, for the representation of any individual in the sale of anything to the United States through the Military Department from which the military officer is retired.

b. The statute also prohibits a retired military officer, during the two-year period following the military officer's release from active duty, from prosecuting or assisting in the prosecution of any claim against the United States involving the Military Department from which the military officer is retired, or involving any subject matter with which the military officer was directly connected while in an active duty status.

A-105. 37 U.S.C. 801, "Restriction on Payment to Certain Officers". This statute prohibits the Federal Government from paying any retired officer, for a period of three years after such military officer's name is placed on a retired list of the Regular Army, Navy, Air Force or Marine Corps, who is engaged for himself or others in selling, or contracting or negotiating to sell, supplies or war material to an agency of DoD, the Coast Guard, the Public Health Service, or the National Oceanic and Atmospheric Administration.

SECTION 2. OTHER LAWS RELATED TO STANDARDS OF ETHICAL CONDUCT

A-200. OGE Digest. Other ethics statutes are summarized in 5 C.F.R. 2635.801(d) and 902 in subsection 2-100 of this Regulation.

A-201. Related Statutes. Engaging in the following activities may subject current and former DoD employees to criminal and/or other penalties:

- a. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 2);
- b. Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if the individual knew of the actual commission of the crime (18 U.S.C. 4);
- c. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to further the object of the conspiracy (18 U.S.C. 371);
- d. Misuse of a Federal Government vehicle (31 U.S.C. 1344 and 1349(b));
- e. Interference in an examination or personnel action in connection with Federal Government employment (18 U.S.C. 1917);
- f. Conversion of Federal Government property (18 U.S.C. 641);
- g. Private use of public money (18 U.S.C. 653), embezzlement of the money or property of another individual in the possession of a DoD employee by reason of his Federal Government employment (18 U.S.C. 654);

h. Certain political activities (5 U.S.C. 7321-7327, 18 U.S.C. 600-603 and 606-607 apply to civilian DoD employees, and DoD Directive 1344.10 applies to military members);

i. Failing to register under the Foreign Agents Registration Act of 1983 and acting as an agent of a foreign principal when required to register (18 U.S.C. 219);

j. Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351) applies to civilians; regulations set out in 5 C.F.R. 2635.301 through 304 in subsection 2-100 of this Regulation, and subsection 2-203 of this Regulation, apply to both military and civilian DoD employees;

k. Accepting, without statutory authority, any present, emolument, office or title, or employment of any kind, from any king, prince, or foreign state without the consent of the Congress; this restriction applies to any person holding any office or profit in or trust of the Federal Government, including all retired military members and Regular enlisted members (Article I, Section 9, Clause 8, of the Constitution of the United States; exceptions to this restriction are at 37 U.S.C. 908);

l. Unique activities of military members (10 U.S.C. 976);

m. Violating merit system principles (5 U.S.C. 2301).

APPENDIX B

PROCUREMENT INTEGRITY

SECTION 1. PROCUREMENT INTEGRITY

B-100. FAR 3.104, "Procurement Integrity"



FEDERAL ACQUISITION CIRCULAR

November 30, 1990

Number 90-2

Federal Acquisition Circular (FAC) 90-2 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-2 is effective November 30, 1990.

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.000 Scope of part.

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

SUBPART 3.1—SAFEGUARDS

3.101 Standards of conduct.

3.101-1 General.

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.

3.101-2 Solicitation and acceptance of gratuities by Government personnel.

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.

3.101-3 Agency regulations.

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR 735 to prescribe "Standards of Conduct." These agency standards contain—

(1) Agency-authorized exceptions to 3.101-2; and
(2) Disciplinary measures for persons violating the standards of conduct.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended 18 U.S.C. 207.

3.102 Officials not to benefit.

3.102-1 General.

41 U.S.C. 22 requires that most Government contracts explicitly state that no member of Congress shall be admitted to any share or part of the contract or any benefit arising from it. If a contract is made between the U.S. Government and any member of or delegate to Congress, or resident commissioner, it may constitute a violation of 18 U.S.C. 431 and 432, resulting in—

(a) Both the officer or employee of the Government who awarded the contract and the member, delegate, or resident commissioner being subject to criminal penalties;

(b) The contract being void; and

(c) The contractor having to return any consideration paid by the Government under the contract.

3.102-2 Contract clause.

The contracting officer shall insert the clause at 52.203-1, Officials Not to Benefit, in solicitations and contracts, except those related to agriculture that are exempted by 41 U.S.C. 22.

3.103 Independent pricing.

3.103-1 Solicitation provision.

The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the small purchase procedures in Part 13;

(b) Reserved.

(c) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(d) The solicitation is for utility services for which rates are set by law or regulation.

3.103-2

3.103-2 Evaluating the certification.

(a) *Evaluation guidelines.* (1) None of the following, in and of itself, constitutes "disclosure" as it is used in subparagraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of subparagraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

(b) *Rejection of offers suspected of being collusive.* (1) If the offeror deleted or modified subparagraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified subparagraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting competition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under subparagraph (1) or (2) above, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with 3.303.

(4) The determination made under subparagraph (2) above shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

FEDERAL ACQUISITION REGULATION (FAR)**3.103-3 The need for further certifications.**

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

3.104 Procurement integrity.**3.104-1 General.**

(a) Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Pub. L. 101-189, and section 815 of the 1991 National Defense Authorization Act, Pub. L. 101-510 (hereinafter section 27 is referred to as "the Act" or "the law as amended"). Agency supplementation of 3.104 and any clauses required by 3.104 must be approved at a level not lower than the Senior Procurement Executive of the agency, unless a higher level of approval is required by law for that agency.

(b) Agency employees are reminded that much of the conduct prohibited by the Act is also prohibited by other statutes and regulations. For example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 10 U.S.C. 2207, 5 U.S.C. 7353, and 5 CFR Parts 735 and 2635;

(2) Employment discussions are covered by 18 U.S.C. 208 which precludes a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is negotiating for employment;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 which prohibits certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract on which the former employee worked while employed by the Government; and

(4) FAR Parts 14 and 15, which place restrictions on the release of information related to procurements and other contractor information which must be protected under 18 U.S.C. 1905. In addition, 5 CFR Part 735 protects non-public Government information.

3.104-2 Applicability.

(a) *Conduct and procurement activities during the period July 16, 1989, through November 30, 1989.*

(1) *Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.*

(i) Participation in a procurement during the period July 16, 1989, through November 30, 1989, whether as a procurement official, competing con-

tractor or through access to information, subjects the participant, during that period, to the prohibitions contained in section 27 as originally enacted.

(ii) If a particular procurement which was begun during the period July 16, 1989, through November 30, 1989, has not been completed by November 30, 1990, then on or after December 1, 1990—

(A) Any person who was subject to the prohibitions on disclosing proprietary or source selection information contained in subsection 27(c) of the law as originally enacted is subject to the disclosure prohibitions of subsection 27(d) of the law as amended;

(B) Except as provided in subdivision (a)(1)(ii)(A) of this subsection, a procurement official who was subject to the prohibitions on gratuities, employment discussions, and disclosing proprietary or source selection information contained in subsection 27(b) of the law as originally enacted is subject to the prohibitions under subsection 27(b) of the law as amended, if the activities performed by the procurement official prior to December 1, 1989, would also make him or her a procurement official under subsection 27(b) of the law as amended; and

(C) Except as provided in subdivision (a)(1)(ii)(A) of this subsection, a competing contractor who was subject to the prohibitions on gratuities, employment discussions, and soliciting or obtaining proprietary or source selection information contained in subsection 27(a) of the law as originally enacted is subject to the prohibitions under subsection 27(a) of the law as amended if it is still a competing contractor for that procurement on or after December 1, 1990.

(2) Post-employment restrictions.

(i) Current and former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989, are subject, during that period, to the post-employment restrictions contained in section 27 as originally enacted.

(ii) On or after June 1, 1991, current and former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989, become subject to the post-employment restrictions contained in subsection 27(f) of the law as amended, if—

(A) The activities performed by the procurement official during the period July 16, 1989, through November 30, 1989, would also make him or her a procurement official under section 27, of the law as amended; and

(B) The 2-year period of any post-employment restriction that attached during the period July 16,

1989, through November 30, 1989, has not expired.

(b) Conduct and procurement activities during the period December 1, 1989, through November 30, 1990.

(1) *Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.*

(i) The prohibitions on gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information contained in section 27 were suspended during the period December 1, 1989, through November 30, 1990. Neither the prohibitions contained in section 27 as originally enacted nor as amended apply during the suspension period. Participation in a procurement solely during the suspension period does not subject any person to any of these prohibitions on or after December 1, 1990.

(2) Post employment restrictions.

(i) The post-employment restrictions contained in section 27 were suspended during the period December 1, 1989, through November 30, 1990. Neither the post-employment restrictions contained in section 27 as originally enacted nor as amended apply to any person during the suspension period. In addition, these post-employment restrictions do not apply on or after December 1, 1990, to any current or former Government employee whose only participation in a procurement occurred during the period from December 1, 1989, through November 30, 1990.

(ii) The suspension of the post-employment restrictions during the period December 1, 1989, through November 30, 1990, does not interrupt the running of the 2-year period of any post-employment restriction that attached to a Government employee who was a procurement official during the period July 16, 1989, through November 30, 1989.

(c) Conduct and procurement activities on or after December 1, 1990.

(1) *Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.*

(i) The prohibitions contained in section 27, of the law as amended, apply on or after December 1, 1990, to persons who participate in a procurement on or after that date, whether as a procurement official, a competing contractor, or through access to information.

(ii) As provided in subdivision (a)(1)(ii) of this subsection, the prohibitions contained in section 27, of the law as amended, may also apply to procurement officials, competing contractors, and other persons who, during the period July 16, 1989, through November 30, 1989, were subject to the prohibitions of section 27 as originally enacted.

(2) Post-employment restrictions.

(i) Pub. L. 101-510 continues the suspension of the post-employment restrictions contained in subsection 27(f) of the law as amended through May 31, 1991. Government employees who perform procurement official activities solely during the period December 1, 1990, through May 31, 1991, do not become subject to the post-employment restrictions contained in subsection 27(f) of the law as amended either during or after the suspension period.

(ii) The post-employment restrictions of subsection 27(f) of the law as amended are effective June 1, 1991. Government employees who perform procurement official activities on or after June 1, 1991, are subject to those restrictions.

(iii) As provided in subdivision (a)(2)(ii) of this subsection, the post-employment restrictions contained in subsection 27(f) of the law as amended may also apply, on or after June 1, 1991, to current or former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989.

(iv) The continued suspension of the post-employment restrictions does not interrupt the running of the 2-year period of any post-employment restriction that attached to a procurement official during the period July 16, 1989, through November 30, 1989.

3.104-3 Statutory prohibitions and restrictions.

As provided in section 27 of the Act, the following conduct is prohibited:

(a) *Prohibited conduct by competing contractors (subsection 27(a) of the Act).* During the conduct of any Federal agency procurement of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency, except as provided in 3.104-6(b);

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) *Prohibited conduct by procurement officials (subsection 27(b) of the Act).* During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly—

(1) Solicit or accept, directly or indirectly, any

promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor, except as provided in 3.104-6(a);

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(c) *Disclosure to unauthorized persons (subsection 27(d) of the Act).* During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(d) *Post-employment restrictions resulting from procurement activities of Government officers or employees who are or were procurement officials (subsection 27(f) of the Act; not effective until June 1, 1991).*

(1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly—

(i) Participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement; or

(ii) Participate personally and substantially on behalf of the competing contractor in the performance of such contract.

The restrictions in subdivisions (d)(1)(i) and (d)(1)(ii) of this subsection apply during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

(2) This subsection does not apply to any participation referred to in subdivisions (d)(1)(i) and (d)(1)(ii) of this subsection with respect to a subcontractor who is a competing contractor unless—

(i) The subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess of \$100,000; or

(ii) The subcontractor significantly assisted the

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST 3.104-4

prime contractor with respect to negotiation of the prime contract; or

(iii) The procurement official involved in the award, modification, or extension of the prime contract personally directed or recommended the particular subcontractor to the prime contractor as a source for the subcontract; or

(iv) The procurement official personally reviewed and approved the award, modification, or extension of the subcontract.

3.104-4 Definitions.

As used in this subsection—

(a) "Agency ethics official" means the designated agency ethics official described in 5 CFR 2638.201 and any other person, including deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104-6(f) and 3.104-8(e) has been delegated by the designated agency ethics official.

(b)(1) "Competing contractor," with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services means any entity (such as an individual, partnership, corporation, educational institution, nonprofit or not for profit organization, or business unit) legally capable of entering into a contract or subcontract in its own name that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.

(2) The term "competing contractor" includes the incumbent contractor in the case of a contract modification.

(3) An entity shall not be considered a competing contractor whenever, by action of the Government or the entity, it is clear that the entity will not, or will no longer, participate in a particular procurement.

(4) For purposes of subsections 27(a) and 27(b) of the Act, the phrase "representative, agent, or consultant of a competing contractor" means any entity, other than an officer or employee of a competing contractor, acting on behalf of, or providing advice to, a competing contractor with regard to a particular Federal agency procurement.

(c)(1) "During the conduct of any Federal agency procurement of property or services" means, except for broad agency announcements, small business innovative research programs, and unsolicited proposals (see subparagraphs (c)(3) and (c)(4) of this subsection), the period beginning on the earliest date upon which an identifiable, specific action is taken for the particular procurement and concluding upon the award or modification of a contract or the cancellation of the procurement; provided, however, that in no event shall the conduct of the procurement be deemed to have begun prior to the decision

by an authorized agency official to satisfy a specific agency need or requirement by procurement. These actions are—

(i) Drafting a specification or a statement of work;

(ii) Review and approval of a specification;

(iii) Requirements computation at an inventory control point;

(iv) Development of procurement or purchase requests;

(v) Preparation or issuance of a solicitation;

(vi) Evaluation of bids or proposals;

(vii) Selection of sources;

(viii) Conduct of negotiations; or

(ix) Review and approval of the award of a contract or contract modification.

(2) Each contract award and each contract modification constitutes a separate procurement action; i.e., a separate period to which the prohibitions and the requirements of the Act apply.

(3) For broad agency announcements and small business innovative research programs, each proposal received by an agency shall constitute a separate procurement for purposes of the Act. The conduct of each procurement shall be deemed to have begun upon the date a Commerce Business Daily announcement was made regarding the availability of the broad agency announcement or the date a solicitation was released for the small business innovative research program. The conduct of the procurement shall end upon the award of a contract or contract modification incident to each proposal or the written rejection of each specific proposal.

(4) Each unsolicited proposal shall be considered a separate procurement for purposes of the Act. For unsolicited proposals, the conduct of the procurement shall be deemed to have begun upon the publication date of a general statement of agency needs (see 15.503(d)), or if an agency does not publicize a general statement of agency needs, upon the provision of advance guidance related to agency needs (see 15.504(a)(1)) or the receipt of the unsolicited proposal, whichever is earlier. The conduct of the procurement shall end upon the award of a contract or contract modification or the rejection of the proposal.

(d) "Government officer or employee" means a person who is employed by a Federal agency (see Subpart 2.1) and who is in such status during the period July 16, 1989, through November 30, 1989, or on or after December 1, 1990. This includes—

(1) A member of the uniformed services as defined in section 101(3) of title 37, United States Code;

(2) A person who is appointed to a position in the Federal Government under title 5, United States Code, or any other title authorizing such appointments, including a person under a temporary appointment; and

(3) A special Government employee as defined in section 202 of title 18, United States Code.

(e) "Modification" means the addition of new work to a contract, or the extension of a contract, which requires a justification and approval (see Subpart 6.3). It does not include an option where all the terms of the option, including option prices, are set forth in the contract and all requirements for option exercise have been satisfied, change orders, administrative changes, or any other contract changes that are within the scope of the contract.

(f)(1) "Gratuity or other thing of value" includes any gift, favor, entertainment, or other item having monetary value. The phrase includes services, conference fees, vendor promotional training, transportation, lodgings and meals, as well as discounts not available to the general public and loans extended by anyone other than a bank or financial institution. The phrase does not include—

(i) Anything for which market value is paid by the procurement official, or on his behalf, by someone other than a competing contractor, or a representative, agent, or consultant of the competing contractor;

(ii) Anything which is paid for by the Government, secured under Government contract, or accepted by the Government under specific statutory authority;

(iii) Plaques or certificates having no intrinsic value; or

(iv) Any unsolicited item, other than money, having a market value of \$10 or less per event or presentation.

For these purposes, market value means the retail cost the procurement official would incur to purchase the item and, in the case of items such as tickets, refers to their face value. A thing of value given or received or otherwise offered or sought "directly or indirectly" includes a thing of value directed to a person other than a procurement official, such as a spouse or child, solely because of that person's relationship to the procurement official or on the basis of designation, recommendation, or suggestion by the procurement official.

(2) Promotional vendor training does not include training provided by a vendor when a vendor's products are furnished under contract to the Government and the training is to facilitate the use of those products.

(g) "Participated personally and substantially" means active and significant involvement of the individual in activities directly related to the procurement. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the supervisor in the matter. To participate "substantially" means that the employee's involvement must be of significance to the matter. For example, the review of procurement documents solely to determine compliance with applicable regulatory, administrative, or budgetary

requirements or procedures, does not constitute substantial participation in a procurement. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial.

(h)(1) "Procurement official" means any civilian or military official or employee of an agency who has participated personally and substantially in any of the following activities for a particular procurement—

(i) Drafting a specification or a statement of work for that procurement;

(ii) Review and approval of a specification or statement of work developed for that procurement;

(iii) Preparation or development of procurement or purchase requests for that procurement;

(iv) The preparation or issuance of a solicitation for that procurement;

(v) Evaluation of bids or proposals for that procurement;

(vi) Selection of sources for that procurement;

(vii) Negotiations to establish the price or terms and conditions of a particular contract or contract modification; or

(viii) Review and approval of the award of a contract or contract modification.

(2) For purposes of 3.104-4(h), the term "employee of an agency" includes a contractor, subcontractor, consultant, expert, or advisor (other than a competing contractor) acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned.

(3) Generally, an individual will not become a procurement official solely by participating in the following activities—

(i) Federal advisory committees that are established and function in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, unless the Federal advisory committee is established or used for the purpose of performing a function listed in subparagraph (h)(1) of this subsection and the individual member's participation in that function is personal and substantial;

(ii) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;

(iii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, tech-

nical, engineering, or scientific effort subsequently may be incorporated into a particular procurement;

(iv) Clerical functions supporting the conduct of a particular procurement; and

(v) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

(4) An employee of an agency does not become a procurement official for a particular procurement until the onset of the employee's personal and substantial participation in that particular procurement.

(i) "Property" means supplies as defined in 2.101.

(j)(1) "Proprietary information" means information contained in a bid or proposal or otherwise submitted to the Government by a competing contractor in response to the conduct of a particular Federal agency procurement, or in an unsolicited proposal, that has been marked by the competing contractor as proprietary information in accordance with applicable law and regulation.

(2) Information shall be considered proprietary information, for purposes of section 27 of the Act, only when—

(i) An attached transmittal document, such as a cover page or the label of a magnetic media storage container, is clearly marked with a restrictive legend; and

(ii) The specific portions of the information whose disclosure the competing contractor desires to restrict are clearly and separately marked.

(3) Proprietary information does not include information—

(i) That is otherwise available without restrictions to the Government, another competing contractor, or the public;

(ii) Contained in bid documents following bid opening (but see 14.404-4); or

(iii) That the contracting officer determines to release in accordance with 3.104-5(d).

(k)(1) "Source selection information" is information, including information stored in electronic, magnetic, audio or video formats, which is prepared or developed for use by the Government to conduct a particular procurement and—

(i) The disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned; and

(ii) Is required by statute, regulation, or order to be secured in a source selection file or other facility to prevent disclosure.

(2) Source selection information is limited to—

(i) Bid prices submitted in response to a Federal

agency solicitation for sealed bids, or lists of those bid prices prior to public bid opening;

(ii) Proposed costs or prices submitted in response to a Federal agency solicitation (for other than sealed bids), or lists of those proposed costs or prices;

(iii) Source selection plans;

(iv) Technical evaluation plans;

(v) Technical evaluations of proposals;

(vi) Cost or price evaluations of proposals;

(vii) Competitive range determinations which identify proposals that have a reasonable chance of being selected for award of a contract;

(viii) Rankings of bids, proposals, or competitors;

(ix) The reports and evaluations of source selection panels or boards or advisory councils; or

(x) Other information marked as "SOURCE SELECTION INFORMATION—SEE FAR 3.104" based upon a case-by-case determination by the Head of the Agency, his designee, or the contracting officer that the information meets the standards in subdivisions (k)(1)(i) and (ii) of this subsection.

(l) "Possible violation" means, for purposes of the certification requirements under 3.104-9, specifically identified or documented circumstances that provide a reasonable basis to believe that a violation of the Act may have occurred. Rumor and hearsay are not, by themselves, a reasonable basis to conclude that a possible violation exists.

3.104-5 Disclosure, protection, and marking of proprietary and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose proprietary or source selection information to any person other than a person authorized by the Head of the Agency to receive such information. A person or entity who does not know if information is proprietary or source selection information, or does not know if the person or entity may disclose or receive such information, shall make the inquiries prescribed at 3.104-8(d).

(b)(1) Proprietary and source selection information shall be protected from unauthorized disclosure in accordance with 14.401, 15.411, 15.413, applicable law, and agency regulations.

(2) Information contained in a bid or proposal that bears the legend required by 3.104-4(j)(2) shall be considered to be proprietary information, for purposes of the Act. However, information contained in a bid or proposal that does not bear that legend shall remain subject to the restrictions on disclosure contained in 15.413, 15.509, 24.202, or as otherwise required by law.

(c) In determining whether particular information is source selection information under 3.104-4(k)(2)(x), the originator shall assure that the information meets the crite-

ria in 3.104-4(k)(1) and consult with agency officials as appropriate. Individuals responsible for preparing material that may include information designated as source selection information in accordance with 3.104-4(k)(2)(x) shall mark the cover page and each page that contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." Although the material described in 3.104-4(k)(2)(i) through (ix) is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with this legend.

(d)(1) The head of the agency, or his or her designee, or the contracting officer, has the authority, in accordance with applicable agency regulations or procedures, to authorize persons, or classes of persons, to receive proprietary or source selection information when necessary to the conduct of the procurement.

(2) For contracts and contract modifications in excess of \$100,000, the head of the agency, or his or her designee, shall establish procedures to assure that the names of all persons, identification of the classes of persons and, to the maximum extent practicable, the names of all individuals within a class of persons, authorized access to proprietary or source selection information at the contracting activity are listed in the contract file.

(3) For contracts and contract modifications expected to exceed \$100,000, if proprietary or source selection information is authorized to be released to Government activities outside the contracting activity responsible for the conduct of the procurement, the head of the office receiving the information, or his or her designee, shall maintain a list of persons, a list of classes of persons and, to the maximum extent practicable, the names of all individuals within classes of persons, who have been authorized access to the proprietary or source selection information. The list shall be forwarded to the contracting office responsible for the conduct of the procurement to be included in the contract file.

(4) For release to other than Government employees, see 15.413-2. The names of those individuals shall also be listed in the contract file when the contract or contract modification is expected to exceed \$100,000.

(5) The lists prescribed by this subsection shall be forwarded to the contracting officer for inclusion in the contract file within the time specified by the contracting officer.

(e)(1) Except as provided in subparagraph (e)(4) of this subsection, if the contracting officer believes that information marked as proprietary (see 3.104-4(j)) is not proprietary, the competing contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the proprietary marking. If the competing contractor agrees that the material is not proprietary information, or does not respond within the time specified in the notice, the

contracting officer may remove the proprietary marking and the information may be released.

(2) After reviewing any justification submitted by the competing contractor, if the contracting officer determines that the proprietary marking is not justified, the contracting officer shall so notify the competing contractor in writing.

(3) Information marked by the competing contractor as proprietary shall not be released until—

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier.

Thereafter, the contracting officer may release the information.

(4) With respect to technical data that are marked proprietary by a competing contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(f) Nothing in 3.104 prohibits competing contractors from disclosing or authorizing the Government to disclose their company-specific proprietary information to any other person or entity where not otherwise prohibited by law.

(g) Proprietary markings under 3.104 do not limit the Government's use of technical data to which the Government has rights.

(h) Source selection or proprietary information that is properly in the possession of a competing contractor as a result of a prior disclosure that was not prohibited by the Act shall not be considered to have been solicited or obtained, directly or indirectly, in violation of the Act.

(i) Nothing in 3.104 shall be construed to authorize the withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains proprietary or source selection information shall clearly notify the recipient that the information or portions thereof are proprietary or source selection information related to the conduct of a Federal agency procurement whose disclosure is restricted by section 27 of the Act.

3.104-6 Restrictions on employment or business opportunity discussions between competing contractors and procurement officials.

(a) *Applicability to procurement officials.* During the conduct of a Federal agency procurement, subsection 27(b)(1) of the Act prohibits an individual who has become a procurement official from knowingly, directly or indirectly, soliciting or accepting from or discussing with any officer, employee, representative, agent, or consultant of a competing contractor, future employment or business

opportunity. Subsection 27(b)(1) of the Act also applies to individuals acting as procurement officials on behalf of the procuring agency who are, or are employed by, contractors, subcontractors, consultants, experts, or advisors (other than employees of a competing contractor). The prohibition in subsection 27(b)(1) does not apply to a procurement official—

(1) After the contract has been awarded, the procurement canceled, or the contract modification has been executed;

(2) After the procurement official leaves Government service;

(3) Who is, or is employed by, a contractor, subcontractor, consultant, expert, or advisor, after such procurement official ceases to act on behalf of, or provide advice to, the procuring agency concerning the procurement;

(4) Described in paragraph (c) of this subsection who has received written authorization for recusal from further participation in a procurement, and who has in fact discontinued participation in the procurement.

(5) Whose only communication with a competing contractor is for the purpose of—

(i) Rejecting an unsolicited offer of employment or business opportunity; or

(ii) Advising the competing contractor that he or she must seek recusal in accordance with paragraph (d) of this subsection prior to any discussions regarding the unsolicited offer. A procurement official who wishes to conduct such discussions with the competing contractor shall promptly submit a recusal proposal.

(b) *Applicability to competing contractors.* During the conduct of a Federal agency procurement, subsection 27(a)(1) of the Act prohibits a competing contractor from knowingly, directly or indirectly, offering or promising to, or discussing with, a procurement official any future business or employment opportunity. The prohibition does not apply to—

(1) An initial contact for the sole purpose of determining whether an individual or other entity is able to engage in discussions concerning future employment or business opportunity either because the individual or entity has been recused or is not a procurement official.

(2) A contact or discussion with an individual or other entity who may engage in such contact or discussion under subparagraphs (a)(1) through (a)(4) of this subsection.

(c) *Eligibility for recusal.* An individual or other entity who is a procurement official may be eligible for recusal if the individual or entity has not participated personally and substantially in—

(1) The evaluation of bids or proposals, the selection of sources, or the conduct of negotiations in connection with such solicitation or contract during the period beginning with the issuance of a procurement sollicita-

tion and ending with the award of a contract or cancellation of a procurement; or

(2) The evaluation of a proposed modification, or the conduct of negotiations during the period beginning with the negotiation of a modification of a contract and ending with an agreement to modify the contract or a decision not to modify the contract.

(d) *Recusal proposal.* An eligible procurement official who wishes to discuss future employment or business opportunities with a competing contractor during the conduct of a procurement shall submit to the Head of the Contracting Activity (HCA) or his or her designee, prior to initiating or engaging in such discussions, a written proposal of disqualification from further participation in the procurement which relates to that competing contractor. Concurrent copies of the written proposal shall be submitted to the contracting officer, the Source Selection Authority if the contracting officer is not the Source Selection Authority, and the procurement official's immediate supervisor. As a minimum, the proposal shall—

(1) Identify the procurement involved;

(2) Describe the nature of the procurement official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the competing contractor and describe its interest in the procurement.

(e) *Suspension from participation in a procurement.* The contracting officer, or the Source Selection Authority if the contracting officer is not the Source Selection Authority, may suspend the individual's or entity's participation in the procurement pending evaluation of the recusal proposal. Notwithstanding submission of a recusal proposal or suspension from participation in a procurement, an individual or entity shall not solicit or engage in discussions of employment or business opportunity until authorized in writing by the HCA or his or her designee.

(f) *Evaluation of recusal proposal.* (1) If the HCA or his or her designee determines that the procurement official's further participation is not essential to the activity's conduct of the procurement and that recusal will not jeopardize the integrity of the procurement process, the HCA may, after consulting with the agency ethics official, grant written approval of the recusal proposal. In evaluating the recusal proposal, the HCA or his or her designee may consider any relevant factors, including—

(i) The importance of the procurement official's role to the completion of the procurement action;

(ii) The procurement official's prior participation in key procurement decisions and actions;

(iii) The timing of the proposal in relation to significant procurement milestones; and

(iv) Potential disruption to the procurement schedule as a result of the procurement official's recusal.

(2) The HCA or his or her designee may request that

any person, including the procurement official, the Source Selection Authority, the contracting officer or the procurement official's immediate supervisor, provide any additional information necessary to evaluate the recusal proposal.

(3) Any rejection of the recusal proposal shall be in writing and shall state the basis for rejection. A determination by the HCA or his or her designee to reject a recusal proposal shall be final. Rejection of a Government officer's or employee's recusal proposal shall not be deemed to be an adverse personnel action or be subject to agency or negotiated grievance procedures.

(g) *Duration of recusal.* A procurement official whose recusal proposal has been approved shall be disqualified—

(1) As a minimum, for any period during which future employment or business opportunities with the competing contractor have not been rejected by either the procurement official or the competing contractor; or

(2) For the period the procurement official and competing contractor have an employment or business relationship or an arrangement concerning future employment or business relationships.

(h) *Reinstatement to participation in a procurement.* Subsequent to a period of disqualification, if an agency wishes to reinstate the procurement official to participation in the procurement, the HCA or his or her designee may authorize immediate reinstatement or, in his or her discretion, may authorize reinstatement following whatever additional period of disqualification he or she determines is necessary to ensure the integrity of the procurement process. It is within the discretion of the HCA, or his or her designee, to determine that the procurement official shall not be reinstated to participation in the procurement. In determining that any additional period of disqualification is necessary, the HCA or his or her designee shall consider any factors that might give rise to an appearance that the procurement official acted without complete impartiality with respect to issues involved in the procurement.

3.104-7 Postemployment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.

(a) Subsection 27(e)(4) of the Act provides that if a procurement official leaves the Government during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000, such official shall certify to the contracting officer that he or she understands the continuing obligation, during the conduct of the procurement, not to disclose propriety or source selection information related to such agency procurement. This certification requirement also applies to individuals acting as procurement officials on behalf of the procuring activity who are, or are employed by, contractors, subcontractors, consul-

tants, experts, or advisors other than employees of the competing contractor when such individuals, during the conduct of the procurement, cease to function as procurement officials for the procurement.

(b) Subsection 27(f)(1)(A) of the Act restricts a current or former Government officer or employee, as defined in 3.104-4(d), who was a procurement official with respect to a particular procurement, from knowingly participating in any manner in negotiations as an officer, employee, representative, agent, or consultant of a competing contractor leading to the award or modification of the contract for such procurement. This restriction not only includes representing the competing contractor in negotiations with the contracting activity, but also includes providing advice or information for the specific purpose of influencing negotiation strategies. For purposes of this restriction, "negotiation strategies" mean the contractor's approach to the preparation and presentation of its offer or the conduct of negotiations with the Government. This restriction does not apply to providing scientific, technical, or other advice that is unrelated to negotiation strategies. This restriction lasts for 2 years from the date of the individual's last personal and substantial participation in the Federal agency procurement. This restriction is not effective until June 1, 1991.

(c) Subsection 27(f)(1)(B) of the Act restricts a current or former Government officer or employee, as defined in 3.104-4(d), who was a procurement official with respect to a particular procurement, from knowingly participating personally and substantially on behalf of the competing contractor in performance of the contract. To participate "personally and substantially" requires the presence of both direct and significant involvement in the performance of the specific contract. The performance of general engineering, scientific or technical work, or providing general budgetary or policy advice, shall not be considered personal and substantial participation on behalf of a competing contractor in the performance of the contract for which the Government officer or employee is or was a procurement official. Where participation is on behalf of a competing contractor who is a subcontractor, the significance of that participation will be determined in relation to the prime contract. This restriction lasts for 2 years from the date of the last personal and substantial participation in the Federal agency procurement. This restriction is not effective until June 1, 1991.

(d) The restrictions in paragraphs (b) and (c) of this subsection do not apply to—

(1) Individuals acting as procurement officials on behalf of the procuring agency who are or were, or who are or were employed by, contractors, subcontractors, consultants, experts, or advisors and who are not Government officers or employees as defined in 3.104-4(d).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST 3.104-8

(2) Participation in the negotiation or performance of any other contract of the competing contractor.

(3) General scientific and technical work on an independent research and development project, unless such work involves the negotiation or performance of a specific contract that the individual worked on as a Government employee.

(4) Participation with respect to a subcontractor who is a competing contractor unless—

(i) The subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess of \$100,000; or

(ii) The subcontractor significantly assisted the prime contractor with respect to negotiation of the prime contract; or

(iii) The procurement official involved in the award or modification of the prime contract personally directed or recommended the particular subcontractor as a source for the subcontract; or

(iv) The procurement official personally reviewed and approved the award or modification of the subcontract. A contracting officer's consent, in accordance with Part 44, to the placement of a subcontract or, with respect to architect-engineer contracts, the substitution of a subcontractor, associate, or consultant, does not constitute approval of the subcontract, subcontractor, associate, or consultant. Similarly, approval of a contractor's purchasing system does not constitute approval of a particular subcontract or subcontractor.

(5) An individual who has been granted a waiver by the President in accordance with subsection 27(f)(3) of the Act. Waivers under that subsection may be granted only to a civilian officer or employee of the Executive branch other than an officer and employee in the Executive Office of the President who, after his or her Federal Government employment is terminated, is or will be engaged in activities at a Government-owned, contractor-operated entity at which he or she served as an officer or employee immediately before his or her Federal Government employment began. Subsection 27(f)(3) is not effective until June 1, 1991.

(6) An individual whose only personal and substantial participation in the procurement occurred during the period December 1, 1989, through May 31, 1991.

3.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.

(a) *Knowing violations.* Neither a procurement official nor a competing contractor violates the restrictions set forth in 3.104-3 unless the prohibited conduct is engaged in knowingly. For these purposes, conduct is not "knowing" when—

(1) A competing contractor engages in specific conduct after having satisfied the duty to inquire under

paragraphs (b), (c), and (d) of this subsection, or when the competing contractor engages in conduct based upon good faith reliance on an agency ethics advisory opinion issued to a current or former procurement official under paragraph (e) of this subsection.

(2) A procurement official engages in specific conduct after having satisfied the duty to inquire under paragraphs (b), (c), and (d) of this subsection or has acted in good faith reliance on an ethics advisory opinion obtained under paragraph (e) of this subsection.

(b) *Duty to inquire—general.*

(1) For some procurements, neither competing contractors nor all procurement officials will have knowledge as to when the conduct of a particular procurement has begun. However, certain conduct and activities that are prohibited by the Act would be inappropriate at any time. There are prohibitions on the receipt of gratuities from agency contractors that apply without regard to whether an employee is involved in the conduct of a particular procurement. Similarly, potential contractors should not solicit, and agency personnel should not offer, proprietary or source selection information at any time. However, potential contractors may offer, and Government employees may solicit, employment except as prohibited by law.

(2) Agency personnel shall be presumed to know the procurements for which they are procurement officials. Contractor personnel are presumed to know the procurements for which the organization they represent is reasonably likely to be competing. Individuals who do not know whether they are procurement officials, or whether the organization they represent is or is reasonably likely to become a competing contractor, should defer any discussions regarding employment until these questions are resolved by consulting appropriate parties within their respective organizations. Agency personnel who cannot ascertain, after discussions with the contracting officer or the Source Selection Authority if the contracting officer is not the Source Selection Authority, whether they are procurement officials may request an ethics advisory opinion under paragraph (e) of this subsection for purposes of determining their status.

(c) *Duty to inquire—employment discussions.*

(1) A contractor who wishes to discuss employment opportunities with an individual whose duties and functions may make that individual a procurement official (see 3.104-4(h)) should ask if that individual is a procurement official for a procurement for which the contractor is a competing contractor or is likely to become a competing contractor before conducting any discussion related to employment. A competing contractor shall not be considered to have knowingly violated the prohi-

bitions set forth in subsection 27(a)(1) of the Act (see 3.104-3(a)(1)) if the contractor has made an inquiry in good faith of the possible procurement official and has been advised that the individual is not a procurement official for any procurement for which the contractor is or is reasonably likely to become a competing contractor, or is advised that the procurement official has been recused from participation in the procurement in accordance with 3.104-6.

(2) A procurement official may not solicit or engage in employment or business opportunity discussions with a competing contractor or a contractor who is reasonably likely to become a competing contractor unless the procurement official has been recused from participation in the procurement in accordance with the procedures at 3.104-6.

(3) A procurement official who wishes to solicit employment from, or discuss employment with, a contractor and does not know if the contractor is or is reasonably likely to become a competing contractor should ask whether the contractor is or is reasonably likely to become a competing contractor on any procurement for which the individual is serving as a procurement official. The procurement official—

(i) May rely on the contractor's representation that it is not or is not likely to become a competing contractor, and enter into employment or business opportunity discussions with that contractor; or

(ii) Shall not, if the contractor represents that it is or is reasonably likely to become a competing contractor, enter into employment or business opportunity discussions with that contractor. If the procurement official is an eligible procurement official as defined at 3.104-6(c), and desires to pursue discussions with that contractor, the procurement official must first seek and obtain written authorization for recusal in accordance with the procedures at 3.104-6 before entering into further discussions with that contractor.

(4) A procurement official shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(b)(1) of the Act (see 3.104-3(b)(1)) if—

(i) The procurement official has made inquiry in good faith of the potential contractor, and has been advised that the contractor is not or will not be a competing contractor on a procurement under the responsibility of the procurement official; or

(ii) The procurement official has been recused from participation in the procurement.

(d) *Duty to inquire—proprietary and source selection information.*

(1) A competing contractor shall not be considered to have knowingly violated the prohibitions in subsection 27(a)(3) of the Act (see 3.104-3(a)(3)) if, before proprietary or source selection information was solicited

or obtained, the contractor—

(i) Had made an inquiry in good faith of the contracting officer (or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee) regarding whether information was proprietary or source selection information; and

(ii) Had been advised by such official that the information was not proprietary or source selection information.

(2) A procurement official shall not be considered to have knowingly violated the prohibitions in subsection 27(b)(3) of the Act (see 3.104-3(b)(3)) if, prior to disclosing information, the procurement official had made an inquiry in good faith of the contracting officer (or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee) and had been advised that—

(i) The information was not proprietary or source selection information; or

(ii) The information is proprietary or source selection information and the individual to whom the procurement official wishes to disclose the information has been authorized access to such information by the Head of the Agency or the contracting officer.

(3) No person who is given authorized or unauthorized access to proprietary or source selection information shall be considered to have knowingly violated the prohibition in subsection 27(d) of the Act (see 3.104-3(c)) if, before disclosing such information, the person—

(i) Had made an inquiry in good faith of the contracting officer (or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee) as to whether or not the individual to whom he seeks to disclose the proprietary or source selection information has been authorized access to such information by the Head of the Agency or the contracting officer; and

(ii) Had been advised by such official that such individual has been so authorized.

(e) *Ethics advisory opinions.* (1) An employee or former employee of an agency who is or was a procurement official may request an ethics advisory opinion from the agency ethics official as to whether specific conduct which has not yet occurred would violate section 27 of the Act. An individual who cannot determine, after discussions with the contracting officer (see subparagraph (b)(2) of this subsection), if he or she is or was a procurement official may request an ethics advisory opinion for the purpose of determining his or her status. Ethics advisory opinions may not be obtained, however, for the purpose of establishing whether—

(i) Prior to bid opening or receipt of proposals, a particular contractor is a competing contractor;

(ii) Items of information constitute proprietary or

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST 3.104-9

source selection information as defined in 3.104-4; or
(iii) Proprietary or source selection information may be disclosed.

Questions regarding proprietary and source selection information shall be referred to the contracting officer or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee (see subparagraphs (d)(1) through (d)(3) of this subsection). Questions regarding a contractor's status as a competing contractor shall be resolved in accordance with subparagraph (c)(3) of this subsection.

(2) The request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the procurement official or former procurement official that is relevant to the inquiry. As a minimum, the request shall include—

(i) Information about the procurement in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, and a description of the goods or services procured or to be procured;

(ii) Information about the individual's participation in the procurement, including the dates or time periods of that participation, and the nature of the individual's duties or responsibilities;

(iii) Information about the competing contractor who would be a party to the proposed conduct, and the nature of the competing contractor's interest in the procurement.

(iv) A description of the possible gratuity or other thing of value if the request concerns conduct that might violate the prohibition of subsection 27(b)(2) of the Act. It shall be the responsibility of the individual requesting an advisory opinion to furnish an appraisal or good faith estimate of market value where the value of an item is in question.

(v) Specific information about the particular duties to be performed on behalf of the competing contractor if the request concerns conduct that might violate either or both of the prohibitions of subsection 27(f) of the Act. Where the issue concerns whether employment with a subcontractor is permissible under subsection 27(f)(2), the request shall include information about the subcontract level and dollar amount, the subcontractor's role in assisting the prime contractor in negotiating the prime contract, and the individual's role in directing or recommending the subcontractor to the prime contractor as a source for the subcontract or reviewing and approving the award or modification of the subcontract.

(3) Within 30 days after the date a request containing complete information is received, or as soon thereafter as practicable, the agency ethics official shall issue

an opinion as to whether proposed conduct is proper or would violate section 27 of the Act.

(i) Where complete information is not included in the request, the agency ethics official may ask the requester to provide any information reasonably available to that person, and the 30-day period will run from the date that additional information is received. Additional information may also be requested from other persons, including the Source Selection Authority, the contracting officer, or the requester's immediate supervisor.

(ii) Where the opinion cannot be issued within 30 days, the reason for the delay will be documented in the file. Acceptable reasons for delay include, but are not limited to, the necessity for the agency ethics official to independently develop information not reasonably available to the requester, or to verify questionable information furnished by the requester.

(iii) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(4) A copy of the request and ethics advisory opinion shall be retained for a period of 6 years. Agencies shall not provide copies of the advisory opinions to any person other than the requester, except with the express authorization of the requester or where release is otherwise permitted by law.

(5) Where the requester engages in conduct in good faith reliance upon an ethics advisory opinion, or a competing contractor engages in conduct based upon good faith reliance on the requester's ethics advisory opinion, neither the requester nor the competing contractor shall be found to have knowingly violated the restriction in issue. Where the requester or the competing contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information provided by the requester, their reliance upon the opinion will not be deemed to be in good faith.

3.104-9 Certification requirements.

(a) *Applicability.* Subsection 27(e) of the Act requires certifications, prior to the award of a Federal agency contract or contract modification for property or services in excess of \$100,000 awarded or executed on or after December 1, 1990, by the officer or employee of the contractor responsible for the offer or bid for that particular contract or contract modification for property or services, and by the contracting officer for that procurement.

(b) *Competing contractor certification.*

(1) Except as provided in 3.104-9(f), contracting officers shall require the competing contractor to—

(i) Certify in writing to the contracting officer

responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Disclose to such contracting officer any and all such information, and certify in writing to such contracting officer that any and all such information has been disclosed; and

(iii) Certify in writing to such contracting officer that, to the best of his or her knowledge and belief, each officer, employee, agent, representative, and consultant of such competing contractor who, on or after December 1, 1990, has participated personally and substantially in the preparation or submission of such bid or offer, or in a modification of a contract, as the case may be, has certified in writing to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or bid for any contract or the modification of a contract, as the case may be, any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), occurring on or after December 1, 1990, as implemented in the FAR.

(2) Subcontractors are not required to submit the certificate required by subsection 27(e)(1) of the Act. However, nothing in 3.104 precludes a competing contractor from requesting certifications from its subcontractors.

(3) The signed certifications prescribed in 3.104-10 shall be submitted as follows:

(i) *Procurements exceeding \$100,000 using sealed bidding procedures:*

(A) For procurements using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission, except for procurements using two-step sealed bidding procedures (see Subpart 14.5). For those procurements, the certifications shall be submitted with submission of the step two sealed bids. A certificate is not required for indefinite delivery contracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed \$100,000.

(B) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds \$100,000.

(C) Failure of a bidder to submit the signed

certificate with its bid shall render the bid nonresponsive.

(ii) *Procurements exceeding \$100,000 using other than sealed bidding procedures:*

(A) For procurements, including contract modifications, made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful offeror to the contracting officer within the time period specified by the contracting officer when requesting the certificates, except as provided in subdivisions (b)(3)(ii)(B) through (F) of this subsection. In no event shall the certificate be submitted subsequent to award of a contract or execution of a contract modification.

(B) For letter contracts, other unpriced contracts, or unpriced contract modifications, whether or not the unpriced contract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter contract, unpriced contract, or unpriced contract modification, and prior to the definitization of the letter contract or the establishment of the price of the unpriced contract or unpriced contract modification. The second certification shall apply only to the period between award of the letter contract and execution of the document definitizing the letter contract, or award of the unpriced contract or unpriced contract modification and execution of the document establishing the definitive price of such unpriced contract or unpriced contract modification.

(C) For basic ordering agreements, prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and prior to establishing the price of an unpriced order. The second certificate to be submitted for unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.

(D) A certificate is not required for indefinite delivery contracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed \$100,000.

(E) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options exceeds \$100,000.

(F) For purposes of contracts entered into under section 8(a) of the SBA, the business entity with whom the SBA contracts, and not the SBA,

shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity, and forward the certificate to the contracting officer prior to the award of a contract to the SEA.

(C) Failure of an offeror to submit the signed certificate within the time prescribed by the contracting officer is a failure to comply with a material requirement of the solicitation and shall cause the offer to be rejected.

(c) *Contracting officer certifications.*

(1) In accordance with subsection 27(e)(2) of the Act, a Federal agency may not award a contract for the procurement of property or services, or agree to a modification of any contract, if the contract or contract modification exceeds \$100,000, unless the contracting officer responsible for such procurement—

(i) Certifies in writing to the head of such agency that, to the best of his or her knowledge and belief, the contracting officer has no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), as implemented in the FAR, pertaining to such procurement; or

(ii) Discloses to the head of such agency any and all such information and certifies in writing that any and all such information has been disclosed.

(2) Immediately prior to contract award or execution of a contract modification, the contracting officer shall execute the following certificate and maintain the completed certificate in the contract file:

CONTRACTING OFFICER CERTIFICATE OF PROCUREMENT INTEGRITY

1. I, [Name of contracting officer], hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, have no information concerning a violation or possible violation of subsections (a), (b), (d), or (f) of section 27 of the Office of Federal Procurement Policy Act* (41 U.S.C. 423), as implemented in the FAR, occurring during the conduct of this procurement (contract/modification number).

2. Violations or possible violations: (Continue on plain bond paper if necessary, and label Contracting Officer Certificate of Procurement Integrity (Continuation Sheet), ENTER "NONE" IF NONE EXISTS.) _____

(Signature of contracting officer and date)

* Subsections 27(a), (b), and (d), are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE

UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(d) *Additional certifications.*

(1) Subsection 27(e)(3) of the Act provides that the head of a Federal agency may require any procurement official or any competing contractor, at any time during the conduct of any Federal agency procurement of property or services—

(i) To certify in writing that, to the best of his or her knowledge and belief, such procurement official or the officer or employee of the competing contractor responsible for the offer or bid for a contract or the modification of a contract, has no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), as implemented in the FAR occurring during the procurement; or

(ii) To disclose any and all such information and to certify in writing that any and all such information has been disclosed.

(2) In addition to the Head of the Agency, additional certifications may be required only by the HCA or his or her designee, provided that the designee is an individual of General Officer, Flag, SES or equivalent rank and is at least one organizational level above the contracting officer.

(3) Any additional certifications shall be submitted to the contracting officer unless another person is specified by the individual requiring the additional certifications.

(4) Each procurement official or competing contractor shall be afforded a reasonable time to comply with the additional certification requirements.

(5) A competing contractor's failure to submit any additional certifications that may be required shall cause the competing contractor's offer to be rejected.

(e) *Recordkeeping requirements.*

(1) In accordance with subsections 27(e)(5)(A) and (B) and 27(e)(7)(A) of the Act, the contracting officer responsible for the award or modification of a contract in excess of \$100,000 shall maintain, as part of the contract file—

(i) All competing contractor, contracting officer, and procurement official certifications required by subsections 27(e)(1), (e)(2), and (e)(4) of the Act, and any additional certifications required by subsection 27(e)(3) of the Act for that particular procurement.

(ii) All certifications required by subsection 27(l) of the Act (see 3.104-12) from individuals acting as procurement officials on behalf of the procuring agency, who are, or are employed by, contractors,

subcontractors, consultants, experts, or advisors (other than competing contractors).

(iii) A record of all persons who have been authorized by the Head of the Agency or the contracting officer to have access to proprietary or source selection information regarding the procurement. When classes of persons have been authorized, this record shall identify the class of persons so authorized and, to the maximum extent practicable, the names of the individuals within the class.

(2) Certifications obtained from Government officers or employees (see 3.104-4(d)) who are required to submit a certification under subsection 27(l) of the Act shall be maintained in accordance with agency procedures.

(3) Ethics advisory opinions shall be retained, in accordance with agency procedures, for a period of 6 years.

(f) *Exceptions to certification requirements.* Pursuant to subsection 27(e)(7)(B) of the Act, certification requirements set forth in 3.104-9 do not apply—

(1) To contracts with a foreign government or an international organization that are not required to be awarded using competitive procedures pursuant to section 303(c)(4) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(4), or section 2304(c)(4) of title 10, United States Code; or

(2) In an exceptional case, when the Head of the Agency concerned determines in writing that the certification requirement should be waived. This authority may not be delegated. The contracting officer shall submit the request for waiver in accordance with agency procedures. The request shall clearly identify the procurement or class of procurements and provide the rationale for the requested waiver. The decision of the agency head shall state the reasons for approving or disapproving the waiver. The agency head shall promptly notify Congress in writing of each waiver approved. Procurements for which a waiver may be appropriate include—

(i) Where prices are set by law or regulation;

(ii) Where terms and conditions of a contract are specified by an agreement with a foreign government or governments;

(iii) Where supplies or services are provided by foreign nationals to United States facilities overseas for use outside the United States;

(iv) Where a foreign government specifies a particular U.S. contractor to satisfy its requirements (see 6.302-4(b)(1)).

3.104-10 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.203-8, Requirement for Certificate of Procurement Integrity, in all solicitations where the resultant contract

award is expected to exceed \$100,000, unless, pursuant to 3.104-9(f), a certification is not required or a waiver has been granted. For procurements using other than sealed bidding procedures, the contracting officer shall substitute Alternate I for paragraph (c) of that provision.

(b) The contracting officer shall insert the clause at 52.203-9, Requirement for Certificate of Procurement Integrity—Modification, in all solicitations where the resultant contract award is expected to exceed \$100,000, all contracts in excess of \$100,000, and modifications to contracts which do not already contain the clause when the modification is expected to exceed \$100,000, unless, pursuant to 3.104-9(f), a certificate is not required or a waiver has been granted.

(c) The contracting officer shall insert the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the small purchase limitation (see 13.000) and all contracts and modifications to contracts exceeding that limitation which do not already contain the clause when the modification is expected to exceed that limitation.

(d) The contracting officer shall insert the clause at 52.203-13, Procurement Integrity—Service Contracting, in all solicitations and contracts where the Government is procuring or may order the services of contractor employees to serve as procurement officials for another agency procurement. In addition, the contracting officer shall insert the provisions and clauses at 52.203-8, 52.203-9, and 52.203-10 in such solicitations and contracts as prescribed in this subsection.

3.104-11 Processing violations or possible violations.

(a) If the contracting officer makes or receives a disclosure of information pursuant to subsection 27(e) of the Act or otherwise receives or obtains information of a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer shall forward the information concerning the violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer shall, without further approval, proceed with the procurement. The individual concurring with that conclusion shall forward all information relating to the violation or possible violation to the HCA, or his or her designee, to satisfy the disclosure requirements of subsection 27(e)(2) of the Act.

(2) If the individual reviewing the contracting offi-

cer's conclusion does not agree with that conclusion, he or she shall advise the contracting officer to withhold award and shall promptly forward the information and documentation to the HCA or his or her designee.

(3) If the contracting officer determines that the violation or possible violation impacts the procurement, the contracting officer shall promptly forward the information to the HCA or his or her designee.

(b) The HCA or his or her designee receiving any information describing an actual or possible violation of subsections 27(a), (b), (d), or (f) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as—

(1) Advising the contracting officer to continue with the procurement;

(2) Causing an investigation to be conducted;

(3) Referring the information disclosed to appropriate criminal investigative agencies; or

(4) Determining that a violation occurred.

(c) Prior to determining that a competing contractor (see 3.104-4(b)) has violated the Act, the HCA or his or her designee may request information from appropriate parties regarding the violation or possible violation when considered in the best interests of the Government.

(d) If the HCA or his or her designee determines that the prohibitions of section 27 of the Act have been violated, then the HCA or his or her designee may direct the contracting officer to—

(1) If a contract has not been awarded, or a contract modification has not been executed—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded or a contract modification has been executed—

(i) Effect appropriate contractual remedies, including profit recapture as provided for in the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity;

(ii) Void or rescind the contract, or contract modification; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspension and debarment official.

(e) The HCA or his or her designee shall, in his or her best judgment, recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA or his or her designee receiving information concerning a violation or possible violation determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government,

he or she may authorize the contracting officer to award the contract or execute the contract modification after notification to the Head of the Agency in accordance with agency procedures.

(g) The designee of the HCA referenced in paragraphs (a), (b), (c), (d), and (e) of this subsection must be an individual at least one organizational level above the contracting officer and be of General Officer, Flag, SES or equivalent rank.

3.104-12 Ethics program training requirements.

(a) Subsection 27(l) of the Act provides that the head of each Federal agency shall establish a procurement ethics training program for its procurement officials. The program shall, as a minimum—

(1) Provide for the distribution of a written explanation of subsections 27(a) through (f) of the Act to such procurement officials; and

(2) Require each such procurement official, as a condition of serving as a procurement official, to certify in writing that he or she is familiar with the provisions of subsections 27(b), (c), and (e) of the Act and will not engage in any conduct prohibited by such subsections, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act as implemented in the FAR.

(3) Certifications made under section 27 as originally enacted and implemented in the FAR do not satisfy the certification requirements of subparagraph (a)(2) of this subsection. Agencies may use Optional Form 333 at 53.302-333 to obtain the certifications required by subparagraph (a)(2) of this subsection.

(b) Contractors, subcontractors, consultants, experts, or advisors (other than competing contractors) are responsible for establishing a procurement ethics training program for individuals in their employ who may serve as procurement officials on behalf of a Federal agency. The program shall, as a minimum, comply with subparagraphs (a)(1) and (a)(2) of this subsection.

SUBPART 3.2—CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

3.201 Applicability.

This subpart applies to all executive agencies, except that coverage concerning exemplary damages applies only to the Department of Defense (10 U.S.C. 2207).

3.202 Contract clause.

The contracting officer shall insert the clause at 52.203-3, Gratuities, in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

3.203 Reporting suspected violations of the Gratuities clause.

Agency personnel shall report suspected violations of the Gratuities clause to the contracting officer or other designated official in accordance with agency procedures. The agency reporting procedures shall be published as an implementation of this section 3.203 and shall clearly specify—

- (a) What to report and how to report it; and
- (b) The channels through which reports must pass, including the function and authority of each official designated to review them.

3.204 Treatment of violations.

(a) Before taking any action against a contractor, the agency head or a designee shall determine, after notice and hearing under agency procedures, whether the contractor, its agent, or another representative, under a contract containing the Gratuities clause—

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended by the gratuity to obtain a contract or favorable treatment under a contract (intent generally must be inferred).

(b) Agency procedures shall afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. The procedures should be as informal as practicable, consistent with principles of fundamental fairness.

(c) When the agency head or designee determines that a violation has occurred, the Government may—

- (1) Terminate the contractor's right to proceed;
- (2) Initiate debarment or suspension measures as set forth in Subpart 9.4; and
- (3) Assess exemplary damages, if the contract uses money appropriated to the Department of Defense.

SUBPART 3.3—REPORTS OF SUSPECTED ANTI-TRUST VIOLATIONS

3.301 General.

(a) Practices that eliminate competition or restrain trade usually lead to excessive prices and may warrant criminal, civil, or administrative action against the participants. Examples of anticompetitive practices are collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business.

(b) Contracting personnel are an important potential source of investigative leads for antitrust enforcement and should therefore be sensitive to indications of unlawful behavior by offerors and contractors. Agency personnel shall report, in accordance with agency regulations, evidence of suspected antitrust violations in acquisitions for

possible referral to (1) the Attorney General under 3.303 and (2) the agency office responsible for contractor debarment and suspension under Subpart 9.4.

3.302 Definitions.

"Identical bids" means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (e.g., discount or transportation cost).

"Line item" means an item of supply or service, specified in an invitation for bids, for which the bidder must bid a separate price.

3.303 Reporting suspected antitrust violations.

(a) Agencies are required by 41 U.S.C. 253(B)(e) and 10 U.S.C. 2305(b)(5) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by Subpart 9.4.

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) below identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that may evidence violations of the antitrust laws include—

- (1) The existence of an "industry price list" or "price agreement" to which contractors refer in formulating their offers;
- (2) A sudden change from competitive bidding to identical bidding;
- (3) Simultaneous price increases or follow-the-leader pricing;
- (4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
- (5) Division of the market, so that certain competitors bid low only for contracts let by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;
- (6) Establishment by competitors of a collusive price estimating system;
- (7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;
- (8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and

(9) Assertions by the employees, former employees, or competitors of offerors, that an agreement to restrain trade exists.

(d) Identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

(e) For offers from foreign contractors for contracts to be performed outside the United States, contracting officers may refer suspected collusive offers to the authorities of the foreign government concerned for appropriate action.

(f) Agency reports shall be addressed to the Attorney General, U.S. Department of Justice, Washington, DC 20530, Attention: Assistant Attorney General, Antitrust Division, and shall include—

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(g) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of the Assistant Attorney General, Antitrust Division.

SUBPART 3.4—CONTINGENT FEES

3.400 Scope of subpart.

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those permitted by 10 U.S.C. 2306(b) and 41 U.S.C. 254(a).

3.401 Definitions.

"Bona fide agency," as used in this subpart, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this subpart, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this subpart, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this subpart, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

3.402 Statutory requirements.

Contractors' arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. In 10 U.S.C. 2306(b) and 41 U.S.C. 254(a), Congress affirmed this public policy but permitted certain exceptions. These statutes—

(a) Require in every negotiated contract a warranty by the contractor against contingent fees;

(b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and

(c) Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

3.403 Applicability.

This subpart applies to all contracts. Statutory requirements for negotiated contracts are, as a matter of policy, extended to sealed bid contracts.

3.404 Solicitation provision and contract clause.

(a) Prospective contractors are generally required to disclose contingent fee arrangements, other than those with full-time bona fide employees working solely for the prospective contractor, in order to permit the Government to evaluate the arrangements before award.

(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—

(1) Contracting by sealed bidding, and the contract amount is expected to be \$25,000 or less;

(2) The contract amount is not expected to exceed the appropriate small purchase limitation in Part 13;

(3) The solicitation is for perishable subsistence supplies, and the contract amount is expected to be \$25,000 or less;

(4) The solicitation is for personal services to be paid for on a time basis;

(5) The solicitation is for utility services, at rates regulated by Federal, State, or other regulatory bodies, from a public utility company that is the sole source;

(6) The award under the solicitation is to be made in a foreign country; or

(7) Any other Department of Defense contracts, individually or by class, have been designated by the Secretary for exception. Reports of such exceptions shall be filed promptly with the Administrator of General Services Administration.

(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in all solicitations and contracts.

3.405 Review of Contingent Fee Representation and Agreement.

(a) Prospective contractors may not use any claimed professional or special relationship (other than that of a full time bona fide employee working solely for the prospective contractor) as a basis for nondisclosure of contingent fee arrangements. The fact that a fee is for information does not exclude it from the definition of contingent fee.

(b) Contracting officers shall review each prospective contractor's offer or quotation and take the following actions:

(1) Ensure that the prospective contractor has completed both subparagraph (a)(1) and (a)(2) of the solicitation provision at 52.203-4, Contingent Fee Representation and Agreement.

(2) Consider failure to complete the representation a minor informality and afford the prospective contractor another opportunity to comply.

(3) If the prospective contractor still does not furnish the representation, reject the offer or quotation.

(4) If the prospective contractor answered subparagraphs (a)(1) and (a)(2) of the representation negatively, accept the representation, unless there is a reason to question its accuracy, and proceed with the contractual action.

(5) If the prospective contractor has answered subparagraph (a)(1) or (a)(2) affirmatively, secure a completed Standard Form 119, Statement of Contingent or Other Fees (see 53.301-119), or the statement authorized by the representation and agreement.

3.406 Award before receipt of the SF 119.

Contracting officers may award sealed bid contracts before receipt of the SF 119 or the statement. Negotiated contracts may not be awarded before receipt and evaluation of the SF 119 or statement, unless specifically approved by the chief of the contracting office.

3.407 Failure or refusal to furnish the SF 119.

If the prospective contractor fails or refuses to furnish the SF 119 or the statement in response to the contracting officer's request, the chief of the contracting office shall determine whether to make further efforts to secure the SF 119 or statement or to initiate appropriate actions under 3.409.

3.408 Evaluation of the SF 119.

3.408-1 Responsibilities.

(a) The contracting officer shall evaluate the SF 119 and all related information to determine—

(1) Whether a contingent fee arrangement exists between the prospective contractor and a person or company other than a full-time bona fide employee working solely for the prospective contractor; and

(2) When such a contingent fee arrangement does exist, whether it meets the statutory exception permitting contingent fee arrangements with bona fide employees or agencies.

(b) The contracting officer's documentation of the evaluation, conclusion, and any proposed actions shall be reviewed at a level above the contracting officer in accordance with agency procedures.

3.408-3 Evaluation criteria.

(a) *Improper influence.* By definition (see 3.401), a bona fide employee or bona fide agency neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts. If the contracting officer decides that there is a reasonable basis to conclude that improper influence has been or will be exerted or proposed, or that the employee or agency has held out as being able to obtain any Government contract or contracts through improper influence, the employee or agency shall not be considered bona fide.

(b) *Bona fide employee.* An employee may be bona fide but not work on a full-time basis solely for the contractor (e.g., small business concerns may need to employ persons who also represent other concerns). Prospective contractors must disclose such arrangements in the representation and agreement and submit the SF 119 or the statement. However, contingent compensation arrangements with bona fide employees, customary in the trade, are within the statutory exception and are not prohibited. In determining whether an employee is bona fide, the contracting officer shall—

(1) Compare the employment arrangement to the definition of bona fide employee in 3.401;

(2) Consider the criteria in subparagraphs (c)(1), (2), and (5) below, as appropriate; and

(3) Consider the continuity of employment. The employment must contemplate some continuity and not be solely for obtaining one or more specific Government contracts.

(c) *Bona fide agency.* The following guidelines are intended to help contracting officers determine whether an agency is a "bona fide agency," as defined in 3.401. They describe circumstances ordinarily existing in acceptable arrangements in which the agency is bona fide. However, the guidelines are not individually or collectively inviolable rules. The contracting officer must evaluate each arrangement in its totality, including attendant facts and circumstances.

(1) The fee should not be inequitable or exorbitant when compared to the services performed or to customary fees for similar services related to commercial business.

(2) The agency should have adequate knowledge of the contractor's products and business, as well as other qualifications necessary to sell the products or services on their merits.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST 3.502-1

(3) The contractor and the agency should have a continuing relationship or, in newly established relationships, should contemplate future continuity.

(4) The agency should be an established concern that has existed for a considerable period, or be a newly established going concern likely to continue in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of regular business.

(5) While an agency that confines its selling activities to Government contracts is not disqualified, the fact that an agency represents the contractor in Government and commercial sales should receive favorable consideration.

3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees shall report the matter promptly to the contracting officer or appropriate higher authority in accordance with agency procedures.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) above, the chief of the contracting office shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the Government's right to annul the contract or to recover the fee.

(3) Initiate suspension or debarment action under Subpart 9.4.

(4) Refer suspected fraudulent or criminal matters to the Department of Justice, as prescribed in agency regulations.

3.410 Records.

For enforcement purposes, agencies shall preserve any representation and the original SF 119 or statement, together with all other pertinent data, including a record of actions taken. Contracting offices shall not retire or destroy these records until it is certain that they are no longer needed for enforcement purposes. If the original record is maintained in a central file, a copy must be retained in the contract file.

SUBPART 3.5—OTHER IMPROPER BUSINESS PRACTICES

3.501 Buying-in.

3.501-1 Definition.

"Buying-in" means submitting an offer below anticipated costs, expecting to—

(a) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or

(b) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

3.501-2 General.

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of (1) change orders or (2) follow-on contracts subject to cost analysis.

(b) The Government should minimize the opportunity for buying-in by seeking a price commitment covering as much of the entire program concerned as is practical by using—

(1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multiyear quantity; or

(2) Priced options for additional quantities that, together with the firm contract quantity, equal the program requirements (see Subpart 17.2).

(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses (e.g., amortization of nonrecurring costs (see 15.804-6(f)) and treatment of unreasonable price quotations (see 15.803(d)).

3.502 Subcontractor kickbacks.

3.502-1 Definitions.

"Kickback," as used in this section, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this section, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this section, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this section, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this section, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract," as used in this section, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this section, (a) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (b) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

3.502-2 General.

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act—

(a) Prohibits any person from—

(1) Providing, attempting to provide, or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

(b) Imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in paragraph (a) of this subsection.

(c) Provides for the recovery of civil penalties by the United States from any person who knowingly engages in such prohibited conduct and from any person whose employee, subcontractor, or subcontractor employee provides, accepts, or charges a kickback.

(d) Provides that—

(1) The contracting officer may offset the amount of a kickback against monies owed by the United States to the prime contractor under the prime contract to which such kickback relates;

(2) The contracting officer may direct a prime contractor to withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against the prime contractor under subparagraph (d)(1) of this subsection; and

(3) An offset under subparagraph (d)(1) or a direction under subparagraph (d)(2) of this subsection is a claim by the Government for the purposes of the Contract Disputes Act of 1978.

(e) Authorizes contracting officers to order that sums withheld under subparagraph (d)(2) of this subsection be paid to the contracting agency, or if the sum has already been offset against the prime contractor, that it be retained by the prime contractor.

(f) Requires the prime contractor to notify the contract-

ing officer when the withholding under subparagraph (d)(2) of this subsection has been accomplished unless the amount withheld has been paid to the Government.

(g) Requires a prime contractor or subcontractor to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice any possible violation of the Act when the prime contractor or subcontractor has reasonable grounds to believe such violation may have occurred.

(h) Provides that, for the purpose of ascertaining whether there has been a violation of the Act with respect to any prime contract, the General Accounting Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.

(i) Requires each contracting agency to include in each prime contract a requirement that the prime contractor shall—

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procedures requiring subcontractors to certify they have not paid kickbacks; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

(2) Cooperate fully with any Federal agency investigating a possible violation of the Act.

3.502-3 Contract clause.

The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in all solicitations and contracts.

3.503 Unreasonable restrictions on subcontractor sales.

3.503-1 Policy.

10 U.S.C. 2402 and 41 U.S.C. 253g require that subcontractors not be unreasonably precluded from making direct sales to the Government of any supplies or services made

or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

3.503-2 Contract clause.

The clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, shall be inserted in solicitations and contracts for supplies or services.

SUBPART 3.6—CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

3.601 Policy.

(a) Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

(b) For purposes of this subpart, special Government employees (as defined in 18 U.S.C. 202) performing services as experts, advisors, or consultants, or as members of advisory committees, are not considered Government employees unless—

- (1) The contract arises directly out of the individual's activity as a special Government employee;
- (2) In the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract; or
- (3) Another conflict of interest is determined to exist.

3.602 Exceptions.

The agency head, or a designee not below the level of the head of the contracting activity, may authorize an exception to the policy in 3.601 only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met.

3.603 Responsibilities of the contracting officer.

(a) Before awarding a contract, the contracting officer shall obtain an authorization under 3.602 if—

- (1) The contracting officer knows, or has reason to believe, that a prospective contractor is one to which award is otherwise prohibited under 3.601; and
- (2) There is a most compelling reason to make an award to that prospective contractor.

(b) The contracting officer shall comply with the requirements and guidance in Subpart 9.5 before awarding a contract to an organization owned or substantially owned or controlled by Government employees.

SUBPART 3.7—VOIDING AND RESCINDING CONTRACTS

3.700 Scope of subpart.

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which there has been a final conviction for bribery, conflict of interest, or similar misconduct, and to recover the amounts expended and property transferred therefor.

(b) This subpart does not prescribe policies or procedures for, or govern the exercise of, any other remedy available to the Government with respect to such contracts, including but not limited to, the common law right of avoidance, rescission, or cancellation.

3.701 Purpose.

This subpart provides a means to—

(a) Provide the Government with an administrative remedy with respect to contracts in relation to which there has been a final conviction for bribery, conflict of interest, or similar misconduct; and

(b) Deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

3.702 Definition.

"Final conviction" means a conviction, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

3.703 Authority.

Section 1(e) of Public Law 87-849, 18 U.S.C. 218 ("the Act"), empowers the President or the heads of executive agencies acting under regulations prescribed by the President, to declare void and rescind contracts and other transactions enumerated in the Act, in relation to which there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code (18 U.S.C. 201-224). Executive Order 12448, November 4, 1983, delegates the President's authority under the Act to the heads of the executive agencies and military departments.

3.704 Policy.

(a) In cases in which there is a final conviction for any violation of 18 U.S.C. 201-224 involving or relating to contracts awarded by an agency, the agency head or designee, shall consider the facts available and, if appropriate, may declare void and rescind contracts, and recover the amounts expended and property transferred by the agency in accordance with the policies and procedures of this subpart.

(b) Since a final conviction under 18 U.S.C. 201-224 relating to a contract also may justify the conclusion that the party involved is not presently responsible, the agency

should consider initiating debarment proceedings in accordance with FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, if debarment has not been initiated, or is not in effect at the time the final conviction is entered.

3.705 Procedures.

(a) *Reporting.* The facts concerning any final conviction for any violation of 18 U.S.C. 201-224 involving or relating to agency contracts shall be reported promptly to the agency head or designee for that official's consideration. The agency head or designee shall promptly notify the Civil Division, Department of Justice, that the action is being considered under this subpart.

(b) *Decision.* Following an assessment of the facts, the agency head or designee may declare void and rescind contracts with respect to which a final conviction has been entered, and recover the amounts expended and the property transferred by the agency under the terms of the contracts involved.

(c) *Decision-Making Process.* Agency procedures governing the voiding and rescinding decision-making process shall be as informal as practicable, consistent with the principles of fundamental fairness. As a minimum, however, agencies shall provide the following:

(1) A notice of proposed action to declare void and rescind the contract shall be made in writing and sent by certified mail, return receipt requested.

(2) A thirty calendar day period after receipt of the notice, for the contractor to submit pertinent information before any final decision is made.

(3) Upon request made within the period for submission of pertinent information, an opportunity shall be afforded for a hearing at which witnesses may be presented, and any witness the agency presents may be confronted. However, no inquiry shall be made regarding the validity of the conviction.

(4) If the agency head or designee decides to declare void and rescind the contracts involved, that official shall issue a written decision which—

(i) States that determination;

(ii) Reflects consideration of the fair value of any tangible benefits received and retained by the agency; and

(iii) States the amount due and the property to be returned to the agency.

(d) *Notice of Proposed Action.* The notice of proposed action, as a minimum shall—

(1) Advise that consideration is being given to declaring void and rescinding contracts awarded by the agency, and recovering the amounts expended and property transferred therefor, under the provisions of 18 U.S.C. 218;

(2) Specifically identify the contracts affected by the action;

(3) Specifically identify the final conviction on which the action is based;

(4) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be returned;

(5) Identify any tangible benefits received and retained by the agency under the contract, and the value of those benefits, as calculated by the agency;

(6) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing shall be held at which witnesses may be presented and any witness the agency presents may be confronted; and

(7) Advise that action shall be taken only after the agency head or designee issues a final written decision on the proposed action.

(e) *Final Agency Decision.* The final agency decision shall be based on the information available to the agency head or designee, including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the agency decision declares void and rescinds the contract, the final decision shall specify the amounts due and property to be returned to the agency, and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision shall be sent promptly by certified mail, return receipt requested. Rescission of contracts under the authority of the Act and demand for recovery of the amounts expended and property transferred therefor, is not a claim within the meaning of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 801-813, or Part 32. Therefore, the procedures required by the CDA and the FAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart, and shall not be followed.

SUBPART 3.8—LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing section 319 of the Department of Interior and Related Agencies Appropriations Act, Pub. L. 101-121, which added a new section 1352 to title 31, United States Code, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" (the Act).

3.801 Definitions.

"Agency," as used in this section, means an executive agency as defined in 2.101.

"Covered Federal action," as used in this section, means any of the following Federal actions:

(a) The awarding of any Federal contract.

- (b) The making of any Federal grant.
- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.
- (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this section, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this section, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this section, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this section, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code;
- (c) A special Government employee, as defined in section 202, title 18, United States Code; and
- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this section, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this section, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this section, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this section, includes the contractor and all subcontractors. This term excludes an

Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this section, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this section, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

3.802 Prohibitions.

(a) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Act also requires offerors to furnish a declaration consisting of both a certification and a disclosure. These requirements are contained in the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions.

(1) By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of the prohibitions in 31 U.S.C. 1352.

(2) The disclosure shall identify if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.*

(i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this section, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(v) Only those activities expressly authorized by subparagraph (c)(1) of this section are permitted under this section.

(2) *Professional and technical services.*

(i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of—

(A) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application

for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subdivisions (c)(2)(i)(A) and (B) of this section are permitted under this section.

(v) The reporting requirements of 3.803(a) shall not apply with respect to payments of reasonable

compensation made to regularly employed officers or employees of a person.

3.803 Certification and disclosure.

(a) Any contractor who requests or receives a Federal contract exceeding \$100,000 shall submit the certification and disclosures required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, with its offer. Disclosures under this section shall be submitted to the contracting officer using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) of this section. An event that materially affects the accuracy of the information reported includes—

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a covered Federal action.

(c) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(d) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

3.804 Policy.

(a) The contracting officer shall obtain certifications

and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding \$100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

3.805 Exemption.

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this section whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of such exemption to Congress immediately after making such a determination.

3.806 Processing suspected violations.

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

3.807 Civil penalties.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804-3408, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

3.808 Solicitation provision and contract clause.

(a) The provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed \$100,000.

(b) The clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed \$100,000.

52.203-6 Restrictions on Subcontractor Sales to the Government.

As prescribed in 3.503-2, insert the following clause:
**RESTRICTIONS ON SUBCONTRACTOR SALES TO
 THE GOVERNMENT (JUL 1985)**

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

(End of clause)

52.203-7 Anti-Kickback Procedures.

As prescribed in 3.502-3, insert the following clause:
ANTI-KICKBACK PROCEDURES (OCT 1988)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency

52.203-8

FEDERAL ACQUISITION REGULATION (FAR)

does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract.

(End of clause)

52.203-8 Requirement for Certificate of Procurement Integrity.

As prescribed in 3.104-10(a), insert the following provision:

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (NOV 1990)

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [*Name of certifier*], am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (*solicitation number*).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [*Name of Offeror*] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (*Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXIST*) _____

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[*Signature of the officer or employee responsible for the offer and date*]

[*Typed name of the officer or employee responsible for the offer*]

*Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(c)(1) For procurements using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission except for procurements using two-step sealed bidding procedure (see Subpart 14.5). For those procurements, the certifications shall be submitted with submission of the step two sealed bids. A certificate is not required for indefinite delivery contracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed \$100,000.

(2) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds \$100,000.

(3) Failure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive.

(d) Pursuant to FAR 3.104-9(d), the Offeror may be requested to execute additional certifications at the request of the Government. Failure of an Offeror to submit the additional certifications shall cause its offer to be rejected.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interests of the Government, such as disqualification of the Offeror.

(f) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203-9

certification to the competing contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(g) Certifications under paragraphs (b) and (d) of this provision are material representations of fact upon which reliance will be placed in awarding a contract.

(End of provision)

Alternate 1 (SEP 1990). Procurements using other than sealed bidding procedures:

(c) For procurements, including contract modifications, in excess of \$100,000 made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful Offeror to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificates except as provided in subparagraphs (c)(1) through (c)(5) of this clause. In no event shall the certificate be submitted subsequent to award of a contract or execution of a contract modification:

(1) For letter contracts, other unpriced contracts, or unpriced contract modifications, whether or not the unpriced contract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter contract, unpriced contract, or unpriced contract modification, and prior to the definitization of the letter contract or the establishment of the price of the unpriced contract or unpriced contract modification. The second certification shall apply only to the period between award of the letter contract and execution of the document definitizing the letter contract, or award of the unpriced contract or unpriced contract modification and execution of the document establishing the definitive price of such unpriced contract or unpriced contract modification.

(2) For basic ordering agreements, prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and, prior to establishing the price of an unpriced order. The second certificate to be submitted for unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.

(3) A certificate is not required for indefinite delivery contracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed \$100,000.

(4) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds \$100,000.

(5) For purposes of contracts entered into under section 8(a) of the SBA, the business entity with whom the SBA contracts, and not the SBA, shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity and forward the certificate to the Contracting Officer prior to the award of a contract to the SBA.

(6) Failure of an Offeror to submit the signed certificate within the time prescribed by the Contracting Officer shall cause the offer to be rejected.

52.203-9 Requirement for Certificate of Procurement Integrity—Modification.

As prescribed in 3.104-10(b), insert the following clause:

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (NOV 1990)

(a) *Definitions.* The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause when requested by the Contracting Officer in connection with the execution of any modification of this contract.

(c) *Certification.* As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (NOV 1990)

(1) I, [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (contract and modification number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

52.203-10

FEDERAL ACQUISITION REGULATION (FAR)

(3) Violations or possible violations: *(Continue on plain bond paper if necessary and label Certificate of Procurement Integrity—Modification (Continuation Sheet), ENTER "NONE" IF NONE EXISTS)* _____

[Signature of the officer or employee responsible for the modification proposal and date]

[Typed name of the officer or employee responsible for the modification proposal]

*Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of clause)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in 3.104-10(c), insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

(a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as

implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
As prescribed in 3.808, insert the following provision:
CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989, that—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

As prescribed in 3.808, insert the following clause:

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) *Definitions.*

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.*

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees.*

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.*

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered

Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the

preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) *Disclosure.*

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(e) *Penalties.*

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

52.203-13 Procurement Integrity—Service Contracting.

As prescribed in 3.104-10(d), insert the following clause:

PROCUREMENT INTEGRITY—SERVICE CONTRACTING (SEP 1990)

(a) *Definitions.* The definitions in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, as a minimum—

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR to such employees; and

(2) Require each such employee, as a condition of serving as a procurement official, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR, and will not engage in any conduct prohibited by subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to FAR 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modification in excess of \$100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.

(End of clause)

52.204-1 Approval of Contract.

As prescribed in 4.103, insert the following clause:

APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of [identify title of designated agency official here] and shall not be binding until so approved.

(End of clause)

52.204-2 Security Requirements.

As prescribed in 4.404(a), insert the following clause in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in 4.404(d) apply:

SECURITY REQUIREMENTS (APR 1984)

(a) This clause applies to the extent that this contract involves access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the *Department of Defense Industrial Security Manual for Safeguarding Classified Information* (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(End of clause)

(R 7-104.12 1971 APR)

(R 7-204.12 1971 APR)

(R 7-702.29 1973 APR)

(R 7-704.22 1976 JUL)

(R 7-902.3 1976 JUL)

Alternate 1 (APR 1984). If a cost contract for research and development with an educational institution is contemplated, add the following paragraphs (e), (f), and (g) to the basic clause:

(e) If a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classification, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with the Contractor's established policies to continue the performance of work under the contract in compliance with the change in security classification.

ation or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

(R 7-402.24, clause paragraphs (e), (f),
and (g) 1971 APR)

Alternate II (APR 1984). If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

52.204-3 Taxpayer Identification.

As prescribed in 4.904, insert the following provision:
TAXPAYER IDENTIFICATION (SEP 1989)

(a) Definitions.

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or

partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) The offeror is required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to the reporting requirements described in 4.902(a), the failure or refusal by the offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract.

(c) Taxpayer Identification Number (TIN).

- TIN: _____
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of a Federal, state, or local government;
- Other. State basis. _____

(d) Corporate Status.

- Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;
- Other corporate entity;
- Not a corporate entity;
- Sole proprietorship
- Partnership
- Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) Common Parent.

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
- Name and TIN of common parent:

Name _____
TIN _____

(End of provision)

52.204-4 Contractor Establishment Code.

As prescribed in 4.603, insert the following provision:
CONTRACTOR ESTABLISHMENT CODE
(AUG 1989)

In the block with its name and address, the offeror should supply the Contractor Establishment Code applica-

ble to that name and address, if known, to the offeror. The number should be preceded by "CEC:" Offerors should take care to report the correct CEC and not a similar number assigned to the Offeror in a different system.

The CEC is a 9-digit code assigned to a contractor establishment that contracts with a Federal executive agency. The CEC system is a contractor identification coding system which is currently the Dun and Bradstreet Data Universal Numbering System (DUNS). The CEC system is distinct from the Federal Taxpayer Identification Number (TIN) system.

The Government will obtain a Contractor Establishment Code for any awardee that does not have or does not know its CEC.

(End of provision)

52.205 Reserved.

52.206 Reserved.

52.207-1 Notice of Cost Comparison (Sealed-Bid).

As prescribed in 7.305(a), insert the following provision:

NOTICE OF COST COMPARISON (SEALED-BID) (JUL 1990)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope no later than the time set for bid opening. At the public bid opening, the Contracting Officer will open the bids and the envelope containing the cost estimate for Government performance and announce the result. This announcement will be based on an initial comparison of the cost of Government performance with the cost of contract performance, as indicated on the cost-comparison form. The abstract of bids, completed cost-comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review.

(c) [insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv))] working days beginning with the date the documents are available to interested parties will be provided for this public review. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected parties may file with the

Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

(d) After evaluation of bids and resolution of any requests under the appeals procedure, the Contracting Officer will either award a contract or cancel this solicitation. The completed cost comparison analysis will be made available to interested parties.

(e) A cost estimate for Government performance is considered a bid for purposes of this solicitation's Late Modifications of Bids or Withdrawal of Bids provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), insert the following provision:

NOTICE OF COST COMPARISON (NEGOTIATED) (JUL 1990)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost-estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost-comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost-comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remain-

ing the more economical alternative after (i) completion of a public review period of [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost-comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) The Government will not make a final determination either for contract or Government performance during the public review period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the

agency appeals procedure. This review will be completed within 30 days after the Contracting Officer receives the requests. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's Late Submissions, Modifications, and Withdrawal of Proposals or Quotations provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT

(APR 1984)

The Contractor shall give Government employees displaced as a result of the conversion to contract performance the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(End of clause)

(R 7-104.104 1980 MAY)

APPENDIX C

FORMS

SECTION 1. PUBLIC FINANCIAL DISCLOSURE REPORT

C-100. Standard Form 278

**Executive Branch Personnel
PUBLIC FINANCIAL
DISCLOSURE REPORT**

Instructions for Completing SF 278

Privacy Act Statement

Title I of the Ethics in Government Act of 1975, as amended (the "Act"), 5 U.S.C. App. § 101 et seq., requires the reporting of this information. This information will be reviewed by Government officials to determine compliance with applicable Federal laws and regulations, and the report may be disclosed upon request to any requesting person pursuant to section 105 of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. See also the OGE/GOVT-1 Privacy Act system of records. Knowing and willful falsification of information, or failure to file or report information required to be reported by section 102 of the Act may subject you to a civil penalty of not more than \$10,000 and to disciplinary action by your employing agency or other appropriate authority under section 104 of the Act. Knowing and willful falsification of information required to be filed by section 102 of the Act may also subject you to criminal prosecution and sentencing under 18 U.S.C. §§ 1001 and 3571.

Public Burden Information

This collection of information is estimated to take an average of three hours per response, including the time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Administrative Services, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, N.W., Washington, D.C. 20005-3917; and to the Office of

Management and Budget, Paperwork Reduction Project (3209-0001), Washington, D.C. 20503. Do not file financial disclosure reports at these addresses; submit them as indicated in "Where to File" on page 3.

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a \$200 late filing fee. Such fee will be collected by the filer's agency, for deposit with the U.S. Treasury.

I. Introduction

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year, except Part II of Schedule C and Part I of Schedule D where you must also include any positions held and agreements or arrangements made from the beginning of the filing year until the date you file. Schedule B need not include transactions made, or gifts or reimbursements received, during a period when the filer was not a Federal employee.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination of Government employment.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D (candidates do not file Part II of Schedule D), as follows:

• **Schedule A**—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is less than 31 days before the date of filing.

• **Schedule C, Part I (Liabilities)**—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is less than 31 days before the date of filing.

• **Schedule C, Part II (Agreements or Arrangements)**—Show any agreements or arrangements as of the date of filing.

• **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Scope of Disclosure

The extent of the reporting requirement is noted in each schedule. In addition to your individual financial information, you are required to report information concerning your spouse and dependent children in several schedules of the form. However, no report is required with respect to your spouse if he or she is living separate and apart from you with the intention of terminating the marriage or providing for permanent separation. In addition, no report is required with respect to any income or obligations of an individual arising from the dissolution of marriage or permanent separation from a spouse. There are other exceptions to the reporting of assets and income, transactions, and liabilities of a spouse or dependent child which are discussed in the instructions applicable to those subjects.

A basic premise of the statutory financial disclosure requirements is that those having responsibility for review of reports filed pursuant to the Act or permitted public access to reports must be given sufficient information by reporting individuals concerning the nature of their outside interests and activities so that an informed judgment can be made with respect to compliance with applicable conflict of interest laws and standards of conduct regulations. Therefore, it is important that you carefully complete the attached form. This report is a safeguard for you as well as the Government, in that it provides a mechanism for determining actual or potential conflicts between

your public responsibilities and your private interests and activities and allows you and your agency to fashion appropriate protections against such conflicts when they first appear.

A Presidential nominee to a position requiring the advice and consent of the Senate shall file with the Senate committee considering the nomination an amendment to the initial report, which shall update all items of earned income and honoraria through the period ending no earlier than 5 days before the scheduled date of the Senate committee hearing on the nomination. This update shall be provided in the manner requested by the Senate committee considering the nomination. Copies shall be provided to OGE and your agency ethics official.

Definition of Terms

o Category of Amount

Reportable financial interests are disclosed either by actual amount or by category of amount, depending on the interest, as specified by the form. You may, but you are not required to, indicate an actual amount where the form provides for a category of amount or value.

o Dependent Child

The term "dependent child" means your son, daughter, stepson, or stepdaughter if such person is either: (1) unmarried, under age 21, and living in your household, or (2) a "dependent" of yours within the meaning of section 152 of the Internal Revenue Code of 1986.

o Excepted Investment Fund

An excepted investment fund is a mutual fund, common trust fund of a bank, pension or deferred compensation plan, or any other investment fund, which is widely held; publicly traded (or available) or widely-diversified; and under circumstances where you neither exercise control over nor have the ability

to exercise control over the financial interests held by the fund. A fund is widely diversified when it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the U.S. Government) and no more than 20% in any particular economic or geographic sector.

o Gifts

See instructions for Schedule B, Part II.B.

o Honoraria

The term "honoraria" means payments of money or anything of value to you or your spouse for an appearance, speech, or article, excluding necessary travel expenses. See 5 CFR Part 2636.

o Personal Savings Account

The term "personal savings account" includes a certificate of deposit, a money market account, or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

o Relative

The term "relative" means an individual who is your father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, your spouse's grandfather or grandmother, or your fiancé or fiancée.

o Trusts ("Qualified" and "Excepted")

See instructions for Schedule A, Part II.B., and 5 CFR Part 2634, Subpart D.

o Value

You may use any one of the methods described below, in determining fair market value:

Option 1- any good faith estimate of the value of the property if the exact value is unknown or not easily obtainable;

Option 2- value based upon a recent appraisal of the property interest;

Option 3- the purchase price of your property interest, or estimated retail price of a gift;

Option 4- the assessed value of the property for tax purposes, adjusted to reflect current market value if the tax assessment is computed at less than 100% of current value;

Option 5- the year-end book value of non-publicly traded stock, or the year-end exchange value of corporate stocks, or the face value of corporate bonds or comparable securities;

Option 6- the net worth of your interest (as in a business partnership or other jointly held business interest);

Option 7- the equity value of your interest (as in a solely owned business or commercial enterprise); or

Option 8- exact value (e.g., personal savings accounts) or any other recognized indication of value (such as last sale on a stock exchange).

II. Who Must File

a. Candidates for nomination or election to the office of President or Vice President.

b. Presidential nominees to positions requiring the advice and consent of the Senate, other than those nominated for judicial office or as a Foreign Service Officer or for appointment to a rank in the uniformed services at a pay grade of O-6 or below.

c. The following newly elected or appointed officials:

- o The President;
- o The Vice President;
- o Officers and employees (including special Government employees, as defined in 18 U.S.C. § 202) whose positions are classified at GS-16¹ or above of the General Schedule, or the rate of basic pay for which is fixed under other pay schedules at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16¹;
- o Members of the uniformed services in pay grade O-7 or above;
- o Officers or employees in any other positions determined by the Director of the Office of Government Ethics to be of equal classification to GS-16¹ or higher;
- o Administrative law judges;
- o Employees in the excepted service in positions which are of a confidential or policy-making character, unless by regulation their positions have been excluded by the Director of the Office of Government Ethics;
- o The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the U.S. Postal Service and officers or employees of the U.S. Postal Service or Postal Rate Commission in positions for which the rate of basic pay is equal to or greater than the minimum rate of basic pay fixed for GS-16¹;
- o The Director of the Office of Government Ethics and each designated agency ethics official; and

o Civilian employees in the Executive Office of the President (other than special Government employees) who hold commissions of appointment from the President.

d. Incumbent officials holding positions referred to in section II.c. of these instructions if they have served 61 days or more in the position during the preceding calendar year.

e. Officials who have terminated employment after having served 61 days or more in a calendar year in a position referred to in section II.c. and have not accepted another such position within 30 days thereafter.

III. When to File

a. Within 30 days after becoming a candidate for nomination or election to the office of President or Vice President, or by May 15 of that calendar year, whichever is later, but at least 30 days before the election, and on or before May 15 of each succeeding year an individual continues to be a candidate.

b. At any time after the President or President-elect has publicly announced an intention to nominate an individual referred to in section II.b. of these instructions, but no later than 5 days after the President transmits the nomination to the Senate.

c. Within 30 days after assuming a position described in section II.c. unless such an individual has left another such position within 30 days prior to assuming the new position, or has already filed a report with respect to nomination for the new position (section II.b.) or as a candidate for the position (section II.a.).

d. No later than May 15th annually, in the case of those in a position described in section II.d.

e. In the event an individual terminates employment and does not accept another position described in section II.c. within 30 days, the report must be filed no later than the 30th day after termination.

IV. Where to File

a. Candidates for President and Vice President, with the Federal Election Commission.

b. The President and Vice President, with the Office of Government Ethics.

c. Members of a uniformed service, with the Service Secretary concerned.

d. All others, with the designated agency ethics official, or that official's delegate, at the agency in which the individual serves, will serve or has served.

e. In the case of individuals nominated by or to be nominated by the President to positions requiring confirmation of the Senate, see 5 CFR Part 2634 for expedited procedures and filing location.

V. General Instructions

a. This form consists of the front page and four Schedules. You must complete each Part of all Schedules as required. If you have no information to report in any Part of a Schedule, you should indicate "None." If you are not required to complete Schedule B or Part II of Schedule D, you should mark it "Not Applicable." A report is considered incomplete if any Part of any Schedule is left blank. Schedule A combines a report of income items with the disclosure of certain property interests. Schedule B deals with transactions in

¹ Under the Federal Employees Pay Comparability Act of 1990, Public Law 101-509, General Schedule positions at GS-16, 17 and 18 will be replaced by a new range of rates for positions classified "above GS-15." The rate of basic pay for these positions will not be less than 120% of the minimum rate of basic pay payable for GS-15. When this provision of the Comparability Act takes effect at some point in 1991, this minimum rate for positions classified "above GS-15" will replace GS-16.

real property or certain other assets, as well as gifts and reimbursements. Schedules C and D relate to liabilities and employment relationships. After completing the first page and each Part of the Schedules (including extra sheets of any Schedule where continuation pages are required for any Part), consecutively number all pages.

b. The information to be disclosed is only that which the Ethics in Government Act of 1978, as amended, and 5 CFR Part 2634 specifically require. You may, however, include any additional information, beyond those requirements, that you wish to disclose for purposes of clarification. Disclosure of information does not authorize any holdings, income, honoraria, liabilities, transactions, gifts, reimbursements, affiliations or positions otherwise prohibited by law, Executive order, rule or regulation.

c. Combine on one form the information applicable to yourself, your spouse and dependent children; or if more convenient, use separate schedules to report the required information applicable to family members. You may, if you desire, distinguish any entry for a family member by preceding the entry with an (S) if it is for a spouse or a (DC) if it pertains to a dependent child. Joint assets may be indicated by a (J). See 5 CFR Part 2634, Subpart C, for exclusions in the case of separation or divorce.

d. Definitions of the various terms used in these instructions and detailed information as to what is required to be disclosed are contained in 5 CFR Part 2634.

e. In the case of references to entities which are operating trades or businesses which do not have listed securities, you must provide sufficient information about these private entities to give the reviewers of your disclosure report an adequate basis for the conflicts analysis required by the Act. Thus, you must disclose the location and primary trade or business of private entities, as well as attributed interests and activities not solely incidental to such a primary trade or business. For instance, if your

family swimming pool services corporation incurs a liability to purchase an apartment house for investment in addition to its pool services business, you will have to report the apartment house investment as part of the nature of the business of the family corporation.

f. In the case of references to entities which are investment funds such as mutual or pension funds (whether public or private), you must disclose the portfolio holdings and all other items such as transactions and liabilities to the extent otherwise required for reportable interests, unless the entity is an "excepted investment fund." See Definition of Terms above.

g. If you need assistance in completing this form, contact the designated agency ethics official of the agency in which you serve, will serve, or have served.

Schedule A

I. General Instructions

Two of the general disclosure requirements of the Act concern certain interests in property (generally referred to here as assets) and items of income. Schedule A is designed to enable you to meet both of these reporting requirements. Generally a description of your, your spouse's, or your dependent child's assets and sources of income is required to be listed in BLOCK A of the Schedule. Reading from left to right across the page from each description of the asset or income source, you will be able to report in BLOCK B the value of each asset, and in BLOCK C the type and amount of income generated by that asset or received from the non-asset source.

On Schedule A are four examples which are representative of the reporting scheme of this Schedule. The first example represents the proper method of reporting stock of Central Airlines Company held at the end of the reporting period which then had a

value of \$75,000. The individual had also received dividends of \$1,500, reported in BLOCK C. If the Central Airlines stock had been sold, there would be a check in the "None (or less than \$1,001)" column in BLOCK B if the individual no longer owned any of the stock at the end of the reporting period, and there would be an entry for capital gains as well as dividends in BLOCK C if they were realized during the period. The second example represents the proper method of reporting the source of \$130,000 of earned income from private law practice, as well as \$18,500 of the reporting individual maintained in the capital account in the law firm at the end of the reporting period.

The third example represents acceptable reporting of an investment fund which is widely held, widely diversified (or publicly traded) and independently managed. Because it meets these requirements, no individual assets of the fund need to be reported, and the type of income does not need to be broken into dividends, interest, or capital gains as long as the column for "excepted investment fund" is marked. The fourth example reports a pension interest from which the filer has not yet received any payment.

Normally you will have to list an item only once in BLOCK A with all other value and income information associated with that item shown on the same line to the right. However, when you have a number of different kinds of financial arrangements and income involving one entity, a full disclosure of all the required information for that entity may require more than one line. You may always use more than one line for clarification if you choose.

II. Property Interests and Assets

(BLOCKS A and B)

A. Items to Report

Report the identity and category of valuation of any interest in property (real or personal) held by you, your spouse or a dependent child in a trade or

business, or for investment or the production of income which has a fair market value which exceeds \$1,000 as of the close of the reporting period. These interests include, but are not limited to, stocks, bonds, pension interests and annuities, futures contracts, mutual funds, IRA assets, tax shelters, beneficial interests in trusts, personal savings or other bank accounts, real estate, commercial crops, livestock, accounts or other funds receivable, and collectible items held for resale or investment. Exceptions: Exclude your personal residence (unless rented out) and any personal liability owed to you, your spouse or dependent child by a spouse or dependent child, or by a parent, brother, sister or child of you, your spouse, or dependent child. Exclude any retirement benefits (including the Thrift Savings Plan) from Federal Government employment and any social security benefits. Exclude also any deposits aggregating \$5,000 or less in personal savings accounts in a single financial institution.

With respect to assets of a spouse or a dependent child, do not report items:

- (1) which represent your spouse's or dependent child's sole financial interest or responsibility and of which you have no knowledge;
- (2) which are not in any way, past or present, derived from your income, assets, or activities; and
- (3) from which you neither derive, nor expect to derive, any financial or economic benefit.

Note: It is very difficult for most individuals to meet all three parts of this test, especially (3). For instance, if you file a joint tax return with your spouse, you derive a financial or economic benefit from the items involved and you are charged with knowledge of those items. A trust for the education of your minor child would also convey a financial benefit to you. Therefore, those asset and income items do not fit the test.

A personal residence held for investment or production of income, such as a summer home rented during parts of the year, must be reported.

Intermittent sales from personal property such as collections of antiques or art holdings demonstrate that the items are held for investment or the production of income and should therefore be reported.

B. What to Show on the Form

Enter the identity of the asset in BLOCK A and then show the value in BLOCK B. Only the category of value, rather than the actual value of the property interest or asset, must be shown. You need not disclose which valuation methods you used.

For assets such as stocks, bonds, and securities, report any holdings directly held or attributable to you, your spouse or dependent child from one source totaling more than \$1,000 in value. Identify the holding and show the category of value. If you hold different types of securities of the same corporation (e.g., bonds and stocks of "X" Corporation), these holdings should be considered as being from the same source for purposes of determining whether the aggregate value of the interest is below or above the \$1,000 threshold value. Report personal savings accounts only if they aggregate more than \$5,000 in a single financial institution.

If you have an interest in an investment fund or pool which is an "excepted investment fund" (see Definition of Terms above), you need only identify the interest by giving the complete name of the fund, rather than identifying the underlying assets as well.

To report interests of you, your spouse, or dependent child in a business, a partnership, or joint venture, or the ownership of property held for investment or the production of income, identify the character of the ownership interest, and the nature and location of the business or interest, unless it is a publicly traded

security. For example, the entry for a holding of farm land might show, under BLOCK A... "sole ownership of 100 acres of unimproved dairy farm land on Rural Route #1 at Pine Bluff, Madison County, Wisconsin."

You must disclose the primary trade or business of non-public entities, as well as interests and activities not solely incidental to such a trade or business. For example, if your family is involved in a private real estate investment business but as a side interest buys stock through the business in a bank, you must disclose that in addition to real estate (by type and general location), the family business holds an interest in a bank.

For an IRA (Individual Retirement Account), indicate the value of each underlying asset, as well as the income derived therefrom (even though deferred for Federal tax purposes) in accordance with section IV below, to enable the reviewer to evaluate compliance with applicable laws and regulations. If the IRA were invested solely in a mutual fund such as "Completion World Fund, Inc." and the investment properly disclosed in Schedule A, that would be sufficient identification of the asset, since for most reporting individuals that fund would be an "excepted investment fund." If, however, the IRA had an individual or privately managed portfolio, detailed disclosure of the portfolio would be required on Schedule A in the same amount of detail as if each investment were directly held.

With respect to trusts in which a vested beneficial interest in principal or income is held, report trust interests and trust assets which had a value in excess of \$1,000. See 5 CFR Part 2634 for more information about vested interests.

You need not report the identity of assets of a trust of which you, your spouse or dependent children are the beneficiaries if the interest is:

1. a "qualified blind trust" or "qualified diversified trust," which has been certified by the Office of

Government Ethics, in accordance with 5 CFR Part 2634, Subpart D, or

2. an "excepted trust," that is, one which:

- A. was not created by you or your spouse or dependent children, and
- B. has holdings or sources of income of which you, your spouse and dependent children have no knowledge.

In the case of these special types of trusts, you should show in BLOCK A the identity of the trust, including the date of creation, and in BLOCK C, the classification of the trust as a "qualified trust" or an "excepted trust." (The category of amount of the trust income, if it exceeded \$200, must also be reported in BLOCK C, in accordance with section IV below.)

Note: You are not permitted by the statute to "create" an excepted trust by instructing a trustee not to divulge information or otherwise avoiding previous sources of knowledge upon entering Government service.

Do not report a trust of which your spouse or dependent child is a beneficiary that meets the three part test set forth in the second paragraph under II.A. A trust that does not fit that exception may still be an excepted trust under this section; in such case, it must be reported, but the assets need not be identified.

Except for the special trusts or funds referred to above, you must identify each individual investment held by a trust or fund, which had a value in excess of \$1,000. For example, in BLOCK A an entry such as "trust held by First National Bank (Boston, MA) consisting of ITT stock, U.S Treasury certificates, and Dallas Municipal Bonds" might be made. In BLOCK B the applicable value of each trust asset would be entered. (As described under IV.B.6. Trust Income, below, the income from each asset would be

entered in BLOCK C as well as income from assets of the trust sold during the reporting period.)

III. Earned and Other Non-Investment Income

(BLOCKS A and C)

A. Items to Report

For yourself, report the identity of the source in BLOCK A and the type and actual amount in BLOCK C of non-investment income exceeding \$200 from any one source. Such income includes fees, salaries, commissions, compensation for personal services, retirement benefits, and honoraria. Report these items on the same line as related interests in property, if any.

For your spouse, report the source, but not the amount, of non-investment income exceeding \$1,000 and the source, amount and date of honoraria exceeding \$200 from any one source. No report of the earned or other non-investment income of your dependent children is required.

Exclude income from employment by the United States Government and from any retirement system of the United States (including the Thrift Savings Plan) or from social security.

B. What to Show on the Form

1. **HONORARIA**—For you or your spouse, show honoraria aggregating more than \$200 from any one source. Report the identity of the source in BLOCK A, and the date of the services performed and actual amount in BLOCK C. List each honorarium separately. For example, if, prior to your Government service, you received \$1,500 for a speech before the Chicago Civic Club on March 19, 1991 of which \$200 was actually spent for round-trip travel, and \$200 went to the agent who made the speaking arrangement, on your new entrant report you would enter in

BLOCK A... "Chicago Civic Club, 18 Lakeshore Dr., Chicago, IL"; in BLOCK C under OTHER (specify type) ... "Honorarium"; under ACTUAL AMOUNT... "\$1,100," and under DATE... "3/1991." Honoraria received and donated to charity must be reported, but a notation explaining that fact may be included in reporting such items. The source, date and amount of payments made or to be made directly to a charitable organization in lieu of honoraria must also be disclosed. In addition, for certain payments in lieu of honoraria you must complete a confidential report for your agency, disclosing the source, the names of charitable organization recipients, the amount, and the dates of payments, if made on or after January 1, 1991. See 5 CFR Part 2636.

2. **EARNED AND OTHER NON-INVESTMENT INCOME**—Includes all income, exclusive of honoraria, from non-investment sources including fees, commissions, salaries, and income from personal services or retirement. Report the identity of the source and give the actual amount of such income exceeding \$200 from any one source. For example, if you earned \$450 teaching at a law school, enter in BLOCK A... "John Jones Law School, Rockville, MD"; in BLOCK C under OTHER... "Salary"; and under ACTUAL AMOUNT... "\$450." If you earned \$75 for teaching in one law school and \$250 from teaching at another school, report only the \$250 amount. Report employee benefits and severance payments which meet the reporting requirements separately from salary.

If your spouse has earned income in excess of \$1,000 (other than honoraria) from any one source, identify the source but show nothing under amount. If your spouse is self-employed in a business or profession, for example as a practicing psychologist who earned \$10,500 during the year, you need only show under BLOCK A... "practicing psychologist."

IV. Investment Income

(BLOCKS A and C)

Report items of investment income on the same line of Schedule A as the related property interest or other asset from which such income is derived. Note that some property interests or other assets will not have a related item of income. In such a case, check "None (or less than \$201)" in BLOCK C under category of amount.

A. Items to Report

Report the identity in BLOCK A and the type and value in BLOCK C of any investment income over \$200 from any one source received by or accrued to the benefit of you, your spouse or dependent child during the reporting period. For purposes of determining whether you meet the over \$200 threshold from any one source, you must aggregate all types of investment income from that same source. For your spouse or dependent child such income is only required to be reported if the asset source meets the reporting threshold in section II above.

Investment income includes, but is not limited to: income derived from dealings in property, interest, rents, royalties, dividends, capital gains; income from annuities, the investment portion of life insurance contracts, or endowment contracts; your distributive share of partnership or joint venture income, gross business income, and income from an interest in an estate or trust. You need not show the actual dollar amount of dividends, rents and royalties, interest, capital gains, or income from qualified trusts, excepted trusts, or excepted investment funds. For these specific types of income, you need only check the category of amount of the item reported. For all "other investment income" as described in item 7 below, you will have to report the actual dollar amount of income from each source, and indicate the type in the space marked "Other (specify type)" in BLOCK C.

B. What to Show on the Form

Check all applicable classifications of income and corresponding categories of amounts. If more than one type of income is derived from the same asset, check all relevant types and categories of amount (unless an excepted investment fund). Categories of amount may be distinguished by using the abbreviations D, R, I and CG in the boxes, in lieu of checks, to represent dividends, rents/royalties, interest or capital gains.

1. **DIVIDENDS**—Show in BLOCK C the amount you, your spouse or dependent child accrued or received as dividends from investment sources including common and preferred securities and underlying assets of pension and mutual funds (unless an excepted investment fund). Identify the source of such income and check the category of amount. For example, if cash dividends of \$950 were received for shares of common stock of IBM, enter in BLOCK A... "IBM common" and in BLOCK C check that dividend income was received and check the appropriate category of amount.

2. **RENTS AND ROYALTIES**—Show income accrued or received by you, your spouse or dependent child as rental or lease payments for occupancy or use of personal or real property in which any one of you has an interest. In addition, show payments accrued or received from such interests as copyrights, royalties, inventions, patents, and mineral leases or other interests. Identify the source of such income and check the category of amount. For example, if you received \$2,000 as rental income from an apartment building in Miami, Florida, enter in BLOCK A... "apartment building at 5802 Biscayne Blvd., Miami, FL," and in BLOCK C check that rental income was received and check the appropriate category of amount.

3. **INTEREST**—Identify the source and the category of amount of any interest accrued or received by you, your spouse or dependent child as income from investment holdings including: bills

and notes, loans, personal savings accounts, annuity funds, bonds, and other securities. For example, if you earned \$300 in interest during the calendar year on a Savings Certificate with Federal Savings and Loan, enter in BLOCK A... "Federal Savings and Loan (Baltimore, MD)-Savings Certificate," and in BLOCK C check that interest income was received and check the appropriate category of amount.

4. **CAPITAL GAINS**—Report income from capital gains realized by you, your spouse or dependent child from sales or exchanges of property, business interests, partnership interests or securities. Identify the source and check the category of amount of the gain. An example of an entry in BLOCK A might be "sale of one-third interest in 100-acre farm in Hamilton County, Iowa" and in BLOCK C check that capital gains were received and check the appropriate category of amount.

5. **INVESTMENT FUND INCOME**—Identify the fund and the category of amount and the type(s) of income from investment funds such as mutual or pension funds for you, your spouse or dependent child. This may include dividends, capital gains and interest for a single fund (unless an excepted investment fund). Income from each individual asset of the fund must also be listed, unless it is an excepted investment fund. See Definition of Terms above for discussion of excepted investment funds.

6. **TRUST INCOME**—Report the category of amount and the type of income accrued or received from any trust. Whenever you are required to identify the source of trust income, either for yourself or for a spouse or dependent child, it is not enough simply to say "John Jones Trust." Generally, the investment holdings of the trust, discussed above under "Property Interests and Assets," and the income derived from each holding must be identified to the same extent as if held directly. However, if the trust is a qualified trust or an excepted trust, in BLOCK A show only the identity of the trust including the date of creation, in BLOCK C check the classification of the trust interest as a "qualified

trust" or "excepted trust," and also in BLOCK C show the category of amount of income attributable to you, your spouse, or dependent child.

7. OTHER INVESTMENT INCOME—Report any other items of investment income exceeding \$200 and not described above, along with the specific type and actual amount, such as gross income from business interests, endowment or annuity contract payments, estate income, a distributive share of a partnership or joint business venture income. To identify the sources of other investment income, either for you, your spouse, or a dependent child, briefly characterize in BLOCK A the nature of the business or investment interest and, when applicable, the location: for example, "one-third ownership in a retail furniture store at 1010 Grand Ave., Chicago, IL." In BLOCK C under OTHER, specify the applicable type of income, for example, "distributive share" from a partnership or "gross income" from a proprietorship, and under ACTUAL AMOUNT the actual amount of such income which was received during the reporting period. Where the asset is listed because of a value of greater than \$1,000 in BLOCK B, but it does not produce more than \$200 in income for the reporting period, check "None (or less than \$201)" instead of listing the actual amount.

Schedule B

i. Part I—Transactions

A. General Instructions and Items to Report

This part is to be completed by incumbents and termination filers only. Give a description, the date, and the category of amount of any purchase, sale, or exchange of any real property, stocks, bonds, commodity futures, excepted investment fund shares, and other securities by you, your spouse or dependent child when the amount involved in the transaction exceeded \$1,000. Also, indicate whether sales were made pursuant to a certificate of divesti-

ture previously issued by OGE to permit delayed recognition of capital gain. (For more information on certificates of divestiture, see 5 CFR Part 2634, Subpart J.) This includes reporting any sale or exchange of an asset involving an amount exceeding \$1,000 when the sold or exchanged asset did not yield income of more than \$200 (and therefore was not reported on Schedule A), or reporting the purchase of an asset involving an amount exceeding \$1,000 but at the end of the reporting period having a value of \$1,000 or less and earning income of \$200 or less during the reporting period (and therefore not appearing on Schedule A). The example on the form shows the proper way to disclose Central Airlines common stock the reporting individual purchased for \$75,000 on 2/1/91. Note that on Schedule A there is an entry for the stock as well since it was still held at the end of the reporting period.

You need not report a transaction involving (1) your personal residence (unless rented out); (2) a money market account or personal savings account; (3) an asset of your spouse or dependent child if the asset meets the three-part test set forth under the instructions for Schedule A, at II.A.; (4) a holding of a "qualified blind trust," a "qualified diversified trust," or an "excepted trust"; (5) U.S. Treasury bills, notes, and bonds; (6) transactions which occurred prior to your Federal Government employment; or (7) transactions solely by and between the reporting individual, spouse, or dependent child.

You will need to report any transactions of a non-public business or commercial enterprise, investment pool, or other entity in which you, your spouse or dependent child have a direct proprietary, general partnership or other interest unless (1) the entity is an "excepted investment fund," or (2) the transaction is incidental to the primary trade or business of the entity as indicated by you on Schedule A. (See also sections V.e. and f. of the General Instructions preceding those for Schedule A.)

B. What to Show on the Form

Under identification of assets, identify the property or securities involved in the purchase, sale or exchange, and give the date of the transaction. For example, under IDENTIFICATION OF ASSETS... "GMC common stock"; under TYPE OF TRANSACTION... check type; under DATE... enter date transaction occurred; under AMOUNT OF TRANSACTION... check the category of value of the sale price, purchase price, or exchange value of the property involved in the transaction. You must also indicate whether an item was sold pursuant to a certificate of divestiture issued by the Office of Government Ethics under 5 CFR Part 2634, Subpart J, to permit delayed recognition of capital gain.

Where multiple transactions have occurred which involve the same asset, you may list the item once, check purchase and/or sale, and indicate... "biweekly," "throughout year," or other appropriate frequency, and the aggregate amount of the sales and purchases. Reporting an exchange generally requires reporting two items since one item is exchanged for another.

II. Part II—Gifts, Reimbursements, and Travel Expenses

A. General Instructions

This Part is to be completed by incumbents and termination filers only. The Act requires you to disclose the receipt of certain gifts, in-kind travel expenses, and cash reimbursements by you, your spouse, or dependent child from any one source other than the U.S. Government. This reporting requirement applies to gifts and reimbursements received by your spouse or dependent child to the extent the gift was not given to him or her totally independent of the relationship to you.

B. Items to Report

Report gifts and reimbursements received by you, your spouse or dependent child from any one source during the reporting period aggregating \$250 or more in the case of gifts of food, lodging, transportation, entertainment and reimbursements; or aggregating \$100 or more from any one source in the case of any other gift. A "gift" means any payment, forbearance, advance, rendering or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor. In determining which gifts and reimbursements must be reported or aggregated, exclude these items:

1. Anything having a value of \$75 or less;
2. Anything received from "relatives" (see Definition of Terms, above);
3. Bequests and other forms of inheritance;
4. Suitable mementos of a function honoring the reporting individual;
5. Food, lodging, transportation, and entertainment or reimbursements provided by a foreign government within a foreign country or by the United States Government, or D.C., state or local governments;
6. Food and beverages not consumed in connection with a gift of overnight lodging;
7. Anything given to a spouse or dependent child totally independent of the relationship to you;
8. Gift items in the nature of communications to your office, such as subscriptions to newspapers and periodicals;
9. Gifts of hospitality (food, lodging, entertainment) on the donor's personal or family premises, as defined in 5 CFR Part 2634;

10. Gifts and reimbursements received during non-Federal employment periods; and

11. Reimbursements you received for political trips which were required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 434).

C. What to Show on the Form

1. GIFTS OF FOOD, LODGING, TRANSPORTATION, ENTERTAINMENT—Report the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and the value of gifts of food, transportation, lodging, or entertainment aggregating \$250 or more from any one source which were received by you or your spouse or dependent child and which do not fall within any of the categories of exclusions enumerated above. To reach a \$250 aggregation, you determine whether any one or combination of the components within this gift category received from one source (food, transportation, lodging, and entertainment) amounts to \$250 or more in value. For example, if you spent a weekend at a hunting lodge owned by AmCoal Corporation, and you received lodging fairly valued at \$150, food valued at \$100, and entertainment valued at \$125, the aggregate value of the gift is \$375. A gift of this nature — hospitality at a lodge owned by a corporation rather than an individual — would not qualify as a "personal hospitality" exclusion. To report this gift you would show, under SOURCE ... "AmCoal Corp., 1210 North St., Chicago, IL"; under BRIEF DESCRIPTION ... "lodging, food, and entertainment as a guest at hunting lodge owned by "AmCoal, 1/25-27/91"; and under VALUE... "\$375."

2. OTHER GIFTS—Report the identity of the source, a brief description, and the value of gifts other than food, transportation, lodging, or entertainment aggregating \$100 or more in value from any one source, other than excluded gifts, which you or your spouse or dependent child received during

the calendar year. Thus, if you and your spouse each receive an \$80 figurine from the same donor (source), the gifts have a value of more than \$100 and must be reported. To report a gift, identify the source, briefly describe the item(s), and show the value. In the case of the figurines, report on the form under SOURCE... "Artifact Co., 153 Utah St., Omaha, NE"; and under BRIEF DESCRIPTION... "two porcelain figurines". Under VALUE... "\$160" would be shown.

3. REIMBURSEMENTS—Report the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and the value of any cash reimbursements (except those from the United States Government or otherwise excluded) aggregating \$250 or more which you or your spouse or dependent child received from any one source. For example, if you were reimbursed \$400 for travel and lodging expenses in connection with a speech you made for the Denver Realtors Association, you would report this item on the form by showing under SOURCE... "Denver Realtors Assoc., 45 Bridge St., Denver, CO"; under BRIEF DESCRIPTION... "travel expenses for speech made in Denver: United Airlines round trip from Washington, D.C. 1/22-23/91, \$275; Denver Airport Marriott, \$125"; and under VALUE... "\$400" would be shown. If your spouse made this speech and received the reimbursement totally independent of his or her relationship to you, no information for this item need be reported.

Note: If you receive food, transportation, lodging, and entertainment or a reimbursement of official travel expenses from a non-profit tax-exempt institution categorized by the IRS as one falling within the terms of 26 U.S.C. § 501(c)(3), you must report the name of the organization, a brief description of the kind services or the reimbursement and the value. If known, you may also wish to note the date you received the required written approval from your agency to accept such items. See 5 U.S.C. § 4111 and 5 CFR Part 410, Subpart G.

Schedule C

I. Part I—Liabilities

A. General Instructions

The Act requires you to disclose certain of your financial liabilities. The examples on the form show how to report a mortgage on real estate the reporting individual held for the production of income and a promissory note. Note that you will need to disclose the date, interest rate and term (if applicable) of each liability. Also note you must disclose the highest amount owed on any liability held during the reporting period, not just at the end of the period. If the liability was completely paid during the period, you may also note that on the form if you wish.

B. Items to Report

Identify and give the category of amount of the liabilities which you, your spouse or dependent child owed to any creditor which exceeded \$10,000 at any time during the reporting period, except:

1. a personal liability owed to a spouse or dependent child, or to a parent, brother, sister, or child of you, your spouse or dependent child;
2. a mortgage or home equity loan secured by real property which is the personal residence (or a second residence not used for producing income) of you or your spouse;
3. a loan secured by a personal motor vehicle, household furniture, or appliances, where the loan does not exceed the purchase price of the item;
4. a revolving charge account where the outstanding liability did not exceed \$10,000 as of the close of the preceding calendar year; and

5. any liability of your spouse or dependent child which represents the sole financial interest or responsibility of the spouse or child, and about which you have no knowledge, and which is not derived from your income, assets, or activities, and concerning which you neither derive nor expect to derive any financial or economic benefit.

You are required to report any liability of any non-public company, investment pool, or other entity, in which you, your spouse or dependent child have an interest, unless (1) the liability is incidental to the primary trade or business of the entity as indicated by you on Schedule A, or (2) the entity is an excepted investment fund. (See also sections V.e. and f. of the General Instructions preceding those for Schedule A.)

C. What to Show on the Form

Under CREDITORS (NAME AND ADDRESS), show the name and address of the actual creditor unless the reporting individual is only able to identify a fiduciary and certifies in the report that he has made a good faith effort to determine who the actual creditor is and was unable to do so, or upon his certification that such determination is otherwise impracticable. Under TYPE OF LIABILITY, briefly indicate the nature of the liability. Under DATE, enter date loan incurred; under INTEREST RATE, note the set rate or, if a variable one, the formula used to vary the rate, i.e. prime +2%; and under TERM, show the duration of the loan. Check the category of value for the highest amount owed during the reporting period.

II. Part II—Agreements or Arrangements

A. General Instructions and Items to Report

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of

Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits. This includes any agreements or arrangements with a future employer entered into by a termination filer. The example on the form shows the severance agreement under which the reporting individual expects to receive a lump sum payment from the law firm he has left in order to enter the Government. It also shows a continuing pension interest and describes the nexus between the organization and the pension interest, so that a complete conflicts assessment can be made.

For purposes of public disclosure, you must disclose any negotiations for future employment from the point you and a potential non-Federal employer have agreed to your future employment by that employer whether or not you have settled all of the terms, such as salary, title, benefits, and date employment is to begin. Your agency may require internal disclosure of negotiations much earlier and you should seek guidance before conducting any negotiations with persons with whom you do business. A criminal statute, 18 U.S.C. § 208, applies to official actions you may take while negotiating future employment.

B. What to Show on the Form

Under STATUS AND TERMS, describe the agreement or arrangement with appropriate specificity. Under PARTIES, show the name of the organization, or entity, and (if applicable) the name and title of the official, corporate officer, or principal person responsible for carrying out the terms of the agreement or arrangement. Under DATE, show the date of any such arrangement. No report is required regarding any agreement or arrangement entered into by a spouse or dependent child.

Schedule D

I. Part I—Outside Positions

A. Items to Report

Report all outside positions held at any time during the reporting period, as well as those positions you currently hold as an officer, director, trustee, general partner, proprietor, representative, employee or consultant of (1) any corporation, company, firm, partnership, trust, or other business enterprise; (2) any non-profit organization; (3) any labor organization; (4) any educational institution; or (5) any organization other than the United States Government. Exclude positions held in any religious, social, fraternal, or political entity, and any positions solely of an honorary nature. Be sure to report on Schedule A any income over \$200 that you received from acting in any of these positions. No report is required regarding any positions held by your spouse or dependent child.

B. What to Show on the Form

Give the name, address and brief description (type) of the organization, the title or other brief functional description of the position, and the dates you held the position. If you currently hold the position, in the entry block under "TO," note "Present."

II. Part II—Compensation in Excess of \$5,000 Paid by One Source

A. General instructions

This Part is to be completed by nominees and new entrants only. You must disclose your sources of compensation in excess of \$5,000 and the nature of the duties you provided. This includes not only the source of your salary or other fees, but the disclosure of clients for whom you personally provided \$5,000 or more in services even though the clients' payments

were made to your employer, firm or other business affiliation. The examples on the form show the proper way to disclose the business affiliation which paid the reporting individual's compensation, in this case a law firm, and a client of the firm for which the reporting individual personally provided over \$5,000 worth of services. This Part does not require you to disclose the value of the compensation for these services; it does require a brief description of the services you provided. When a source has paid you directly, you should have a corresponding entry on Schedule A if the payment was within the reporting period for Schedule A. A client who paid your business affiliation more than \$5,000 for your services will appear only in this Part.

B. Items to Report

Report the nature of the duties performed or services rendered for any person (other than the United States Government) from which compensation in excess of \$5,000 in any of the two preceding calendar years or the present calendar year was received by you or an entity which billed for your services (business affiliation). Exclude: (1) information to the extent that it is considered confidential as a result of a privileged relationship established by law, or (2) information about persons for whom services were provided by a business affiliation of which you were a member, partner or employee unless you were directly involved in the provision of the services. The name of a client of a law firm is not generally considered confidential. No report is required regarding compensation paid to your spouse or a dependent child.

C. What to Show on the Form

Under SOURCE, give the name and address of the person to whom services were provided, for example, "Newark Real Estate Co. (Newark, NJ)"; and under BRIEF DESCRIPTION, the title or other brief functional description of the services rendered, for example: "tax matters researched for above firm while an associate with Quinn and Ouspensky."

Executive Branch PUBLIC FINANCIAL DISCLOSURE REPORT

Reporting Status (Check Appropriate Boxes) <input type="checkbox"/> Incumbent		Calendar Year Covered by Report <input type="checkbox"/> New Entrant, Nominee, or Candidate		Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)		Termination Date (If Applicable) (Month, Day, Year)		Agency Use Only	
Reporting Individual's Name Last Name: _____ First Name and Middle Initial: _____		Title of Position Department or Agency (If Applicable): _____		Address (Number, Street, City, State, and ZIP Code) Telephone No. (Include Area Code): _____		Telephone No. (Include Area Code)		OGE Use Only	
Position for Which Filing		Title of Position(s) and Date(s) Held		Do You Intend to Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input type="checkbox"/> No		Fee for Late Filing Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a \$200 fee.		Reporting Periods Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.	
Location of Present Office (or forwarding address) Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)		Name of Congressional Committee Considering Nomination		Signature of Reporting Individual Date (Month, Day, Year)		Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.		Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.	
Certification I CERTIFY that the statements I have made on this form, and all attached schedules are true, complete and correct to the best of my knowledge and belief.		Signature of Other Reviewer Date (Month, Day, Year)		Signature of Designated Agency Ethics Official/Reviewing Official Date (Month, Day, Year)		Nominees, New Entrants and Candidates for President and Vice President:		Schedule A-- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.	
Other Review (If desired by agency)		Signature		Signature Date (Month, Day, Year)		Schedule B-- Not applicable.		Schedule C, Part I (Liabilities)-- The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.	
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.		Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)		Supervisor's Certification: I have reviewed the interests reported on this form in light of the duties required by the reporting individual's position. I am satisfied that there is no actual or potential conflict of interest. (If remedial action is required or additional explanation is necessary, use reverse side.)		Schedule C, Part II (Agreements or Arrangements)-- Show any agreements or arrangements as of the date of filing.		Schedule D-- The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.	
Office of Government Ethics Use Only		Supervisor's signature: _____ (Check box if comments are continued on reverse side) <input type="checkbox"/>							

SCHEDULE A

Page Number

BLOCK A

Assets and Income

BLOCK B

Valuation of Assets at close of reporting period

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.

Identify each asset or source of income which generated over \$200 in income during the reporting period.

None

S DC or J	Ex- amples Central Airline Common Doe Jones & Smith, Hometown, USA Kempstone Equity Fund Doe Jones & Smith pension plan	BLOCK B										BLOCK C										Date (Mo., Day, Yr.) Only if Honoraria							
		Valuation of Assets at close of reporting period										Type											Amount						
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Actual Amount Only if "Other" specified		
1																													
2																													
3																													
4																													
5																													
6																													

Reporting Individual's Name

SCHEDULE B

New Entrant/Nominee/Candidate:
 Schedule Not Applicable

Page Number

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent child during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

S, DC or J	Identification of Assets	Transaction Type (a)			Date (Mo., Day, Yr.)	Amount of Transaction (a)													
		Purchase	Sale	Exchange		\$1,001 - \$16,000	\$16,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$1,000,000	Over \$1,000,000					
1	Example: Central Airlines Common	x			2/1/91			x											
2																			
3																			
4																			
5																			

None

Part II: Gifts, Reimbursements, and Travel Expenses

Report the source, a brief description (including travel, dates, and the nature of expenses provided), and the value of: (1) transportation, lodging, food, or entertainment received from one source totaling \$250 or more (unless received as personal hospitality at the donor's personal or family residence); (2) other gifts from one source totaling \$100 or more in value; and (3) cash reimbursements of \$250 or more from one source. Exclude gifts, reimbursements and travel expenses from the U.S. Government. Also exclude gifts from relatives, gifts of \$75 or less when aggregating gifts for the total from one source, and gifts and reimbursements received by your spouse or dependent child that were given totally independent of the relationship to you. See instructions for further exclusions.

S, DC or J	Source (Name and Address)	Brief Description	Value
1	Example: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/90	\$500
	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	\$125
2			
3			
4			
5			

None

Reporting Individual's Name

Page Number

SCHEDULE C

Part I: Liabilities

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automo-

biles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

Creditors (Name and Address)

Example:
DC First District Bank, Washington, DC
or
John Jones, 123 J St., Washington, DC

Type of Liability

Mortgage on rental property, Delaware
Promissory note

None

Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (\$)							
1981	13%	25 yrs.	\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$10,000,000	\$10,000,001 - \$100,000,000
1989	10%	on demand				x				

Part II: Agreements or Arrangements

Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an

employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

Status and Terms of any Agreement or Arrangement

Example: Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/91 and retained pension benefits (independently managed, fully funded, defined contribution plan)

Example:	Status and Terms of any Agreement or Arrangement	Parties	Date
1		Doe Jones & Smith, Hometown, USA	7/85
2			
3			
4			
5			
6			

SCHEDULE D

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None

Examples:	Organization (Name and Address)		Type of Organization	Position Held	From (Mo., Yr.) To (Mo., Yr.)	
	1	2			3	4
Examples:	1234 Ave. of Rock Collectors, NY, NY		Non-profit, education	President	6/82	Present
	Doe Jones & Smith, Hometown, USA		Law firm	Partner	7/85	11/91
1						
2						
3						
4						
5						
6						

Part II: Compensation In Excess Of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Incumbent/
 Termination Filer/
 Candidate:
 Not Applicable
 None

Source (Name and Address)	Brief Description of Duties
Examples:	
Doe Jones & Smith, Hometown, USA	Legal services
Metro University (client of Doe Jones & Smith), Moneystown, USA	Legal services in connection with university construction
1	
2	
3	
4	
5	
6	

SECTION 2. CONFIDENTIAL FINANCIAL DISCLOSURE REPORT

C-200. Standard Form 450

Executive Branch Personnel
CONFIDENTIAL FINANCIAL
DISCLOSURE REPORT

Instructions for Completing SF 450

A. Who Must File

Your agency will inform you if the position in which you serve or will serve has been designated as requiring confidential financial disclosure. Agencies are required to designate positions at or below GS-15, O-6, or comparable pay rates, in which the nature of duties may involve a potential conflict of interest. Examples include contracting, procurement, administration of grants and licenses, regulating/auditing non-Federal entities, other activities having a substantial economic effect on non-Federal entities, or law enforcement. Additionally, all special Government employees (SGE's) (those appointed pursuant to 18 U.S.C. 202(a) to serve no more than 130 days in a period of 365 days) must file, unless exempted or subject to the public reporting system. Agencies may also require certain employees in positions above GS-15, O-6, or a comparable pay rate to file.

B. Reporting Periods

New entrant reports: The reporting period is the preceding twelve months from the date of filing.

Annual reports: The reporting period is the preceding twelve months ending September 30 (or any portion thereof not covered by a new entrant report). However, no report is required if you performed the duties of your position for less than 61 days during that twelve-month period.

C. When to File

New entrant reports: Reports are due within 30 days of assuming a position designated for filing (including reappointment as a special Government employee (SGE)), unless your agency requests the report earlier. No report is required if you left another (different) filing position within 30 days prior to assuming the new position.

Annual reports: Reports are due not later than October 31, unless extended by your agency.

D. Where to File

With ethics officials at the agency in which you serve or will serve, in accordance with their procedures.

E. General Instructions

1. Confidential filers must provide sufficient information about their outside interests and activities, as well as those of their spouse and dependent children, so that an informed judgment can be made by agency ethics officials as to compliance with applicable conflict of interest laws and standards of conduct regulations. Therefore, it is important that you carefully complete the attached form. This report is a safeguard for you as well as the Government. It provides a mechanism for determining actual or potential conflicts between your public responsibilities and your private interests and activities, and allows you and your agency to fashion appropriate protections against such conflicts.

2. This form consists of five parts, which require identification of certain specific financial interests and activities. No disclosure of amounts or values is required. You must complete each part (except as indicated for Part V) and sign the report. If you have no information to report in any part or do not meet the threshold values for reporting, check the "None" box. If you are a new entrant or special Government employee

(SGE), you are not required to complete Part V, in all other instances, a report is incomplete if any part is left blank.

3. The information to be disclosed on this form is required by regulation. You may include other information beyond these requirements that you wish to disclose for clarification. However, disclosure of any information does not authorize holdings, income, liabilities, affiliations, positions, gifts or reimbursements which are otherwise prohibited by law, Executive order, or regulation.

4. You can combine on one form the information applicable to yourself, your spouse, and dependent children which is required by Parts I, II, and V. (Parts III and IV require disclosures about yourself only.) You may, if you desire, distinguish any entry for a family member by preceding the entry with S if it is for a spouse or DC if it pertains to a dependent child. Joint assets may be indicated by J. Information about your spouse is not required in the case of marriage dissolution, permanent separation, or temporary separation with the intention of terminating the marriage or permanently separating.

5. In the case of references to trades or businesses which do not have publicly traded securities, you must provide sufficient information about these private entities to give the reviewers an adequate basis for conflict analysis. Thus, you must disclose the location and primary trade or business of private entities, as well as their separate financial interests and liabilities which are not solely incidental to the business. For instance, if your family swimming pool services corporation purchases an apartment house for investment in addition to its pool services business, you will have to disclose the apartment house investment, in addition to the family corporation.

6. In the case of a mutual fund, pension, IRA, or investment account, you must disclose information about portfolio holdings and sources of income, unless the entity is "an excepted investment fund." See definition below. In that case, identify it by name and

indicate "excepted investment fund" in the appropriate block; no further disclosure is required.

7. In the case of a trust, you must disclose information about its underlying assets and sources of income, unless it is an "excepted trust." See definition below. In that case, identify it by name and date of creation, and indicate "excepted trust" in the appropriate block; no further disclosure is required. (Additionally, you may, in rare cases, have an interest in a trust specifically certified by the Office of Government Ethics to be a qualified blind or diversified trust, pursuant to statute; for such qualified trusts, you will also be exempt from disclosures about underlying holdings.)

8. If you need assistance in completing this form, contact the ethics officials of the agency in which you serve or will serve.

F. Definition of Terms

o Dependent Child

The term "dependent child" means your son, daughter, stepson, or stepdaughter if such person is either:

- (1) unmarried, under age 21, and living in your household; or
- (2) a "dependent" of yours within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

o Excepted Investment Fund (EIF)

An "excepted investment fund" is a mutual fund, common trust fund of a bank, pension or deferred compensation plan, or any other investment fund, which is:

- (1) widely held;
- (2) either publicly traded (or available) or widely diversified; and
- (3) you neither exercise control over nor have the ability to exercise control over the financial interests held by the fund.

* A fund is widely diversified when it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the U.S. Government) and no more than 20% in any particular economic or geographic sector.

o Excepted Trust (ET)

An "excepted trust" is one which:

- (1) was not created by you, your spouse, or dependent children; and
- (2) the holdings or sources of income of which you, your spouse, and dependent children have no past or present knowledge.

o Honoraria

The term "honoraria" means payments (direct or indirect) of money or anything of value to you or your spouse for an appearance, speech or article, excluding necessary travel expenses. Also included are payments to charities in lieu of honoraria.

o Personal Savings Account

The term "personal savings account" includes a certificate of deposit, a money market account, a savings account, an interest-bearing checking account, or any other form of deposit in a bank, savings and loan association, credit union or similar financial institution. Additionally, any money market mutual fund holding is treated as the equivalent of a personal savings account.

Privacy Act Statement

Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), Executive Order 12674, and 5 CFR Part 2634, Subpart I, of the Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this form is for review by Government officials of your agency, to determine compliance with applicable Federal conflict of interest laws and regulations. Additional disclosures

of the information on this report may be made: (1) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (2) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a subpoena; (3) to a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration in records management inspections; (5) to the Office of Management and Budget during legislative coordination on private relief legislation; and (6) in response to a request for discovery or for the appearance of a witness in a judicial or administrative proceeding, if the information is relevant to the subject matter. This confidential report will not be disclosed to any requesting person unless authorized by law.

Falsification of information or failure to file or report information required to be reported may subject you to disciplinary action by your employing agency or other appropriate authority. Knowing and willful falsification of information required to be reported may also subject you to criminal prosecution.

Public Burden Information

This collection of information is estimated to take an average of one and a half hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Associate Director for Administration, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue N.W., Washington, DC 20005-3917; and to the Office of Management and Budget, Paperwork Reduction Project (3209-0006), Washington, DC 20503. Do not send your completed financial disclosure report to these addresses; it should be filed as indicated above in section D.

Executive Branch Confidential Financial Disclosure Report

PARTS I - II

Employee's Name (Last, first, middle initials)		Position/Title		Date of Appointment		Page No.	
Agency		Branch/Unit and Address		Work Phone		Check box if special Government employee (SGE)	
I certify that the statements I have made on this form and all attached statements are true, complete, and correct to the best of my knowledge.				Reporting Status: <input type="checkbox"/> New entrant <input type="checkbox"/> Annual			
Date Received by Agency		Signature of Supervisor/Other Intermediate Reviewer		Printed Name/Title		Date	
Signature of Agency's Final Reviewing Official and Title		Date		Comments of Reviewing Officials		(Check box if continued on reverse)	

(Use additional copies of this form as continuation pages, if necessary, to complete any part.)

Part I: Assets and Income

None

Identify for you, your spouse, and dependent children: 1) such asset held for investment or the production of income which had a fair market value exceeding \$1,000 (\$5,000 for personal savings accounts) at the close of the reporting period; and 2) each asset or source of income other than U.S. Government savings Plan which generated over \$200 in income during the reporting period (\$1,000 for your spouse's earned income, other than honoraria). This includes but is not limited to employers' stocks, bonds, tax shelters, personal savings accounts, realty, mutual funds, pensions, annuities, IRA assets, trust assets, commodity futures, trades and businesses, partnership interests, and honoraria. Exclude your personal residence, unless you rent it out, and any earned income of your dependent children. If the holding is an exempt trust (ET) or an exempt investment fund (EIF) (see instructions), indicate that in the designated column, and you need not disclose underlying holdings.

1	Assets and Income Sources (Identify specific employer, business, stock, bond, mutual fund, financial institution, type/location of real estate, etc.)	(X) if no longer held	Nature of Income (Rent, interest, dividends, capital gains, salary, etc.)	If EIF or ET, so indicate	Date (Only for honoraria)
1					
2					
3					
4					
5					
6					
7					
8					

Part II: Liabilities

None

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period lower \$10,000 at the end of the period if revolving charge accounts by you, your spouse, and dependent children. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to a spouse, dependent child, or parent, brother, sister or child of you or your spouse.

Creditors (Name and address)	Type of Liability (Mortgage, promissory note, etc.)
1	
2	
3	
4	

Executive Branch CONFIDENTIAL FINANCIAL DISCLOSURE REPORT PART III - END

Employee's Name (Last, first, middle initial)	Agency	Branch/Unit	Work Phone	Page No.
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Part III: Outside Positions

None

Report any positions, whether or not compensated, which you held outside the U.S. Government during the reporting period. Positions include but are not limited to those of an employee, officer, director, trustee, general partner, proprietor, representative, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature. You need not report any positions of your spouse or dependent children.

Organization (Name and address)	Type of Organization	Position	If no longer held (X)

Part IV: Agreements and Arrangements

None

Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. You need not report agreements or arrangements of your spouse or dependent children.

Terms of Any Agreement or Arrangement	Parties	Date

Part V: Gifts and Travel Reimbursements

None

Do not complete this part if you are a new entrant or special Government employee (SGSE).

Report the source and a brief description of gifts from one source totaling \$250 or more during the reporting period, and travel reimbursements from one source totaling \$250 or more during the reporting period, which are received by you, your spouse, and dependent children. Exclude anything valued at \$100 or less; anything from relatives or from the U.S. Government; anything given to your agency in connection with your official travel; and food, lodging, or entertainment received as personal hospitality at the donor's residence or premises.

Source	Description (For travel-related items, include itinerary and date)

SECTION 3. REQUEST TO INSPECT OR RECEIVE COPIES OF SF 278,
FINANCIAL DISCLOSURE REPORT

C-300. Office of Government Ethics Form 201

REQUEST TO INSPECT OR RECEIVE COPIES OF SF 278, FINANCIAL DISCLOSURE REPORT

I. APPLICATION

1. Applicant's name and address (please print):		2. Date:
		3. Occupation:
4. If application is for or on behalf of any other person or organization give the other's name:	4a. Address of the other person or organization:	
5. Public Financial Disclosure Report Form SF 278 requested for the following named individuals:		
a.	d.	
b.	e.	
c.	f.	
6. Applicant's signature:		

II. NOTICE OF ACTION

- Copies of the reports you requested are enclosed. See the IMPORTANT NOTICE below. Other
- Your request does not comply with the requirements of the statute. Please complete Part I of this form and return so we may comply with your request.

IMPORTANT NOTICE

The law requires that a report not be available to any person except upon written application by such person stating his or her name, occupation and address, and the name and address of any other person or organization on whose behalf the report is requested, and that the person be aware of the prohibitions on improper use, set forth below.

Section 105(c) of the Ethics in Government Act of 1978, as amended, provides in part that it is unlawful for any person to obtain or use a report -

- a. for any unlawful purpose;
- b. for any commercial purpose, other than by news and communications media for dissemination to the general public;
- c. for determining or establishing the credit rating of any individual; or
- d. for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

The Attorney General may bring a civil action against any person who obtains or uses a report for any such prohibited purpose as set forth above. The court may assess against such a person a penalty in any amount not to exceed \$10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

PRIVACY ACT STATEMENT

The Ethics in Government Act of 1978, as amended, authorizes the solicitation of the information requested in this form. Failure to furnish the information will result in this agency's inability to allow access to, or to provide copies of, the financial disclosure forms requested. Otherwise, furnishing the requested information is voluntary. The information may be publicly disclosed pursuant to section 105(b) of the Act, or as otherwise authorized by law.

PUBLIC BURDEN INFORMATION

Public burden reporting for this collection of information is estimated to take approximately three minutes per response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Administrative Services, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, N.W., Washington, D.C. 20005-3917; and to the Office of Management and Budget, Paperwork Reduction Project (3209-002), Washington, D.C. 20503.

SECTION 4. NOTIFICATION OF CONFLICT OF INTEREST REFERRAL

C-400. Office of Government Ethics Form 202

Notification of Conflict of Interest Referral

For use in cases involving violations of 18 U.S.C. §§ 203, 205, 207-209 by current or former executive branch employees only; see reverse for summary of statutory/regulatory background. Please return directly to: Office of Education, U.S. Office of Government Ethics, 1201 New York Ave. NW, Suite 500, Washington, DC 20005-3917. Phone: (202/FTS)523-5757. FAX: (202/FTS)523-6325.

Agency Referring the Case	Agency Case or Referral Number	Case Referred to: <input type="checkbox"/> DOJ, Public Integrity Section, Criminal Division <input type="checkbox"/> U.S. Atty. (for district) _____ <input type="checkbox"/> DOJ (other) _____
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Date of Referral to DOJ	Name of Employee Involved in Case (optional), Agency, and Agency Component Where he/she was Employed
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Please check each statute involved in the case, and answer all questions concerning those statute(s). Questions marked with a check should be completed by placing a check next to the appropriate answer(s).

Yes No Unclear Is there any evidence the individual received ethics training?

18 U.S.C. § 203 (Compensation for Representation Affecting the Government)

Federal entity before which representation occurred: _____

Compensated representation on behalf of? _____

Were representational services rendered or to be rendered by the employee? _____ or by another? _____

18 U.S.C. § 205 (Representation Affecting the Government)

Federal entity before which representation occurred: _____

Representation on behalf of? _____

18 U.S.C. § 207 (Post-Employment)

Federal entity before which representation occurred: _____

Representation on behalf of? _____

Was the communication/representation oral? _____ and/or written? _____

Former employee terminated service before January 1, 1991. Check subsections involved:

207(a) 207(b)(i) 207(b)(ii) 207(c)

Former employee terminated service on or after January 1, 1991. Check subsections involved:

207(a)(1) 207(a)(2) 207(b) 207(c) 207(d) 207(f)

18 U.S.C. § 208 (Acts Affecting a Personal Financial Interest)

Does the case involve the financial interest of the employee? _____ that of the employee's spouse? _____ dependent child? _____ a firm with which the employee was negotiating for employment? _____ other? _____

Yes No Was a waiver sought?

Yes No Was the employee required to file a financial disclosure form?

Yes No If so, was the interest disclosed on the financial disclosure form?

18 U.S.C. § 209 (Supplementation of Salary)

Type of supplementation (meals, travel, cash, etc.): _____

Value of supplementation: \$ _____ Number of supplements: _____

Other Statutes Involved in Conflict of Interest Referrals

Yes No Was 18 U.S.C. § 201 (bribery/ gratuity) involved?

Yes No Was 18 U.S.C. § 1001 (false statements) involved?

Other (list) _____

Agency Contact/ Telephone Number

Date

Statutory/ Regulatory Background

28 U.S.C. § 535 requires every department or agency to report to the Attorney General any information, allegations or complaints relating to violations of title 18 of the United States Code involving Government employees, including possible violations of 18 U.S.C. § 207 by former Government employees. The Director of the Office of Government Ethics (OGE), in accordance with 5 U.S.C. App. § 402(e)(2), has promulgated regulations at 5 C.F.R. § 2638.603 requiring agencies to concurrently notify the Director when any matter involving a violation of 18 U.S.C. §§ 203, 205, 207, 208, and/or 209 is referred to the Department of Justice pursuant to 18 U.S.C. § 535. Such notification may be accomplished by providing a copy of the referral document or by submitting this optional form, unless such notification would otherwise be prohibited by law. OGE regulations also require that the department or agency subsequently notify the Director of the referral's disposition, including any disciplinary or corrective action taken by the department or agency. 5 C.F.R. § 2638.603. Information relating to the disposition of a referral may be communicated to the Director in writing.

Additional agency comments (if any):

Disposition of Referral (OGE use only):

DOJ declined prosecution.
Agency disciplinary or corrective action, if any:

DOJ initiated prosecution.
Resolution:

Agency disciplinary or corrective action, if any:

SECTION 5. SENIOR APPOINTEE PLEDGE

C-500. Office of Government Ethics Form 203

SENIOR APPOINTEE PLEDGE

As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

2. In the event that I serve as a senior appointee in the Executive Office of the President ("EOP") I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

5. I acknowledge that the Executive order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Signature

_____, 19____
Date

Print or type your full name (Last, first, middle -- spell out each fully)

Privacy Act Statement

Executive Order 12834 entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993 (and published at 58 Federal Register 5911-5916 on 1/22/93), requires every senior appointee in every executive agency appointed on or after January 20, 1993 to sign this pledge upon becoming a senior appointee. This pledge establishes a contractual commitment regarding your post-employment activities and your activities after your personal and substantial participation in a trade negotiation has ceased. If there is a violation or apparent violation of this pledge, this pledge may be disclosed to the Department of Justice or any other appropriate Federal agency charged with the responsibility of investigating, prosecuting, enforcing or implementing the Executive order. Disclosure of this pledge can also be made to another Federal agency, a court or a party in court litigation or an administrative proceeding when the Government is a party as well as to another Federal agency in connection with your hiring when the pledge is relevant and necessary thereto. Further, this pledge may be disclosed to the Executive Office of the President and the Office of Government Ethics to enable them to carry out their responsibilities under Executive Order 12834 and other ethics oversight authorities. This pledge will be filed for permanent retention in your official personnel folder or equivalent folder. Your signing this pledge is a condition, and in consideration, of your employment as a senior appointee, or your receiving a pay raise that will make you a senior appointee, as defined in the Executive order.

**OGE Form 203
Jan. 1993**

SECTION 6. TRADE NEGOTIATOR PLEDGE

C-600. Office of Government Ethics Form 204

TRADE NEGOTIATOR PLEDGE

As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

2. I acknowledge that the Executive order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Signature

_____, 19____
Date

Print or type your full name (Last, first, middle -- spell out each fully)

Privacy Act Statement

Executive Order 12834 entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993 (and published at 58 Federal Register 5911-5916 on 1/22/93), requires every trade negotiator (who is not a senior appointee) in every executive agency appointed on or after January 20, 1993 to sign this pledge prior to personally and substantially participating in a trade negotiation. This pledge establishes a contractual commitment regarding your activities after your personal and substantial participation in a trade negotiation has ceased. If there is a violation or apparent violation of this pledge, this pledge may be disclosed to the Department of Justice or any other appropriate Federal agency charged with the responsibility of investigating, prosecuting, enforcing or implementing the Executive order. Disclosure of this pledge can also be made to another Federal agency, a court or a party in court litigation or an administrative proceeding when the Government is a party as well as to another Federal agency in connection with your hiring when the pledge is relevant and necessary thereto. Further, this pledge may be disclosed to the Executive Office of the President and the Office of Government Ethics to enable them to carry out their responsibilities under Executive Order 12834 and other ethics oversight authorities. This pledge will be filed for permanent retention in your official personnel folder or equivalent folder. Your signing this pledge is a condition, and in consideration, of your employment in the United States Government as a trade negotiator, as defined in the Executive order.

OGE Form 204
Jan. 1993

SECTION 7. PROCUREMENT INTEGRITY TRAINING CERTIFICATE FOR
PROCUREMENT OFFICIALS

C-700. Optional Form 333

PROCUREMENT INTEGRITY CERTIFICATION FOR PROCUREMENT OFFICIALS

As a condition of serving as a procurement official, I _____
(typed or printed name)

_____ hereby certify that I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 USC 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and a requirement to so certify.

SIGNATURE OF PROCUREMENT OFFICIAL

DATE

DEPARTMENT OR AGENCY

OFFICE TELEPHONE NUMBER

This form is authorized for use and local reproduction through December 31, 1990.

OPTIONAL FORM 333 (9-90)
Prescribed by GSA - FAR (48 CFR) 53.203(b)

SECTION 8. REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT

C-800. Department of Defense Form 1787

REPORT OF DOD AND DEFENSE RELATED EMPLOYMENT AS REQUIRED BY 10 U.S.C. §2397

REPORT CONTROL SYMBOL

Form Approved
OMB No. 0704-0047
Expires Jul 97, 1992

(If additional space is required, use blank sheets of paper referencing item numbers below.)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0047), Washington, DC 20503.

Privacy Act Statement

AUTHORITY: 10 U.S.C. §2397; 10 U.S.C. §2397b; Executive Order 9397, November 1943 (SSN).

PRINCIPAL PURPOSES: Each report will be reviewed by Department of Defense officials to determine compliance with the intent of the Act. The purpose of requesting the SSN is for positive identification and retrieving the record.

ROUTINE USE: Information derived from the reports, including names of reporting individuals and their current and former employers, shall be provided annually to the Congress. The reports themselves shall be available for review by members of the public and may otherwise be made available as authorized by law.

DISCLOSURE: Mandatory. Knowing or willful failure to file or report information required to be reported by this law, or falsification of information, may subject you to administrative penalty of up to \$10,000 pursuant to regulations promulgated by the Secretary of Defense. Knowing or willful falsification of information required to be filed may also subject you to criminal prosecution under 18 U.S.C. §1001, leading to a fine of not more than \$10,000 or imprisonment for not more than five years or both.

(Please read instructions before completing this form.)

1. NAME (Last, First, Middle Initial)	2. SOCIAL SECURITY NO.	3. HOME TELEPHONE NO.

4. HOME ADDRESS			
a. STREET	b. CITY	c. STATE	d. ZIP CODE

5. IS THIS AN INITIAL REPORT? (X a. or b.)	6.a. STATUS (X as many as applicable)	6.b. Rank/Grade	6.c. Most Recently Acquired Status (X one)
a. YES (If "Yes," go to Item 6.)	(1) RETIRED MILITARY - O4 OR ABOVE		
b. NO (If "No," go to Item 5.c.)	(2) FORMER MILITARY - O4 OR ABOVE		
c. If this is NOT an initial report, reason for subsequent report is: (X one)	(3) RETIRED CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE		
	(4) FORMER CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE		
	(5) PRESENT DOD EMPLOYEE		
(1) change in employer			
(2) change in duties			

PART I

To be completed only by former officers or employees of DoD who are now employed by contractor. (Category I)

7.a. DATE OF TERMINATION OF MOST RECENT DOD SERVICE OR EMPLOYMENT (YYMMDD)	7.b. NAME OF MOST RECENT MILITARY DEPARTMENT OR DOD AGENCY

8. DATE OF EMPLOYMENT WITH DEFENSE CONTRACTOR (YYMMDD)	9. IS YOUR ANNUAL COMPENSATION FROM OR SALARY RATE WITH THE DEFENSE CONTRACTOR \$25,000 OR MORE?				
	<table style="width: 100%; border: none;"> <tr> <td style="width: 90%;"></td> <td style="width: 10%; text-align: center;">a. YES</td> </tr> <tr> <td></td> <td style="text-align: center;">b. NO</td> </tr> </table>		a. YES		b. NO
	a. YES				
	b. NO				

10. NAME OF DEFENSE CONTRACTOR EMPLOYER	11. WORK TELEPHONE NO.

12. WORK ADDRESS			
a. STREET	b. CITY	c. STATE	d. ZIP CODE

13. YOUR POSITION WITH CONTRACTOR			
a. (X one that best describes position.)		b. SPECIFIC TITLE(S)	
(1) Administrator	(4) Manager		
(2) Researcher	(5) Consultant		
(3) Contract Officer	(6) Other		

c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL former DoD positions that are reported in Item 14 below. See instructions.

14. YOUR FORMER DOD POSITION			
a. (X one that best describes position.)		b. SPECIFIC TITLE	
(1) Administrator	(4) Manager		
(2) Researcher	(5) Consultant		
(3) Contract Officer	(6) Other		
		c. SPECIFIC DOD ORGANIZATION	

d. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 14.a., b., c., and d. for each former DoD position held within 2 years prior to contractor position. See instructions.

15. DOD DISQUALIFICATION ACTIONS (IF ANY) (Within two years prior to contractor employment.)	c. DESCRIBE DISQUALIFICATION ACTIONS
a. YES (If "Yes," go to Item 15.c.)	
b. NO (If "No," go to Item 16.)	

PART II

To be completed only by former employees of contractors who are now DoD officers or employees. (Category II)

16.a. DATE OF TERMINATION WITH DEFENSE CONTRACTOR (YYMMDD)	16.b. NAME OF FORMER DEFENSE CONTRACTOR EMPLOYER (Most recent)		
17. DATE OF EMPLOYMENT OR SERVICE WITH DOD (YYMMDD)	18. IS YOUR ANNUAL SALARY WITH DOD AT A RATE EQUAL TO OR ABOVE GS-13?	a. YES	c. SPECIFY AMOUNT
		b. NO	\$
19. NAME OF SPECIFIC DOD ORGANIZATION(S) BY WHICH EMPLOYED (Within the last 2 years)		20. WORK TELEPHONE NO.	
		- - - - -	

21. WORK ADDRESS			
a. STREET	b. CITY	c. STATE	d. ZIP CODE
			- - - - -

22. CURRENT DOD POSITION			
a. (X one that best describes position.)		b. SPECIFIC TITLE(S)	
(1) Administrator	(4) Manager		
(2) Researcher	(5) Consultant		
(3) Contract Officer	(6) Other		

c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL contractor positions that are reported in Item 23 below. See Instructions.

23. CONTRACTOR POSITION			
a. (X one that best describes position.)		b. SPECIFIC TITLE	
(1) Administrator	(4) Manager		
(2) Researcher	(5) Consultant		
(3) Contract Officer	(6) Other		
c. SPECIFIC DEFENSE CONTRACTOR NAME AND BRANCH			

d. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 23.a., b., c., and d. for each contractor position held within two years prior to current position. See Instructions

CERTIFICATION
To be completed by all filers.

24. I certify that the above information is true, complete, and correct to the best of my knowledge. I understand that I must file a new report of DoD and defense related employment within 30 days if, within the two years immediately following the termination of my most recent DoD service or employment, the information in this report ceases to be accurate. I understand subsequent reports are not required after such two year period.

a. SIGNATURE	b. DATE SIGNED (YYMMDD)

REVIEW
To be completed by reviewing official.

25. I certify that I have reviewed this Report of DoD and Defense Related Employment (DD Form 1787) in accordance with the guidance set out in DoD Directive 5500.7, enclosure 8.

a. SIGNATURE	b. OFFICE	c. DATE SIGNED (YYMMDD)

DD FORM 1787
REPORT OF DOD AND DEFENSE - RELATED EMPLOYMENT
AS REQUIRED BY 10 U.S.C. §2397

WHO MUST FILE

CATEGORY I (Complete Part I)

a. Each person who has left service or employment with a DoD Component, who:

(1) is a retired military officer or former military officer who served on active duty at least 10 years and who held, for any period during that service, the grade of O-4 or above, or is a former civilian officer or employee whose pay at any time during the three year period prior to the end of DoD service or employment was equal to or greater than the minimum rate for a GS-13 at that time;

(2) within the two-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year preceding employment, was awarded \$10,000,000 or more in DoD contracts; and

(3) is employed by the defense contractor and at any time during a year receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor. "Employed" includes the rendering of services as a consultant, lawyer, agent or other kind of assistant.

b. For a two year period following the termination of your last position with a DoD Component, you are required to file a new DD Form 1787 each time your duties with the defense contractor change significantly and each time you become employed with a new defense contractor.

CATEGORY II (Complete Part II)

Each civilian officer and employee (whether or not full-time) of a DoD Component, who:

(1) is employed at a pay rate equal to or greater than the minimum rate for GS-13;

(2) within the two-year period prior to the beginning of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded \$10,000,000 or more in DoD contracts; and

(3) was employed by the defense contractor and at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more from the defense contractor. "Employed" includes the rendering of services as a consultant, lawyer, agent or other kind of assistant.

WHEN AND WHERE TO FILE

a. Civilians shall submit their reports to the Designated Agency Ethics Official of the individual's present or former DoD Component in accordance with DoD Component procedures. Retired or former military officers shall submit their reports to the Designated Agency Ethics Official of the DoD Component to which they were last assigned.

b. Current DoD officers and employees shall file a report within 30 days after entering employment or service with any DoD Component.

c. Former DoD officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor.

d. Former DoD officers and employees shall file subsequent reports each time, during the two-year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly change or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

INSTRUCTIONS FOR COMPLETION

Items 1 through 6 apply to all individuals completing this form.

Items 1 through 4. Provide the appropriate information.

Item 5. Mark "Yes" if this is the first DD Form 1787 you have ever filed and go to Item 6. Mark "No" if you have filed a DD Form 1787 in the past and answer 5.c.

Item 6. Mark the box(es) which indicates your status and include the highest grade or rank that you held prior to leaving that DoD position. If you hold more than one status, mark one box to show which status was most recently acquired. Keep in mind that the requirement to file DD Form 1787 is imposed on former and retired civilian employees who have been paid at a rate equal to or greater than the minimum rate at the time for a GS-13 at any time during the three year period prior to termination from the last DoD position.

PART I

This part only applies to individuals in Category I.

Item 7. Provide the requested date and name your most recent Military Department or DoD agency.

Item 8. Provide the date your employment with the defense contractor began. If you are no longer employed by the defense contractor, provide the date of termination on a separate sheet referencing this item number. Provide the information requested in the following items for your most recent defense contractor employer even if no longer employed.

INSTRUCTIONS FOR COMPLETION OF DD FORM 1787 (Continued)

PART I (Continued)

Item 9. Indicate whether your annual compensation from or salary rate with the defense contractor is above \$25,000 by marking "Yes" or "No."

Items 10 through 12. Provide the appropriate information for your present or most recent defense contractor employer.

Item 13. Indicate your position with the defense contractor by marking the box(es) next to the title that best describes your position. Also provide your specific title(s). You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names of all contracts and details of all duties you have performed on behalf of the defense contractor that relate in any way to your duties in all former DoD positions held within the two years prior to the beginning of your employment with the defense contractor. You must also identify each major defense system on which you have performed work on behalf of the defense contractor, regardless of whether that work relates to your former DoD position. All these former DoD positions must be reported in Item 14.

"Major Defense System" means: A combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (a) DoD is responsible for the system and the total expenditures, and research, development, test, and evaluation for the system are estimated to be more than \$75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than \$300,000,000 (based on fiscal year 1980 constant dollars); (b) a civilian agency is responsible for the system and total expenditures of the system are estimated to exceed \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to OMB circular A-109, entitled "Major Systems Acquisitions," whichever is greater; or (c) the system is designated a "major system" by the head of the agency responsible for the system.

Item 14. Indicate your former DoD position by marking the box(es) next to the title that best describes your position. Also provide your specific title(s) and include your organization code letters. You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names of all contracts and details of all duties you performed while in your former DoD position that relate in any way to your position with the defense contractor reported in Item 13. You must also identify each major defense system you performed any work on while in your former DoD position, regardless of whether that work relates to your position with the defense contractor reported in Item 13. If you held more than one DoD position during the two years prior to the beginning of your employment with the defense contractor, provide all the information requested in Item 14.a., b., and c. for each DoD position on a separate sheet of paper referencing this item number.

Item 15. Indicate whether there were any DoD disqualification actions related to you during the two years prior to your defense contractor employment. If there were, describe the actions in detail. A "disqualification action" is a formal exclusion of a person from taking part in a particular matter, usually to prevent a conflict of interest.

PART II

This part only applies to individuals in Category II.

Item 16. Provide the requested date and name your most recent former defense contractor employer.

Item 17. Provide the requested date.

Item 18. Indicate whether your annual salary with the DoD Component is equal to or above the minimum rate for a GS-13 by marking "Yes" or "No." Various pay schedules, levels and steps can be confusing. Provision of your annual salary will ensure your compliance with applicable law and is required to process your report.

Items 19 through 21. Provide the appropriate information for your DoD Component organization.

Item 22. Indicate your DoD position by marking the box(es) next to the title that best describes your position. Also provide your specific title(s) and include your organization code letters. You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names and details for all contracts and actions that relate in any way to your duties in all former defense contractor positions held within the two years prior to the beginning of your service or employment with the DoD Component. All these former defense contractor positions must be reported in Item 23.

Item 23. Indicate your former position with the defense contractor by marking the box(es) next to the title that best describes your position. Also provide your specific title(s). You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must include names and details for all contracts and actions that relate in any way to your position with your DoD Component reported in Item 22. If you have been employed by more than one defense contractor during the two years prior to the beginning of your service or employment with the DoD Component, provide all information requested in Item 23.a., b., and c. for each defense contractor position on a separate sheet of paper referencing this item number.

CERTIFICATION

All filers must certify this report by signing and dating.

Item 24. You must sign and date this report.

REVIEW

Item 25. Reviewing official must sign and date after reviewing the report in accordance with DoD Directive 5500.7, enclosure B

APPENDIX D

18 U.S.C. 208 WAIVERS

SECTION 1. DEPARTMENT OF DEFENSE 18 U.S.C. 208(b) WAIVER

D-100. 32 C.F.R. 40.1

. . . . 18 U.S.C. 208(b) permits agencies to grant an exemption in writing from 18 U.S.C. 208(a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the Federal Register. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

SECTION 2. DEPARTMENT OF THE ARMY 18 U.S.C. 208(b) WAIVER

D-200. AR 600-50

. . . . A conflict does not exist when [Department of the Army] DA personnel hold shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C. 208b(2), such holdings are exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

SECTION 3. DEPARTMENT OF THE NAVY 18 U.S.C. 208(b) WAIVER

D-300. SECNAVINST 5370.2I

. . . . Under 18 U.S.C. 208(b)(2) (1982), [Department of the Navy] DON personnel need not be disqualified from participating in matters in which they have the following financial interests:

- (a) Shares of widely held and diversified mutual, money market, trust, or similar funds

offered for sale by a financial institution or by a regulated investment company;

(b) Deposits in and loans from banks or other financial institutions, provided they are at customary and generally available terms and conditions; and

(c) Federal, State, municipal, or local government bonds, regardless of the value of such interests.

DON personnel who are members or officers of non-governmental associations or organizations must avoid activities on behalf of such groups that are incompatible with their official Government positions. Under certain circumstances, holding a position in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. Holding, however, a position in a private, non-profit association or other organization that fosters and promotes the general interests of the naval service and which depends, in part, upon the voluntary efforts of DON personnel acting in their private capacities for leadership, is unlikely to affect the integrity of the services of such personnel. Under 18 U.S.C. 208(b)(2) (1982), such individuals are not disqualified from rendering advice or making recommendations within their chains of command on particular matters affecting such organizations if:

(a) They disclose their interest or affiliation to their supervisor prior to rendering advice or making recommendations;

(b) The final decision is made by higher authority; and

(c) The individual's commander does not determine that disqualification is otherwise required by the best interests of DON or of the United States.

SECTION 4. DEPARTMENT OF THE AIR FORCE 18 U.S.C. 208(b) WAIVER**D-400. AFR 30-30**

. . . . Non-Disqualifying Financial Interest. Air Force personnel need not disqualify themselves if the financial holdings are in shares of a widely held diversified mutual fund or regulated investment company. The indirect interests in business entities of these financial holdings come from ownership by the fund or investment company of stocks in business entities. They are hereby exempted from the requirements of 18 U.S.C. 208(a), according to 18 U.S.C. 208(b)(2), as too remote or inconsequential to affect the integrity of the government officers' or employees' services.

ERRATA

DEPARTMENT OF DEFENSE PUBLICATION SYSTEM

CHANGE TRANSMITTAL

OFFICE OF THE SECRETARY OF DEFENSE
General Counsel of the Department of Defense

DoD 5500.7-R
CHANGE 2
March 25, 1996

JOINT ETHICS REGULATION (JER)

The General Counsel of the Department of Defense, has authorized the following page changes to DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 1993:


PAGE CHANGES

Remove: Pages iii through xvi, 1 through 18, 21 & 22, 25 through 30, 33 through 48, 57 through 60, 67 & 68, 73 & 74, 81 & 82, 91 through 96, 101 through 110, 117 through 138, 143 & 144, 161 through 164, 181 & 182, and 182-1 through 182-4.

Insert: Attached replacement pages and new pages 58-1 & 58-2.

EFFECTIVE DATE

The above changes are effective immediately.


B. C. WHITEHEAD
Director
Correspondence and Directives

Attachments
112 Pages

A275132

CHAPTER 1

GENERAL INFORMATION

SECTION 1.	PURPOSE	1
1-100.	Single Source of Guidance	1
1-101.	Disclaimer	1
SECTION 2.	DEFINITIONS	1
1-200.	Administrative Officer	1
1-201.	Agency	1
1-202.	Agency Designee	1
1-203.	Alternate Designated Agency Ethics Official	1
1-204.	Competing Defense Contractor	2
1-205.	Conduct of a Procurement	2
1-206.	DAEO or Designee	2
1-207.	Defense Contractor	2
1-208.	Deputy Designated Agency Ethics Official (Deputy DAEO)	2
1-209.	Designated Agency Ethics Official	2
1-210.	DoD Component	2
1-211.	DoD Employee	2
1-212.	DoD Supplement	3
1-213.	Employment	3
1-214.	Ethics Counselor	3
1-215.	Ethics Oversight Committee (EOC)	4
1-216.	Former DoD Employee	4
1-217.	Gratuity	4
1-218.	He, His, Him, Himself	4
1-219.	Head of DoD Component Command or Organization	4
1-220.	Major Defense Contractor	4
1-221.	Non-Federal Entity	4
1-222.	Non-Public Information	4
1-223.	Office of Government Ethics	5
1-224.	Personal and Substantial	5
1-225.	Personal Commercial Solicitation	5
1-226.	Procurement Official	5
1-227.	Prohibited Source	5
1-228.	Qualified Individual	5
1-229.	Reserve Military Officer	5

1-230.	Retired Military Officer	5
1-231.	Senior DoD Official	5
1-232.	Special Government Employee	6
1-233.	Travel Benefits	6
SECTION 3.	GENERAL POLICY	6
1-300.	DoD Policy	6
SECTION 4.	GENERAL RESPONSIBILITIES	8
1-400.	Head of each DoD Component	8
1-401.	DoD Component Designated Agency Ethics Official	8
1-402.	DoD Component Alternate Designated Agency Ethics Official	10
1-403.	DoD Component Deputy Designated Agency Ethics Official	10
1-404.	Head of each DoD Component command or organization	10
1-405.	General Counsel of each DoD Component	11
1-406.	Judge Advocate General of each Military Department	11
1-407.	General Counsel, DoD	11
1-408.	Agency Designee	11
1-409.	DoD Standards of Conduct Office	12
1-410.	DoD Ethics Oversight Committee	13
1-411.	Director, Washington Headquarters Services	13
1-412.	Ethics Counselors	13
1-413.	Inspector General of each DoD Component	14
1-414.	Director of each DoD Component Personnel Office	14
1-415.	Administrative Officer	15
1-416.	DoD Employee	15
SECTION 5.	REFERENCES	16
1-500.	References	16

CHAPTER 2

STANDARDS OF ETHICAL CONDUCT

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	19
2-100.	5 C.F.R. Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch"	19
SECTION 2.	DoD SUPPLEMENT TO 5 C.F.R. PART 2635	21
2-200.	Purpose	21
2-201.	Designation of Separate Agency Components	21

2-202. Additional Exceptions for Gifts from Outside Sources 22
 2-203. Additional Limitations on Gifts Between DoD Employees 23
 2-204. Standard for Accomplishing Disqualification 24
 2-205. Limitation on Solicited Sales 24
 2-206. Prior Approval for Outside Employment and Business Activities 25
 2-207. Disclaimer for Speeches and Writings Devoted to Agency Matters .. 25

SECTION 3. DoD GUIDANCE 26
 2-300. Gifts 26
 * 2-301. Use of Federal Government Resources 27 *
 * 2-302. Gambling 29 *
 2-303. Outside Employment and Activity. 29
 * 2-304. Use of Military Title by Retirees or Reserves 30 *
 * SECTION 4. REFERENCES 30 *
 * 2-400. References 30 *

CHAPTER 3

ACTIVITIES WITH NON-FEDERAL ENTITIES

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION 31
 3-100. 5 C.F.R. 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria" 31

SECTION 2. OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES 33
 3-200. Attendance 33
 3-201. Membership 33
 3-202. Management. 33
 * 3-203. Impartiality of Agency Designee and Travel-Approving Authority ... 34 *
 3-204. Impartiality of DoD Employees 34
 3-205. Remuneration 34
 3-206. Co-Sponsorship 34
 3-207. Participation in Conferences and Similar Events 35
 3-208. Distributing Information. 35
 3-209. Endorsement. 36
 3-210. Fundraising and Membership Drives. 36
 3-211. Logistical Support of Non-Federal Entity Events. 37

3-212.	Relationships Governed by Other Authorities	38
SECTION 3.	PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES ...	39
3-300.	Participation	39
3-301.	Membership and Management	40
3-302.	Impartiality of DoD Employees	40
3-303.	Interference with Employment of Local Civilians.	40
3-304.	Competition with Civilian Musicians	40
3-305.	Use of Federal Government Resources	41
3-306.	Prior Approval of Outside Employment and Business Activities	41
3-307.	Teaching, Speaking and Writing	42
SECTION 4.	REFERENCES	43
3-400.	References	43

CHAPTER 4

TRAVEL BENEFITS

SECTION 1.	ACCEPTANCE OF OFFICIAL TRAVEL BENEFITS IN KIND OR PAYMENT FOR OFFICIAL TRAVEL EXPENSES	45
4-100.	Acceptance from Non-Federal Sources	45
4-101.	Acceptance of Travel and Related Expenses by a DoD Component From Non-Federal Sources	46
4-102.	Acceptance of Contributions, Awards and Other Payments by DoD Employees from Tax-Exempt Organizations (5 U.S.C. 4111)	47
4-103.	Receipt and Disposition of Foreign Gifts and Decorations (5 U.S.C. 7342)	48
SECTION 2.	DoD GUIDANCE	48
4-200.	Acceptance of Incidental Benefits	48
4-201.	Examples of Benefits Considered Federal Government Property	49
4-202.	Examples of Benefits Treated as Gifts to an Individual	50
SECTION 3.	PROCEDURES AND RESPONSIBILITIES	51
4-300.	The travel-approving authority	51
4-301.	Each DoD Component DAEO or Designee	52
4-302.	Each traveling DoD employee	52
SECTION 4.	REFERENCES	52
4-400.	References	52

CHAPTER 5

CONFLICTS OF INTEREST

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION 55
5-100. 5 C.F.R. 2639, "Interpretation of 18 U.S.C. 209" 55

SECTION 2. OFFICE OF GOVERNMENT ETHICS REGULATION 57
5-200. 5 C.F.R. 2640, "Interpretation of 18 U.S.C. 208" 57

SECTION 3. GUIDANCE ON 18 U.S.C. 208 59
5-300. Conflicts and Appearance of Conflicts Under 18 U.S.C. 208 59
5-301. Applicability to Enlistees 59
5-302. Waiver of 18 U.S.C. 208(a) 59
5-303. Resolution of Conflicts 61

SECTION 4. OTHER CONFLICT OF INTEREST LAWS 61
5-400. Bribery and Graft 61
5-401. Compensation Related to Matters Pending Government Decision. ... 62
5-402. Contracts with DoD Employees 63
5-403. Representation of Others 63
5-404. Compensation From Other Sources 64
5-405. Additional Pay or Allowances 65
5-406. Interference with Military Duties 65
5-407. Civil Office Prohibition 65
* 5-408. Assignment of Reserves for Training 66 *
5-409. Commercial Dealings Involving DoD Employees 66
5-410. Related Rules 67

* SECTION 5. REFERENCES 67 *
* 5-500. References 67 *

CHAPTER 6

POLITICAL ACTIVITIES

* SECTION 1. OFFICE OF PERSONNEL MANAGEMENT REGULATION. 69
6-100. 5 C.F.R. 734, "Political Activities of Federal Employees" 69

SECTION 2. POLITICAL ACTIVITIES OF CIVILIAN DoD EMPLOYEES 71
6-200. Policy 71
6-201. Permissible Activities 71
6-202. Limitations 72
6-203. Prohibited Activities 72
6-204. DoD Employees Residing in Designated Localities 73
6-205. Political Recommendations. 74

SECTION 3. POLITICAL ACTIVITIES OF MILITARY MEMBERS 75
6-300. DoD Directive 1344.10, "Political Activities by Members of
the Armed Forces on Active Duty," June 15, 1990 75

SECTION 4. REFERENCES 77
6-400. References 77

CHAPTER 7

FINANCIAL AND EMPLOYMENT DISCLOSURE

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION 79
7-100. 5 C.F.R. 2634, "Financial Disclosures, Qualified Trusts, and
Certificates of Divestiture for Executive Branch Employees" 79

SECTION 2. PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278) 81
7-200. Individuals Required to File. 81
7-201. Information on Covered Positions 82
7-202. Notification of Requirement to File 82
7-203. Time of Filing 82
7-204. Content of Report 84
7-205. Chain of Submission 85
7-206. Review 86
7-207. Disposition 91
7-208. Public Availability of Reports 91
7-209. Penalties 91

SECTION 3.	CONFIDENTIAL FINANCIAL DISCLOSURE REPORT	
	(SF 450)	92
7-300.	Individuals Required to File	92
7-301.	Information on Covered Positions	94
7-302.	Notification of Requirement to File	95
7-303.	Time of Filing	95
7-304.	Content of Report	96
7-305.	Chain of Submission	96
7-306.	Review	96
7-307.	Disposition	100
7-308.	Privacy Act	100
7-309.	Status Reports	101
7-310.	Penalties	101
SECTION 4.	REFERENCES	102
7-400.	References	102

CHAPTER 8

SEEKING OTHER EMPLOYMENT

SECTION 1.	GENERAL RULES	103
8-100.	Office of Government Ethics Regulation	103
SECTION 2.	CONFLICT OF INTEREST - (18 U.S.C. 208)	103
8-200.	Negotiating for Employment	103
8-201.	Penalties	104
SECTION 3.	PROCUREMENT INTEGRITY - (41 U.S.C. 423(b))	104
8-300.	Soliciting, Accepting, or Discussing Employment	104
8-301.	Penalties	107
SECTION 4.	DoD GUIDANCE	107
8-400.	Appearances	107
8-401.	Written Guidance	108
SECTION 5.	REFERENCES	108
8-500.	References	108

CHAPTER 9

POST-GOVERNMENT SERVICE EMPLOYMENT

SECTION 1.	OFFICE OF GOVERNMENT ETHICS REGULATION	111	
9-100.	5 C.F.R. 2637, "Regulations Concerning Post-Employment Conflict of Interest"	111	
SECTION 2.	OFFICE OF GOVERNMENT ETHICS REGULATION	113	
9-200.	5 C.F.R. 2641, "Post-Employment Conflict of Interest Restrictions"	113	
SECTION 3.	OGE GUIDANCE ON 18 U.S.C. 207	115	
9-300.	Office of Government Ethics Memorandum, "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992	115	
SECTION 4.	DoD GUIDANCE ON 18 U.S.C. 207 (reference (c))	117	
9-400.	Exceptions to Restrictions of 18 U.S.C. 207	117	
* SECTION 5.	POST-EMPLOYMENT COUNSELING AND ADVICE	118	*
* 9-500.	Written Advice	118	*
* 9-501.	Delegation of Authority	119	*
SECTION 6.	RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES	118	
* 9-600.	41 U.S.C. 423	119	*
* SECTION 7.	RESTRICTIONS ON RETIRED MILITARY MEMBERS	121	*
* 9-700.	Restrictions on Federal Government Employment	121	*
* 9-701.	Foreign Employment Restrictions	126	*
SECTION 8.	RESTRICTIONS ON FORMER SENIOR APPOINTEES	127	
9-800.	Executive Order 12834	127	
SECTION 9.	RESTRICTIONS ON DEALING WITH CURRENT OR FORMER DoD EMPLOYEES	128	
* 9-900.	General Rule	128	*

	9-901. Terminal Leave	127	*
*	SECTION 10. REFERENCES	128	*
*	9-1000. References	129	*

CHAPTER 10

ENFORCEMENT

	SECTION 1. ENFORCEMENT OF THE PROVISIONS OF THE JOINT ETHICS REGULATION	131	*
*	10-100. Penalties	131	*
*	SECTION 2. REPORTING PROCEDURES	131	*
*	10-200. Reporting Suspected Violations	131	*
*	10-201. Receipt of Report	132	*
	10-202. Violations of 41 U.S.C. 423	136	
*	SECTION 3. REFERENCES	136	*
	10-300. References	137	*

CHAPTER 11

TRAINING

	SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION	139	
	11-100. 5 C.F.R. Part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities"	139	
	SECTION 2. DoD GUIDANCE	141	
	11-200. Initial and Annual Ethics Training	141	
	11-201. Procurement Integrity Training	141	
	SECTION 3. PROCEDURES	142	
	11-300. Combined Initial and Annual Ethics Training (CIAET) for Calendar Year 1993	142	
*	11-301. Initial Ethics Training (IET) for New DoD Employees	143	*
	11-302. Annual Ethics Training (AET)	144	
	11-303. Annual Ethics Training Plans	144	

11-304.	Ethics Training Assistance	145
SECTION 4.	RESPONSIBILITIES	145
11-400.	The Head of Each DoD Component	145
11-401.	Each DoD Component DAEO	146
11-402.	The head of each DoD Component command or organization	146
11-403.	The DoD SOCO	146
11-404.	The Director of each DoD Component Personnel Office	146
11-405.	The Administrative Officer (or equivalent) of each DoD Component command and organization	147
11-406.	The DoD Employees	147
SECTION 5.	REFERENCES	147
11-500.	References	147

CHAPTER 12

ETHICAL CONDUCT

SECTION 1.	EXECUTIVE ORDER 12674	149
12-100.	E.O. 12674	149
SECTION 2.	EXECUTIVE ORDER 12834	151
12-200.	E.O. 12834	151
SECTION 3.	CODE OF ETHICS FOR GOVERNMENT SERVICE	153
12-300.	Display of Code	153
SECTION 4.	DoD HUMAN GOALS	154
12-400.	DoD Human Goals	154
SECTION 5.	ETHICAL VALUES	155
12-500.	General	155
12-501.	Primary Ethical Values	155
SECTION 6.	ETHICAL DECISION-MAKING	157
12-600.	General	157
12-601.	Ethical Decision-Making Plan	157

SECTION 7. **REFERENCES** 158
 12-700. **References** 158

APPENDIX A

DIGEST OF LAWS

SECTION 1. **DoD-SPECIFIC STATUTES** 161
 A-100. **Synopsis of Laws** 161
 A-101. **10 U.S.C. 2397a, "Requirements Relating to Private
 Employment Contacts Between Certain DoD Procurement
 Officials and Defense Contractors"** 161
 A-102. **10 U.S.C. 2397, "Employees or Former Employees of Defense
 Contractors: Reports."** 161
 A-103. **10 U.S.C. 2397b, "Certain Former DoD Procurement Officials:
 Limitations on Employment by Contractors"** 162
 A-104. **18 U.S.C. 281, "Restriction on Retired Military Officers Regarding
 Certain Matters Affecting the Government"** 162
 A-105. **37 U.S.C. 801, "Restriction on Payment to Certain Officers** 162 *

SECTION 2. **OTHER LAWS RELATED TO STANDARDS OF ETHICAL
 CONDUCT** 163
 A-200. **OGE Digest** 163
 A-201. **Related Statutes** 163

APPENDIX B

PROCUREMENT INTEGRITY

SECTION 1. **PROCUREMENT INTEGRITY** 165
 B-100. **FAR 3.104, "Procurement Integrity"** 165

APPENDIX C

FORMS

SECTION 1. **PUBLIC FINANCIAL DISCLOSURE REPORT** 167
 C-100. **Standard Form 278** 167

SECTION 2.	CONFIDENTIAL FINANCIAL DISCLOSURE REPORT	169
C-200.	Standard Form 450	169
SECTION 3.	REQUEST TO INSPECT OR RECEIVE COPIES OF SF 278, FINANCIAL DISCLOSURE REPORT	171
C-300.	Office of Government Ethics Form 201	171
SECTION 4.	NOTIFICATION OF CONFLICT OF INTEREST REFERRAL ...	173
C-400.	Office of Government Ethics Form 202	173
SECTION 5.	SENIOR APPOINTEE PLEDGE	175
C-500.	Office of Government Ethics Form 203	175
SECTION 6.	TRADE NEGOTIATOR PLEDGE	177
C-600.	Office of Government Ethics Form 204	177
SECTION 7.	PROCUREMENT INTEGRITY TRAINING CERTIFICATE FOR PROCUREMENT OFFICIALS	179
C-700.	Optional Form 333	179
* SECTION 8.	RESERVED	181
* C-800.	Reserved	181

APPENDIX D

18 U.S.C. 208 WAIVERS

SECTION 1.	DEPARTMENT OF DEFENSE 18 U.S.C. 208(b) WAIVER	183
D-100.	32 C.F.R. 40.1	183
SECTION 2.	DEPARTMENT OF THE ARMY 18 U.S.C. 208(b) WAIVER'	183
D-200.	AR 600-50	183
SECTION 3.	DEPARTMENT OF THE NAVY 18 U.S.C. 208(b) WAIVER	183
D-300.	SECNAVINST 5370.2J	183
SECTION 4.	DEPARTMENT OF THE AIR FORCE 18 U.S.C. 208(b) WAIVER	185
D-400.	AFR 30-30	185

CHAPTER 1

GENERAL INFORMATION

SECTION 1. PURPOSE

1-100. **Single Source of Guidance.** This Regulation provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training.

1-101. **Disclaimer.** A violation of this Regulation does not create any right or benefit, substantive or procedural, enforceable at law by any person against the U.S., its agencies, its officers or employees, or any other person.

SECTION 2. DEFINITIONS

1-200. **Administrative Officer.** The individual responsible for the administrative control of personnel within a unit or office, including assistance with training, travel, or personnel actions for individuals of the unit or office.

1-201. **Agency.** A DoD Component as follows: Department of the Army; Department of the Navy; Department of the Air Force; Defense Commissary Agency; Defense Contract Audit Agency; Defense Finance and Accounting Service; Defense Intelligence Agency; Defense Investigative Service; Defense Logistics Agency; Defense Mapping Agency; Defense Nuclear Agency; Defense Information Systems Agency; National Security Agency; Office of the Inspector General of the Department of Defense (IG, DoD); and the Uniformed Services University of the Health Sciences. Employees of DoD Components not designated as separate Agencies, including employees of the Office of the Secretary of Defense (OSD), shall be treated as employees of DoD which shall be treated as a separate Agency.

1-202. **Agency Designee.** The first supervisor who is a commissioned military officer or a civilian above GS/GM-11 in the chain of command or supervision of the DoD employee concerned. Except in remote locations, the Agency Designee may act only after consultation with his local Ethics Counselor. For any military officer in grade O-7 or above who is in command and any civilian Presidential appointee confirmed by the Senate, the Agency Designee is his Ethics Counselor.

1-203. **Alternate Designated Agency Ethics Official (Alternate DAEO).** An employee of a DoD Agency who has been appointed by the DoD Component Head to serve

in the absence of the DoD Component Designated Agency Ethics Official (DAEO).

1-204. Competing Defense Contractor. See Federal Acquisition Regulation (FAR) 3.104-4(b) (reference (a)) in Appendix B of this Regulation or 41 U.S.C. 423(p)(2) (reference (b)).

1-205. Conduct of a Procurement. See FAR 3.104-4(c) (reference (a)) in Appendix B of this Regulation or 41 U.S.C. 423(p)(1) (reference (b)).

1-206. DAEO or Designee. This phrase refers to the Designated Agency Ethics Official, or to the Alternate Designated Agency Ethics Official, Deputy Designated Agency Ethics Official, or Ethics Counselor who has been delegated specific written authority by the DoD Component DAEO to perform specific functions on behalf of the DoD Component DAEO.

* 1-207. Defense Contractor. Any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with DoD or a DoD Component to furnish services, supplies, or both, including construction. Subcontractors are excluded unless they are separate legal non-Federal entities that contract directly with DoD or a DoD Component in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to DoD or a DoD Component are defense contractors when acting in that context. *

1-208. Deputy Designated Agency Ethics Official (Deputy DAEO). An employee of a DoD Agency who has been appointed, in writing, by the DoD Component DAEO and who has been delegated written authority by that DoD Component DAEO to act on his behalf.

* 1-209. Designated Agency Ethics Official (DAEO). A DoD employee appointed, in writing, by the Head of the DoD Agency to administer the provisions of Pub. L. 95-521 (reference (c)) and this Regulation. *

1-210. DoD Component. OSD; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; IG, DoD; the Uniformed Services University of the Health Sciences; the Defense Agencies; the DoD Field Activities; the Combined Commands and Agencies; and the Special Activities, including non-appropriated fund instrumentalities. See subsection 1-201 of this Regulation, above, for those DoD Components that are Agencies.

1-211. DoD Employee

a. Any DoD civilian officer or employee (including special

Government employees) of any DoD Component (including any non-appropriated fund activity).

b. Any active duty Regular or Reserve military officer, including warrant officers.

c. Any active duty enlisted member of the Army, Navy, Air Force, or Marine Corps.

d. Any Reserve or National Guard member on active duty under orders issued pursuant to title 10, United States Code.

e. Any Reserve or National Guard member while performing official duties or functions under the authority of either title 10 or title 32, United States Code, or while engaged in any activity related to the performance of such duties or functions, including any time the member uses his Reserve or National Guard of the United States title or position, or any authority derived therefrom.

f. Any faculty member in a civil service position or hired pursuant to title 10, United States Code, and any student (including a cadet or midshipman) of an academy, college, university, or school of DoD.

g. Consistent with labor agreements and international treaties and agreements, and host country laws, any foreign national working for a DoD Component except those hired pursuant to a defense contract.

* 1-212. DoD Supplement. Subsections 2-200 through 2-207 of this Regulation contain the DoD Supplement of 5 C.F.R. 2635 (reference (d)), which is reproduced in subsection 2-100 of this Regulation. *

* 1-213. Employment. See 5 C.F.R. 2635.603(a) (reference (d)) in subsection 2-100 of this Regulation. *

1-214. Ethics Counselor. The DoD Component DAEO, Alternate DAEO, Deputy DAEO, or a DoD employee appointed in writing by the DoD Component DAEO or designee to generally assist in implementing and administering the DoD Component command's or organization's ethics program and to provide ethics advice to DoD employees of the DoD Component command or organization in accordance with this Regulation. Except for a DoD Component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall only serve as a "DAEO or designee" when he has been delegated

specific written authority by the DoD Component DAEO to perform specific functions on behalf of the DoD Component DAEO. Except for a DoD Component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall be an attorney. 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. The term "Ethics Counselor" includes "agency ethics official" as used by the Office of Government Ethics (OGE). See 5 C.F.R. 2635.102.(c) (reference (d)) in subsection 2-100 of this Regulation.

1-215. Ethics Oversight Committee (EOC). A working group composed of the DoD Component DAEOs, or their representatives, and representatives of the CJCS, and the Judge Advocates General of the Military Departments.

1-216. Former DoD Employee. Any individual defined in subsection 1-211 of this Regulation, above, after termination of active duty or termination of on DoD service, including Reserve military officers who served on active duty for more than 130 days and who are no longer on active duty, or who are in an inactive or retired status.

1-217. Gratuity. Gifts as defined in 5 C.F.R. 2635.203(b) (reference (d)) in subsection 2-100 of this Regulation.

1-218. He, His, Him, Himself. These pronouns include she, hers, her and herself.

1-219. Head of DoD Component Command or Organization. A commander, commanding officer, or other military or civilian DoD employee who exercises command authority within a DoD Component.

1-220. Major Defense Contractor. Any non-Federal entity which, during the preceding fiscal year, received defense contracts in a total amount equal to or greater than \$10 million.

1-221. Non-Federal Entity. A non-Federal entity is generally a self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government. A non-Federal entity may operate on DoD installations if approved by the installation commander or higher authority under applicable regulations.

1-222. Non-Public Information. Information generally not available to the public, obtained in the course of one's official DoD duties or position, which would normally

not be releasable under the Freedom of Information Act, 5 U.S.C. 552 (reference (e)). The term "non-public information" includes "inside information," "proprietary information," and "source selection information." See 5 C.F.R. 2635.703 (reference (d)) in subsection 2-100 of this Regulation, DoD Directive 5400.7 (reference (f)), and FAR 3.104-4(j) and (k) and 3.104-5 (reference (a)) in Appendix B of this Regulation.

1-223. Office of Government Ethics. The Federal Government agency responsible for overall direction and leadership concerning Executive Branch policies related to ethics in the Federal Government. See 5 C.F.R. 2638 (reference (g)) in subsection 11-100 of this Regulation.

1-224. Personal and Substantial. See 5 C.F.R. 2635.402(b)(4) (reference (d)) in subsection 2-100 of this Regulation.

1-225. Personal Commercial Solicitation. Any effort to contact an individual to conduct or transact matters involving unofficial business, finance, or commerce. This does not include off-duty employment of DoD employees employed in retail establishments. See DoD Directive 1344.7 (reference (h)).

1-226. Procurement Official. See FAR 3.104-4(h) (reference (a)) in Appendix B of this Regulation.

1-227. Prohibited Source. See 5 C.F.R. 2635.203(d) (reference (d)) in subsection 2-100 of this Regulation.

1-228. Qualified Individual. See 5 C.F.R. 2638.702(a)(2) (reference (g)) in subsection 11-100 of this Regulation.

1-229. Reserve Military Officer. An individual who currently holds an appointment in the Reserve of a Military Department, or is a military officer of the National Guard with Federal Government recognition.

1-230. Retired Military Officer. Any military officer entitled to receive military retired pay, even though such pay may be waived or pending.

1-231. Senior DoD Official. For purposes of 18 U.S.C. 207 (reference (i)), a DoD employee:

(i) [E]mployed at a rate of pay specified in or fixed according to subchapter 11 of chapter 53 of [United States Code,] title 5

* [(reference (e))]; *

* (ii) [E]mployed in a position which is not referred to in clause a. and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5305 of [United States Code,] title 5 [(reference (e))] (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule; *

* (iii) [A]ppointed by the President to a position under section 105(a)(2)(B) of [United States Code,] title 3 [(reference (j))] or by the Vice President to a position under section 106(a)(1)(B) of [United States Code,] title 3 [(reference (j))]; or *

* (iv) [E]mployed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of [United States Code,] title 37 [(reference (k))]) is pay grade 0-7 or above. *

* See 18 U.S.C. 207(c)(2) (reference (i)). *

* 1-232. Special Government Employee. An individual who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve military officer who is serving on active duty involuntarily or for training for any length of time, and one who is serving voluntarily on active duty for training for 130 days or less. It does not include enlisted members; however, for the purposes of this Regulation, enlisted members shall be considered special Government employees to the same extent that military officers are included in the meaning of the term. *

* 1-233. Travel Benefits. Travel related gifts, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources. *

SECTION 3. GENERAL POLICY

1-300. DoD Policy. It is DoD policy that:

a. A single, uniform source of standards of ethical conduct and ethics guidance shall be maintained within DoD, and each DoD Agency shall implement and administer a comprehensive ethics program to ensure compliance with such standards and

guidance;

b. Although OGE regulations, reprinted in this Regulation, do not apply to enlisted members of DoD, the provisions of 5 C.F.R. 2634 (reference (l)) in subsection 7-100 of this Regulation, 5 C.F.R. 2635 (reference (d)) in subsection 2-100 of this Regulation, 5 C.F.R. 2638 (reference (g)) in subsection 11-100 of this Regulation, 5 C.F.R. 2639 (reference (m)) in subsection 5-100 of this Regulation, 5 C.F.R. 2640 (reference (n)) in subsection 5-200 of this Regulation, 5 C.F.R. 2641 (reference (o)) in subsection 9-200 of this Regulation, are determined to be appropriate for enlisted members and are hereby made applicable to enlisted members as if the terms "employee," and "special Government employee," as used in those OGE regulations, include enlisted members to the same extent that military officers are included within the meaning of those terms. The following exception applies:

(1) Certain criminal statutes, 18 U.S.C. 203, 205, 207, 208, and 209, (reference (i)), and related provisions of OGE regulations, do not apply to enlisted members. Provisions similar to those of 18 U.S.C. 208 and 209 (reference (i)) apply to enlisted members as follows:

(a) Except as approved by the DoD Component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner, or employee, or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest;

(b) An enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government.

c. DoD employees shall become familiar with all ethics provisions, including the standards set out in E.O. 12674 (reference (p)) in subsection 12-100 of this Regulation, and comply with them;

d. DoD employees shall become familiar with the scope of and authority for the official activities for which they are responsible. Sound judgment must be exercised. All DoD employees must be prepared to account fully for the manner in which that judgment has been exercised;

e. If the propriety of a proposed action or decision is in question for any reason, DoD employees shall seek guidance from a DoD Component legal counsel, the DoD Component DAEO or designee, or Ethics Counselor, as appropriate;

f. Individual conduct, official programs and daily activities within DoD shall be accomplished lawfully and ethically;

g. DoD employees shall adhere strictly to DoD policy of equal opportunity, regardless of race, color, religion, gender, age, national origin, or handicap, in accordance with applicable laws and regulations.

SECTION 4. GENERAL RESPONSIBILITIES

1-400. The Head of each DoD Component shall:

a. Exercise personal leadership and take personal responsibility through the DoD Component DAEO or designee for establishing and maintaining the DoD Component's ethics program and be personally accountable for the DoD Component's compliance with every requirement of this Regulation, including the ethics and procurement integrity training requirements;

b. When authorized, appoint a DoD Component DAEO, through a formal written delegation of authority, who is qualified to oversee and supervise the DoD Component's ethics programs for DoD employees, both civilian and military. (The GC, DoD, may serve as the DAEO for several DoD Components);

c. When authorized, appoint a DoD Component Alternate DAEO who shall serve in the absence of the DoD Component DAEO;

d. Provide sufficient resources (including funding and investigative, audit, legal, training and administrative staff) to enable the DoD Component DAEO or designee to implement and administer the DoD Component's ethics programs in a positive and effective manner.

1-401. Each DoD Component Designated Agency Ethics Official (DAEO) shall:

a. Be responsible for the implementation and administration of all aspects of the DoD Component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this Regulation.

b. Appoint DoD Component Deputy DAEOs and Ethics

Counselors and delegate to them written authority to act on behalf of the DoD Component DAEO;

c. Ensure that ethics advice (and facts relied upon for such advice) is in writing, when practicable;

d. Ensure that written opinions regarding the applicability of 41 U.S.C. 423 (reference (b)) are provided within 30 days of request by any DoD employee provided that the request is accompanied by complete and full information necessary to render an opinion;

e. Ensure the proper collection, review, and handling of the DoD Component's financial and employment disclosure reports, including those submitted by Presidential appointees for confirmation purposes;

f. Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

g. Provide periodic ethics and procurement integrity training for Ethics Counselors;

h. Certify Qualified Individuals to conduct ethics training;

i. Assist Agency Designees, through the chain of command or supervision, in initiating prompt, effective action to evaluate and process violations, potential violations, and appearances of violations of ethics laws or regulations, in accordance with applicable procedures as discussed in Chapter 10 of this Regulation;

j. Provide advice and assistance to DoD employees of the DoD Component not otherwise served by a local Ethics Counselor;

k. Oversee and coordinate local ethics programs through a system for periodic evaluation and ensure that the DoD Component provides and maintains sufficient funding, staff, space and resources to administer the DoD Component's ethics programs;

l. Maintain liaison with the DoD EOC, OGE, and the DoD Standards of Conduct Office (SOCO), and provide to SOCO and OGE all information required by law or regulation;

m. Represent the DoD Component to OGE, Congress, the Executive Branch and the public on matters relating to ethics and standards of conduct.

1-402. Each DoD Component Alternate Designated Agency Ethics Official (Alternate DAEO) shall serve in the absence of the DoD Component DAEO and, when so serving, is authorized to take any action this Regulation indicates may be taken only by the DoD Component DAEO.

1-403. Each DoD Component Deputy Designated Agency Ethics Official (Deputy DAEO) shall serve on behalf of the DoD Component DAEO consistent with written delegation of authority from the DoD Component DAEO.

1-404. The head of each DoD Component command or organization shall:

a. Exercise personal leadership and take personal responsibility for establishing and maintaining the command's or organization's ethics program in coordination with the command's or organization's Ethics Counselors;

b. Be personally accountable for the command's or organization's ethics program, including its ethics and procurement integrity training program, and the command's or organization's compliance with every requirement of this Regulation;

c. Provide sufficient resources to enable the command's or organization's Ethics Counselors to implement and administer the local aspects of the command's or organization's ethics program in a positive and effective manner;

d. Ensure the prompt resolution of any actual or apparent conflict of interest involving a DoD employee of the command or organization;

e. Direct Administrative Officers (or equivalent) of the command or organization to ensure that the position descriptions of the DoD Component command or organization indicate if financial disclosure report filing, annual ethics training or procurement integrity training is required and ensure the accuracy of personnel data provided by the Director of the DoD Component personnel office on DoD employees of the command or organization;

f. Direct Administrative Officers (or equivalent) of the command or organization to coordinate with the DoD Component DAEO or designee to develop lists of all DoD employees of the command or organization who are required to receive ethics and procurement integrity training, schedule such training, annotate such lists to indicate when required training was accomplished and retain annotated lists for three years;

* g. Ensure that DoD employees of the command or organization who are in positions requiring the filing of SF 450, "Confidential Financial Disclosure Reports," Appendix C of this Regulation, do so in a timely manner; *

h. Ensure that DoD employees of the command or organization attend required ethics and procurement integrity training.

1-405. The General Counsel of each DoD Component shall:

- a. Serve as the DAEO for the DoD Component unless otherwise delegated;
- b. Support all aspects of the ethics program of the DoD Component;
- c. Provide legal guidance and assistance to the DoD Component DAEO or designee.

1-406. The Judge Advocate General of each Military Department shall:

- a. Provide legal guidance and assistance to Ethics Counselors under his supervision;
- b. Support all aspects of the ethics program of the Military Department.

1-407. The General Counsel, DoD (GC, DoD) shall:

- a. Maintain the DoD SOCO and provide sufficient resources to enable SOCO to oversee and coordinate DoD Component ethics programs, to produce reports required by Congress and maintain report data, and to manage the DoD EOC;
- b. Represent DoD as a whole to OGE, Congress, the Executive Branch, and the public when called upon to do so on matters relating to ethics policy;
- c. Have the authority to incorporate changes to Government-wide regulations that are reprinted in this Regulation without formal coordination.

1-408. Each Agency Designee shall:

a. In accordance with subsection 3-306 of this Regulation, provide prior approval or disapproval of outside activities by DoD employees under his responsibility;

b. Receive and appropriately process reports of suspected violations of ethics statutes or regulations and possible conflicts of interest;

c. Receive and appropriately process reports of non-compliance with the filing requirements of Chapter 7 of this Regulation;

d. Perform all the other duties of an Agency Designee established in this Regulation and in 5 C.F.R. 2635 (reference (d)) in subsection 2-100 of this Regulation;

e. Annually determine those positions under his responsibility that require the filing of SF 450, Appendix C of this Regulation, and annual ethics and procurement integrity training.

1-409. The DoD Standards of Conduct Office (SOCO) shall:

a. Manage the DoD EOC and call periodic meetings to consider current issues in ethics and standards of conduct;

b. Coordinate DoD Component ethics programs, including providing uniform guidance and training material;

c. Collect and publish important written opinions from DoD Components, when practicable, to promote uniformity of ethics opinions throughout DoD;

d. Monitor and assist DoD Component DAEOs in ensuring effective corrective action is taken to remedy violations, potential violations and the appearance of violations of ethics laws or this Regulation;

e. Certify Qualified Individuals to conduct ethics training who may be used by DoD Components;

f. Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;

g. Distribute ethics and procurement integrity training material to all DoD Component DAEOs for use in all types of ethics and procurement integrity training;

h. In the interest of Federal Government efficiency and economy, establish and maintain a resource center of ethics and procurement integrity materials (including training materials) developed by DoD Components.

1-410. The DoD Ethics Oversight Committee (EOC) shall:

- a. Meet periodically, as necessary;
- b. Consider general ethics issues or current issues and make recommendations to promote uniformity of ethics opinions throughout DoD;
- c. Provide recommendations to DoD Component DAEOs on particular ethics matters in accordance with this Regulation;
- d. Provide recommendations for DoD input on proposed ethics legislation and regulations.

1-411. The Director, Washington Headquarters Services shall:

- a. Prepare an annual report listing all the defense contractors that have been awarded \$25,000 or more in defense contracts during the fiscal year;
- b. Distribute the annual report to the DoD Component DAEOs not later than December 31 following the end of the fiscal year.

* 1-412. Each Ethics Counselor shall: *

- a. Provide written and oral advice, counseling, and assistance to his DoD Component command or organization and to the DoD employees of his DoD Component command or organization, on all ethics matters, particularly areas covered by this Regulation and related statutes and regulations;
- b. Request assistance, through appropriate channels, from the DoD Component DAEO or designee on any matter that cannot be resolved locally;
- c. Maintain a current copy of this Regulation, and all changes, for review by any DoD employee;
- d. Maintain a thorough understanding of current DoD ethics policy through contact with the DoD Component DAEO, attendance at periodic ethics training

courses, and other appropriate methods;

e. Promptly provide a copy to the DoD Component DAEO of precedental written decisions to assist uniformity throughout the DoD Components;

f. Perform other duties as assigned by written delegation from the DoD Component DAEO;

g. Review financial disclosure reports in accordance with Chapter 7 of this Regulation.

* 1-413. The Inspector General of each DoD Component shall: *

a. Investigate ethics matters arising in the DoD Component, and refer any such matters that involve suspected criminal violations to the appropriate criminal investigative office of the DoD Component;

b. Report to the DoD Component DAEO or designee on investigations that result in referrals to the Department of Justice (DoJ) and on disciplinary actions that must be reported in response to the OGC annual ethics survey;

c. Ensure inspectors and agents are educated in ethics matters to ensure appropriate handling of ethics related cases and calls;

* 1-414. The Director of each DoD Component Personnel Office (or equivalent) shall: *

a. Provide the DoD Component DAEO or designee such personnel data on DoD employees, both civilian and military, as may be required by the DoD Component DAEO or designee;

b. Assign personnel action officers the responsibility of providing the required information at local levels;

c. In coordination with the DoD Component DAEO or designee, establish procedures to inform new DoD employees of their obligation to receive ethics and procurement integrity training as required;

d. In coordination with the DoD Component DAEO or designee, establish out-processing procedures and records to advise DoD employees of available counseling regarding post-employment and procurement integrity restrictions prior to departure from DoD;

e. In coordination with the DoD Component DAEO or designee, establish procedures to advise incoming and outgoing DoD employees of their financial and employment disclosure reporting obligations.

* 1-415. The Administrative Officer (or equivalent) of each DoD Component command and organization shall: *

* a. Ensure that each position description of the DoD Component command or organization indicates if an SF 278, "Public Financial Disclosure Report," or SF 450, Appendix C of this Regulation, and annual ethics and procurement integrity training are required so prospective or new DoD employees are on notice of such requirements prior to employment; *

b. Upon the request of the DAEO or designee, ensure the accuracy of personnel data provided by the Director of the DoD Component personnel office on DoD employees of the DoD Component command or organization;

c. In coordination with the DoD Component DAEO or designee, develop a list of all DoD employees within the DoD Component command or organization who are required to receive ethics and procurement integrity training;

d. In coordination with the DoD Component DAEO or designee, ensure that DoD employees of the DoD Component command or organization are scheduled to receive required ethics and procurement integrity training;

e. Annotate such list to indicate when required training was accomplished and retain annotated list for three years.

* 1-416. Each DoD Employee shall: *

* a. Abide by the ethical principles established by E.O. 12674 (reference (p)), in subsection 12-100 of this Regulation, ethics statutes, and the ethics regulations promulgated by OGE and the DoD thereunder; *

b. Set a personal example for fellow DoD employees in performing official duties within the highest ethical standards;

c. Report suspected violations of ethics regulations in accordance with subsection 10-200 of this Regulation;

- d. Perform all official duties so as to facilitate Federal Government efficiency and economy;
- e. Attend ethics and procurement integrity training as required;
- f. File financial and employment disclosure reports as required.

SECTION 5. REFERENCES

1-500. References

- (a) Federal Acquisition Regulation, Part 3.104, current edition
- (b) Title 41, United States Code, Section 423
- (c) Public Law 95-521, "Ethics in Government Act of 1978," October 26, 1978, as amended
- (d) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (e) Title 5, United States Code, Chapter 53, Subchapter 11, and Sections 552 and 5305
- (f) DoD Directive 5400.7, "DoD Freedom of Information Act Program," May 13, 1988
- (g) Title 5, Code of Federal Regulations, Part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities," current edition
- (h) DoD Directive 1344.7, "Personal Commercial Solicitation on DoD Installations," February 13, 1986
- (i) Title 18, United States Code, Sections 203, 205, 207, 208, and 209
- (j) Title 3, United States Code, Sections 105 and 106
- (k) Title 37, United States Code, Section 201
- (l) Title 5, Code of Federal Regulations, Part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition
- (m) Title 5, Code of Federal Regulations, Part 2639, "Interpretation of 18 U.S.C. 209," current edition
- (n) Title 5, Code of Federal Regulations, Part 2640, "Interpretation of 18 U.S.C. 208," current edition
- (o) Title 5, Code of Federal Regulations, Part 2641, "Post-Employment Conflict of Interest Restrictions," current edition
- (p) Executive Order 12674, "Principles of Ethical Conduct for

Government Officers and Employees," April 12, 1989, as amended

SECTION 2. DoD SUPPLEMENT TO 5 C.F.R. PART 2635 (reference (a))

2-200. Purpose. In accordance with 5 C.F.R. 2635.105 (reference (a)) in subsection 2-100 of this Regulation, the provisions in this Regulation apply to employees of the Department of Defense (DoD) and supplement the "Standards of Ethical Conduct for Employees of the Executive Branch" contained in 5 C.F.R. 2635 (reference (a)) in subsection 2-100 of this Regulation. DoD employees are required to comply with 5 C.F.R. 2635 (reference (a)) in subsection 2-100 of this Regulation, this Regulation, and implementing guidance and procedures.

2-201. Designation of Separate Agency Components

a. Pursuant to 5 C.F.R. 2635.203(a) (reference (a)) in subsection 2-100 of this Regulation, each of the following Components of DoD is designated as a separate Agency for purposes of the provisions in 5 C.F.R. 2635 Subpart B (reference (a)) in subsection 2-100 of this Regulation, governing gifts from outside sources and 5 C.F.R. 2635.807 (reference (a)) in subsection 2-100 of this Regulation, governing teaching, speaking and writing:

- (1) Department of the Army;
- (2) Department of the Navy;
- (3) Department of the Air Force;
- (4) Defense Commissary Agency;
- (5) Defense Contract Audit Agency;
- (6) Defense Finance and Accounting Service;
- (7) Defense Information Systems Agency;
- (8) Defense Intelligence Agency;
- (9) Defense Investigative Service;
- (10) Defense Logistics Agency;
- (11) Defense Mapping Agency;
- (12) Defense Nuclear Agency;

- (13) National Security Agency;
- (14) Office of the Inspector General;
- (15) Uniformed Services University of the Health Sciences;
- (16) Armed Services Board of Contract Appeals

b. **Employees of DoD Components not designated as separate Agencies, including employees of OSD, will be treated as employees of DoD which shall be treated as a single Agency that is separate from the above listed agencies for purposes of determining whether the donor of a gift is a prohibited source under 5 C.F.R. 2635.203(d) (reference (a)) in subsection 2-100 of this Regulation, and for identifying the DoD employee's Agency under 5 C.F.R. 2635.807 (reference (a)) in subsection 2-100 of this Regulation, governing teaching, speaking and writing.**

2-202. **Additional Exceptions for Gifts from Outside Sources.** In addition to the gifts which come within the exceptions set forth in 5 C.F.R. 2635.204 (reference (a)) in subsection 2-100 of this Regulation, and subject to all provisions of 5 C.F.R. 2635.201 through 2635.205 (reference (a)) in subsection 2-100 of this Regulation, a DoD employee may accept gifts from outside sources otherwise prohibited by 5 C.F.R. 2635.202(a) (reference (a)) in subsection 2-100 of this Regulation, as follows:

a. **Events Sponsored by States, Local Governments or Civic Organizations.** A DoD employee may accept a sponsor's unsolicited gift of free attendance for himself and an accompanying spouse at an event sponsored by a State or local government or by a civic organization exempt from taxation under 26 U.S.C. 501(c)(4) (reference (b)), when:

(1) The Agency Designee has determined that the community relations interests of the Agency will be served by the DoD employee's attendance;

(2) The cost of the DoD employee's and the spouse's attendance is provided by the sponsor in accordance with 5 C.F.R. 2635.204(g)(5) (reference (a)) in subsection 2-100 of this Regulation; and

(3) The gift of free attendance meets the definition in 5 C.F.R. 2635.204(g)(4) (reference (a)) in subsection 2-100 of this Regulation.

b. **Scholarships and Grants.** A DoD employee, or the dependent of a DoD employee, may accept an educational scholarship or grant from an entity that does not have interests that may be substantially affected by the performance or non-performance of the DoD employee's official duties, or from an association or similar entity that does not have a majority of

2-206. Prior Approval for Outside Employment and Business Activities

a. A DoD employee, other than a special Government employee, who is required to file a financial disclosure report, SF 450 or SF 278, Appendix C of this Regulation, shall obtain written approval from the Agency Designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with subsection 2-206(b) of this Regulation, below. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation. Also see subsection 2-303 of this Regulation, below.

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

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

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

b. The DoD Component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of subsection 2-206(a) of this Regulation, above, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

2-207. Disclaimer for Speeches and Writings Devoted to Agency Matters. *A DoD employee who uses or permits the use of his military grade or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 C.F.R. 2635.807(b) (reference (a)) in subsection 2-100 of this Regulation, shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's Agency, as defined in subsection 2-201 of this Regulation, above, and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency's position. The disclaimer shall be made as follows:*

a. The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components;

b. Where a disclaimer is required for an article, book or other writing, the disclaimer shall be printed in a reasonably prominent position in the writing itself;

c. Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

SECTION 3. DoD GUIDANCE

2-300. Gifts

a. Procurement Officials. In addition to the restrictions on gifts in 5 C.F.R. 2635, Subpart B (reference (a)) in subsections 2-100 and 2-202 of this Regulation, procurement officials are subject to the gift acceptance restrictions of the procurement integrity statute. See 41 U.S.C. 423 (reference (c)) and FAR 3.104 (reference (d)) in Appendix B of this Regulation.

b. Gifts from Foreign Governments. There are special DoD rules governing gifts from foreign governments. See 5 U.S.C. 7342 (reference (e)) and DoD Directive 1005.13 (reference (f)). For the purposes of gifts from foreign governments, the following interpretations apply:

(1) The values of gifts from different officials of the same foreign government during the same presentation shall be aggregated and such gifts are considered to be from that foreign government. A gift from the spouse of a representative or official of a foreign government is deemed a gift from the representative or official. A gift given to the spouse of the DoD employee is deemed a gift to the DoD employee. Conditions and exceptions regarding gifts to and from spouses in 5 U.S.C. 7342 (reference (e)) may apply.

(2) Gifts received at separate presentations, even on the same day or from the same official, are separate gifts and their values are not aggregated. When more than one gift is included in a single presentation, only those gifts with an aggregate of less than the minimum allowed may be retained by the DoD employee, the remainder to be disposed of in accordance with enclosure 2 of DoD Directive 1005.13 (reference (f)).

c. Ship Launch and Similar Ceremonies. Unless the gift is otherwise acceptable under an exception in 5 C.F.R. 2635, Subpart B (reference (a)) in subsection 2-100 of this Regulation, a DoD employee may not accept gifts in connection with a ceremony to mark the completion of a milestone in shipbuilding, aircraft completion, or similar vehicle launch or roll-out unless attendance is official and is approved by the head of the DoD Component command or organization and the gifts are limited to the following (see 5 U.S.C. 7301 note (reference (e))):

(1) Attendance at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and reception following it, and related food, hospitality and entertainment, as long as the function and related benefits are not lavish, excessive, or extravagant;

(2) Tangible gifts or mementos in connection with the ceremony to DoD employees, their spouses, and their dependent children, who are official participants in the ceremony, as long as the aggregate retail value does not exceed \$100 per family and the cost is not borne by the Federal Government. When such gifts exceed the \$100 limit, the recipient shall pursue one of the following alternatives:

- (a) Return the gift to the donor;
- (b) Retain the gift after reimbursing the donor the full value of the gift; or
- (c) Forward the gift to the appropriate DoD Component official for disposition as a gift to the Federal Government in

accordance with statute. See 10 U.S.C. 2601 (reference (g)).

2-301. Use of Federal Government Resources.

a. Communication Systems. See GSA regulation 41 C.F.R. Subpart 201-21.6 (reference (h)) on use of Federal Government telephone systems. *Federal Government communication systems and equipment (including Government owned telephones, facsimile machines, electronic mail, internet systems, and commercial systems when use is paid for by the Federal Government) shall be for official use and authorized purposes only.*

(1) Official use includes emergency communications and communications that the DoD Component determines are necessary in the interest of the Federal Government. Official use may include, when approved by theater commanders in the interest of morale and welfare, communications by military members and other DoD employees who are deployed for extended periods away from home on official DoD business.

(2) Authorized purposes include brief communications made by DoD employees while they are traveling on Government business to notify family members of official transportation or schedule changes. They also include personal communications from the DoD employee's usual work place that are most reasonably made while at the work place (such as checking in with spouse or minor children; scheduling doctor and auto or home repair appointments; brief internet searches; e-mailing directions to visiting relatives) when the Agency Designee permits categories of communications, determining that such communications:

(a) Do not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;

(b) Are of reasonable duration and frequency, and whenever possible, made during the DoD employee's personal time such as after duty hours or lunch periods;

(c) Serve a legitimate public interest (such as keeping DoD employees at their desks rather than requiring the use of commercial systems; educating the DoD employee on the use of the communications system; improving the morale of DoD employees stationed for extended periods away from home; enhancing the professional skills of the DoD employee; job-searching in response to Federal Government downsizing);

(d) Do not put Federal Government communications systems to uses that would reflect adversely on DoD or the DoD Component (such as uses involving pornography; chain letters; unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use; violations of statute or regulation; inappropriately handled classified information; and other uses that are incompatible with public service); and

(e) Do not overburden the communication system (such as may be the case with broadcasts and group mailings), create no significant additional cost to DoD or the DoD Component, and in the case of long distance communications, charges are:

1 Charged to the DoD employee's home telephone

number or other non-Federal Government number (third number call);

- 2 Made to a toll-free number;
- 3 Reversed to the called party if a non-Federal Government number (collect call);
- 4 Charged to a personal telephone credit card; or
- 5 Otherwise reimbursed to DoD or the DoD Component in accordance with established collection procedures;

(3) *In accordance with applicable laws and regulations, use of Federal Government communications systems may be monitored. See DoD Directives 4640.1 (reference (i)) and 4640.6 (reference (j)). DoD employees shall use Federal Government communications systems with the understanding that such use serves as consent to monitoring of any type of use, including incidental and personal uses, whether authorized or unauthorized.* In addition, use of such systems is not anonymous. For example, for each use of the internet over Federal Government systems, the name and computer address of the DoD employee user is recorded by the Government and also by the locations searched.

(4) *Most Federal Government communications systems are not secure. DoD employees shall not transmit classified information over any communication system unless it is transmitted using approved security procedures and practices (e.g., encryption, secure networks, secure workstations). In addition, DoD employees shall not release access information, such as passwords, to anyone unless specifically authorized to do so by the Agency Designee. See DoD Directives 5200.28 (reference (k)) and C-5200.5 (reference (l)). DoD employees should exercise extreme care when transmitting any sensitive information, or other valued data. Information transmitted over an open network (such as through unsecure e-mail, the internet, or telephone) may be accessible to anyone else on the network. Information transmitted through the internet or by e-mail, for example, is accessible to anyone in the chain of delivery. Internet information and e-mail messages may be re-sent to others by anyone in the chain.*

b. **Other Federal Government Resources.** Other than the use of Federal Government communications systems authorized in accordance with subsection 2-301.a. of this Regulation, above; the use of Federal Government resources as logistical support to non-Federal entity events in accordance with subsection 3-211 of this Regulation, below; and the use of Federal Government time authorized in accordance with subsection 3-300 of this Regulation, below; *Federal Government resources, including personnel, equipment, and property, shall be used by DoD employees for official purposes only, except as follows:*

(1) Agency Designees may permit their DoD employees to make limited personal use of Federal Government resources other than personnel, such as typewriters, calculators, libraries, and other similar resources and facilities, if the Agency Designee determines the following:

(a) The use does not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;

(b) The use is of reasonable duration and frequency, and made only during the DoD employee's personal time such as after duty hours or lunch periods;

(c) The use serves a legitimate public interest (such as supporting local charities or volunteer services to the community; enhancing the professional skills of the DoD employee; job-searching in response to Federal Government downsizing);

(d) The use does not put Federal Government resources to uses that would reflect adversely on DoD or the DoD Component (such as involving commercial activities; unofficial advertising, soliciting or selling; violation of statute or regulation; and other uses that are incompatible with public service); and

(e) The use creates no significant additional cost to DoD or the DoD Component.

(2) The use of personnel for non-Federal purposes is regulated by subsections 3-211 and 3-305 of this Regulation, below.

2-302. Gambling

a. *A DoD employee shall not participate while on Federally-owned or leased property or while on duty (for military members, this means, in this context, present for duty) for the Federal Government in any gambling activity prohibited by 5 C.F.R. 735.201 (reference (m)) except:*

(1) *Activities necessitated by a DoD employee's law enforcement duties;*

(2) *Activities by organizations composed primarily of DoD employees or their dependents for the benefit of welfare funds for their own members or for the benefit of other DoD employees or their dependents, subject to the limitations of local law and subsections 3-210 and 3-211 of this Regulation, below, when approved by the Head of the DoD Component or designee;*

(3) *Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned Federal Government living quarters and within the limitations of local laws; or*

(4) *Purchases of lottery tickets authorized by any State from blind vendors licensed to operate vending facilities in accordance with 20 U.S.C. 107a(5) (reference (n)).*

b. Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice (UCMJ) (reference (g)).

c. Gambling may be prohibited by Federal Government building and grounds regulations, such as 32 C.F.R. Part 40b (reference (o)) which prohibits gambling in the Pentagon.

2-303. Outside Employment and Activity. In addition to subsection 2-206 of this Regulation, above, except to the extent that when procedures have been established by higher authority for

any class of DoD employee (e.g., DoD Directive 6025.7 (reference (p))), Agency Designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity. See subsection 3-306 of this Regulation, below.

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

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

2-304. Use of Military Title by Retirees or Reserves. Retired military members and members of Reserve Components, not on active duty, may use military titles in connection with commercial enterprises, provided they clearly indicate their retired or inactive Reserve status. However, any use of military titles is prohibited if it in any way casts discredit on DoD or gives the appearance of sponsorship, sanction, endorsement, or approval by DoD. In addition, in overseas areas, commanders may further restrict the use of titles by retired military members and members of Reserve Components.

SECTION 4. REFERENCES

2-400. References

- (a) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (b) Title 26, United States Code, Section 501
- (c) Title 41, United States Code, Section 423
- (d) Federal Acquisition Regulation, Part 3.104, current edition
- (e) Title 5, United States Code, Sections 7301 and 7342
- (f) DoD Directive 1005.13, "Gifts from Foreign Governments," October 13, 1988
- (g) Title 10, United States Code, Sections 801 through 940 (Uniform Code of Military Justice), and 2601
- (h) Title 41, Code of Federal Regulations, 201-21.6, "Use of Government Telephone Systems," current edition
- (i) DoD Directive 4640.1, "Telephone Monitoring and Recording," January 15, 1980
- (j) DoD Directive 4640.6, "Communications Security Telephone Monitoring and Recording," June 26, 1981
- (k) DoD Directive 5200.28, "Security Requirements for Automated Information Systems," March 21, 1988
- (l) DoD Directive C-5200.5, "Communications Security," April 21, 1990
- (m) Title 5, Code of Federal Regulations, 735.201, "Gambling," current edition
- (n) Title 20, United States Code, Section 107a
- (o) Title 32, Code of Federal Regulations, Part 40b, "Conduct on the Pentagon Reservation," current edition
- (p) DoD Directive 6025.7, "Off-Duty Employment by DoD Health Care Providers," October 21, 1985

SECTION 2. OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES**3-200. Attendance**

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

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

3-201. Membership.

a. DoD employees may serve as DoD liaisons to non-Federal entities when appointed by the head of the DoD Component command or organization who determines there is a significant and continuing DoD interest to be served by such representation. Liaisons serve as part of their official DoD duties, under DoD Component memberships, and represent only DoD interests to the non-Federal entity in an advisory capacity. Liaisons may not be involved in matters of management or control of the non-Federal entity. Liaisons may officially represent DoD in discussions of matters of mutual interest with non-Federal entities providing it is made clear to the non-Federal entities that the opinions expressed by liaisons do not bind DoD or any DoD Component to any action.

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

3-202. **Management.** DoD employees may not participate in their official DoD capacities in the management or control of non-Federal entities without authorization from the DoD DAEO. Requests for authorization shall be in writing and forwarded to the DoD DAEO through SOCO. See 36 U.S.C. 5, 121, and 1305 (reference (g)). However, with authorization from the DoD DAEO, DoD employees may participate fully in the management and control of the non-Federal entity, may participate in the determinations and conclusions of the non-Federal entity, and may cast a vote on issues within the scope of the DoD employee's official responsibilities.

3-203. Impartiality of Agency Designee and Travel-Approving Authority.

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

3-204. Impartiality of DoD Employees. DoD employees are generally

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

3-205. Remuneration. DoD employees may not receive any salary or salary

supplement from a non-Federal entity for performance of DoD duties. See 18 U.S.C. 209 (reference (i)).

3-206. Co-sponsorship. A DoD Component command or organization is a

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

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

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

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

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

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

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

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

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

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

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

* 3-209. Endorsement. *Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-210 of this Regulation, below.* DoD employees may use or allow the use of their titles, positions, or organization names in conjunction with their own names only to identify themselves in the performance of their official duties. Use of titles, positions, and organization names when acting a personal capacity is covered by subsection 3-300 of this Regulation, below. *

3-210. Fundraising and Membership Drives

* a. *DoD employees shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of subsection 3-211 of this Regulation, below:* *

- (1) *The Combined Federal Campaign (CFC);*
- (2) *Emergency and disaster appeals approved by the Office of Personnel Management (OPM);*
- (3) *Army Emergency Relief;*
- (4) *Navy-Marine Corps Relief Society;*
- (5) *Air Force Assistance Fund, including:*
 - (a) *Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;*
 - (b) *Air Force Village;*
 - (c) *Air Force Aid Society;*
 - (d) *General and Mrs. Curtis E. LeMay Foundation.*

* (6) *Other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents when approved by the head of the DoD Component command or organization after consultation with the DAEO or designee. (This includes most morale, welfare and recreation programs, regardless of funding sources).* *

b. Fundraising by DoD employees is strictly regulated by E.O.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Certain banks and credit unions (DoD Directive 1000.11 (reference (q)));

b. United Service Organization (DoD Directive 1330.12 (reference (r)));

c. Labor organizations (5 U.S.C. Chapter 71 (reference (b))); DoD 1400.25-M, Chapter 711 (reference (s)));

d. Combined Federal Campaign (E.O. 10927 (reference (t)), DoD Directive 5035.1 (reference (n)));

e. Association of Management Officials and Supervisors (DoD Instruction 5010.30 (reference (u)));

f. American Registry of Pathology (10 U.S.C. 177); Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. 178); American National Red Cross (10 U.S.C. 2542); Boy Scouts Jamborees (10 U.S.C. 2544); Girl Scouts International Events (10 U.S.C. 2545); Shelter for Homeless (10 U.S.C. 2546); National Military Associations; Assistance at National Conventions (10 U.S.C. 2548); Assistance from

American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation and Assistance in Foreign Areas (10 U.S.C. 2606); and Civil Air Patrol (10 U.S.C. 9441-9442) (reference (f)).

SECTION 3. PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-300. Participation

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

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

(2) Purely personal, unofficial volunteer efforts to support fundraising outside the Federal Government workplace (which includes the entire DoD installation) are not prohibited where the efforts do not imply DoD endorsement. The head of the DoD Component command or organization may, on a limited basis, authorize their DoD employees or their dependents to participate in fundraising activities in designated areas on the Federal Government workplace, such as public entrances, in community support facilities and in personal quarters. See E.O. 12353 (reference (l)), 5 C.F.R. 950 (reference (m)), and DoD Directive 1344.7 (reference (v)). These activities may be further limited by Federal Government building and grounds regulations.

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

(1) The participation or paper is related to the DoD

employee's official position or to DoD functions, management or mission; and

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

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

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

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

* 3-301. Membership and Management. DoD employees may become members and may participate in the management of non-Federal entities as individuals in a personal capacity provided they act exclusively outside the scope of their official position. Except for such service in the organizations listed in subsection 3-210.a. of this Regulation, above, a DoD employee may not serve in a personal capacity as an officer, member of the Board of Directors, or in any other similar position in any non-Federal entity offered because of their DoD assignment or position. DoD employees may authorize an allotment for membership dues to a non-Federal entity as provided in 5 C.F.R. 550.311 and 550.331 (reference (w)) and DoD 7000.14-R (reference (x)). *

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

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

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

3-305. Use of Federal Government Resources

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

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

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

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

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

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

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

b. The DoD Component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of subsection 3-306.a. of this Regulation, above, for prior approval based on a determination that business

activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

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

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

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

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

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

3-307. Teaching, Speaking and Writing

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

(1) *The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components.*

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

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

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

SECTION 4. REFERENCES

3-400. References

- (a) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition
- (b) Title 5, United States Code, Chapter 71, App. 501, 4101 and 5946
- (c) Title 37, United States Code, Section 412
- (d) Title 31, United States Code, Sections 1345, and 6303 through 6306
- (e) Decisions of the Comptroller General, Volume 24, page 814, 1945
- (f) Title 10, United States Code, Sections 177, 178, 974, 2012, 2371, 2541, 2542, 2544, 2545, 2546, 2548, 2601, 2602, 2604, 2606, 3634, 6223, 8634, 9441 and 9442
- (g) Title 36, United States Code, Sections 5, 121, and 1305
- (h) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (i) Title 18, United States Code, Sections 208 and 209

- (j) DoD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business," January 16, 1974
- (k) Title 15, United States Code, Section 3710a
- (l) Executive Order 12353, "Charitable Fund-Raising," March 23, 1982, as amended
- (m) Title 5, Code of Federal Regulations, Part 950, "Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations," current edition
- (n) DoD Directive 5035.1, "Fund-Raising Within the Department of Defense," August 28, 1990
- (o) DoD Instruction 5035.5, "DoD Combined Federal Campaign - Overseas Area," August 17, 1990
- (p) DoD Directive 5410.18, "Community Relations," July 3, 1974
- (q) DoD Directive 1000.11, "Financial Institutions on DoD Installations," July 26, 1989
- (r) DoD Directive 1330.12, "United Service Organizations, Inc.," November 9, 1987
- (s) DoD 1400.25-M, "DoD Civilian Personnel Manual," January 24, 1978, authorized by DoD Directive 1400.25, "Department of Defense Civilian Personnel Manual System," January 24, 1978
- (t) Executive Order 10927, "Abolishing the President's Committee on Fund-Raising Within the Federal Service and Providing for the Conduct of Fund-Raising Activities," March 18, 1961
- (u) DoD Instruction 5010.30, "Intramangement Communication and Consultation," May 2, 1989
- (v) DoD Directive 1344.7, "Personal Commercial Solicitation on DoD Installations," February 13, 1986
- (w) Title 5, Code of Federal Regulations, Part 550, "Pay Administration," current edition
- (x) DoD 7000.14-R, "Financial Management Regulation," June 1994, authorized by DoD Instruction 7000.14, November 15, 1992
- (y) DoD Directive 6025.7, "Off Duty Employment by DoD Health Care Providers," October 21, 1985
- (z) United States et al. v. National Treasury Employees Union et al., No. 93-1170, slip op. (Sup. Ct., February 22, 1995)
- (aa) Public Law 102-484, "National Defense Authorization Act of 1993," October 23, 1992

CHAPTER 4**TRAVEL BENEFITS****SECTION 1. ACCEPTANCE OF OFFICIAL TRAVEL BENEFITS IN KIND OR PAYMENT FOR OFFICIAL TRAVEL EXPENSES****4-100. Acceptance from Non-Federal Sources**

a. **Official Travel.** Official travel by DoD employees shall be funded by the Federal Government except that DoD Components may accept official travel benefits, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources as provided in this Chapter of this Regulation.

b. **Personal Travel.** This Chapter does not apply to travel benefits provided to DoD employees in their personal capacities. However, DoD employees must report such travel expenses when appropriate in accordance with Chapter 7 of this Regulation. There may be limitations on acceptance of travel benefits in a personal capacity, including limitations on acceptance from prohibited sources, because of official position, and under 41 U.S.C. 423 (reference (a)).

c. **Acceptance Procedures.** 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 (reference (b)), approved in advance of travel.

d. **Spousal Travel.** The travel approving authorities for travel of a spouse accompanying a DoD employee on official travel that is paid for or provided in kind by a non-Federal source are as follows:

(1) For DoD employees of OSD, Defense Agencies and DoD Field Activities, the Executive Secretary, OSD;

(2) For DoD employees of Military Departments, the Secretaries concerned or their designees;

(3) For DoD employees of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified or Specified Commands, and the Combined Commands and Agencies, the Chairman, Joint Chiefs of Staff, or his designee.

4-101. Acceptance of Travel and Related Expenses by a DoD Component From Non-Federal Sources

a. Attendance at a Meeting or Similar Function (31 U.S.C. 1353 (reference (b)))

(1) In accordance with 31 U.S.C. 1353 (reference (b)) and GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), Heads of DoD Components may accept travel benefits from a non-Federal source incurred by DoD employees in connection with their attendance in an official capacity at a meeting or similar function. The Joint Federal Travel Regulations (JFTR), Chapter 7, Part W, Paragraphs U7900-7908 (DoD Uniformed Services) (reference (d)) and Joint Travel Regulations (JTR), Chapter 4, Part Q, Paragraphs C4900-4908 (DoD Civilian Personnel) (reference (e)) implement 41 C.F.R. 301-1.2 and 304 (reference (c)). For detailed guidance as to the applicability and application of specific authority, these regulations should be consulted directly.

(2) Where the GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), are inconsistent with the JFTR (reference (d)) and JTR (reference (e)), 41 C.F.R. 301-1.2 and 304 (reference (c)) are the controlling authorities.

(3) A DoD Component may not accept or approve acceptance of travel benefits from non-Federal sources under any other gift acceptance authority if 31 U.S.C. 1353 (reference (b)) applies.

(4) **Payment Guidelines.** DoD employees (or their spouses) shall not accept cash payments on behalf of the Federal Government.

(a) When travel benefits are paid for rather than provided in kind, payments from the non-Federal source will be by check or similar instrument made payable to the United States Treasury. Any such payment received by the DoD employee (or spouse) shall be submitted with his travel voucher as soon as practicable.

(b) The DoD employee shall exclude from his travel voucher any request for reimbursement for travel benefits furnished in kind by a non-Federal source on the travel voucher to ensure that appropriate deductions are made in

the travel, per diem, or other allowances payable by the United States.

(5) **Reporting.** Each travel-approving authority designated by the DoD Component Head to accept travel benefits from non-Federal sources shall submit a report to the DoD Component DAEO or designee semiannually on April 30 and October 31 to accommodate the required reporting to OGE on May 31 and November 30 each year. See JFTR, Paragraph U7908 (reference (d)) and JTR, Paragraph C4908 (reference (e)) for details on what to report.

b. **DoD Component Gift Acceptance Statutes.** In accordance with procedures established by those DoD Components with gift acceptance authority under 10 U.S.C. 2601 (reference (f)), travel benefits may be accepted by such DoD Component Heads or their designees.

(1) This authority may not be used to accept travel benefits covered by 31 U.S.C. 1353 (reference (b)).

(2) This authority may be used to accept, for example, reimbursement for travel benefits of flight crew members that accompany Federal Government aircraft to international air shows or the expenses incurred by the attendance of DoD employees at ceremonial events in order to enhance a DoD Component's public relations. This authority may also be used to accept travel benefits offered after travel has begun or has been completed.

c. **DoD Component DAEO or Designee Approval.** Acceptance of official travel benefits from non-Federal sources described in subsections 4-101.a. and 4-101.b. of this Regulation, above, requires the concurrence of the DoD Component DAEO or designee.

4-102. Acceptance of Contributions, Awards and Other Payments by DoD Employees from Tax-Exempt Organizations (5 U.S.C. 4111 (reference (g)))

a. **Applicability.** Military members are permitted to accept contributions, awards and other payments the same as civilian DoD employees in accordance with the requirements of this subsection, below.

b. **Conditions for Acceptance.** Except when acceptance is permitted under 5 C.F.R. 2635.204(d) (reference (h)) in subsection 2-100 of this Regulation, DoD employees are permitted to accept contributions, awards and other payments directly from non-Federal sources only when all of the following conditions are met:

(1) The source is a tax-exempt organization described by 26 U.S.C. 501(c)(3) (reference (i)) or a State or local government (see 5 C.F.R. 410, Subpart G (reference (j)));

(2) The contribution, award, or payment of travel benefits is incidental to training in non-Federal Government facilities or attendance at a meeting;

(3) An appropriate deduction is made from any payment by the Federal Government to the DoD employee for their official travel entitlement;

(4) The contribution, award, or payment is not a reward for services to the non-Federal source;

(5) Acceptance of the contribution, award or payment would not reflect unfavorably on the DoD employee's ability to perform his duties in a fair and objective manner, nor otherwise compromise the integrity of any Federal Government action; and

(6) The travel approving authority approves the acceptance of the contribution, award or payment in writing.

c. Payments from Multiple Sources. When more than one organization participates in making a single contribution, award, or payment, only the organization that selects the recipient and administers the funds from which the contribution, award, or payment is made will be considered the source.

* d. Reporting. Individuals who are required to file financial disclosure statements must report acceptance of these travel benefits on their financial disclosure statements if the fair market value of those benefits reach the reportable amount. *

4-103. Receipt and Disposition of Foreign Gifts and Decorations (5 U.S.C. 7342 (reference (g))). DoD employees may accept travel and travel-related expenses from a foreign government in accordance with DoD Directive 1005.13 (reference (k)).

SECTION 2. DoD GUIDANCE

4-200. Acceptance of Incidental Benefits. There are two basic principles DoD employees must consider in determining whether they may accept

SECTION 2. OFFICE OF GOVERNMENT ETHICS REGULATION

5-200. 5 C.F.R. 2640, "Interpretation of 18 U.S.C. 208" (reference (b))

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Sec. 2640.101 Exemptions for financial interests arising from Federal Government employment or from Social Security or veterans' benefits.

An employee may participate in any particular matter, whether of general applicability or involving specific parties, where the disqualifying financial interest arises from Federal Government salary or benefits, or from Social Security or veterans' benefits, except an employee may not:

(a) Make determinations that individually or specially affect his own Government salary and benefits, or Social Security or veterans' benefits, or

(b) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the Government salary or benefits, or Social Security or veterans' benefits of any other person specified in section 208.

Note: This exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement, such as the prohibition on the employment of relatives at 5 U.S.C. 3100.

Example 1: An employee of the Office of Management and Budget may vigorously and energetically perform the duties of his position even though his outstanding performance would result in a performance bonus or other similar merit award.

Example 2: A policy analyst at the Defense Intelligence Agency may request promotion to another grade or salary level. However, the analyst may not recommend or approve the promotion of her general partner to the next grade.

Example 3: An engineer employed by the National Science Foundation may request that his agency pay the registration fees and appropriate travel expenses required for him to attend a conference sponsored by the Engineering Institute of America. However, the employee may not approve payment of his own travel expenses and registration fees.

Example 4: A GS-14 attorney at the Department of Justice may review and make comments about the legal sufficiency of a bill to raise the pay level of all Federal employees paid under the General Schedule even though her own pay level, and that of her spouse who works at the Department of Labor, would be raised if the bill were to become law.

Example 5: An employee of the Department of Veterans Affairs (VA) may assist in drafting a regulation that will provide expanded hospital benefits for veterans, even though he himself is a veteran who would be eligible for treatment in a hospital operated by the VA.

Example 6: An employee of the Office of Personnel Management may participate in discussions with various health insurance providers to formulate the package of benefits that will be available to Federal employees who participate in the Government's Federal Employees Health Benefits Program, even though the employee will obtain health insurance from one of these providers through the program.

Example 7: An employee of the Federal Supply Service Division of the General Services Administration (GSA) may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.

Example 8: Absent an individual waiver under section 208(b)(1), the employee in the preceding example could not participate in the implementation of a GSA plan to create an employee-owned private corporation which would carry out Federal Supply Service functions under contract with GSA. Because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits, or Social Security or veterans' benefits.

Example 9: A career member of the Senior Executive Service (SES) at the Internal Revenue Service (IRS) may serve on a performance review board that makes recommendations about the performance awards that will be awarded to other career SES employees at the IRS. The amount of the employee's own SES performance award would be affected by the board's recommendations because all SES awards are derived from the same limited pool of funds. However, the employee's activities on the board involve only recommendations, and not determinations that individually or specifically affect his own award. Additionally, 5 U.S.C. 5354(c)(2) requires that a majority of the board's members be career SES employees.

Example 10: In carrying out a reorganization of the Office of General Counsel (OGC) of the Federal Trade Commission, the Deputy General Counsel is asked to determine which of five Senior Executive Service (SES) positions in the OGC to abolish. Because her own position is one of the five SES positions being considered for elimination, the matter is one that would individually or specifically affect her own salary and benefits and, therefore, the Deputy may not decide which position should be abolished.

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.



SECTION 3. GUIDANCE ON 18 U.S.C. 208 (reference (c))

5-300. Conflicts and Appearance of Conflicts Under 18 U.S.C. 208 (reference (c)). See 5 C.F.R. 2635, Subpart D and Subpart E (reference (d)), in subsection 2-100 of this Regulation, OGE opinions (reference (e)), and subsection 2-204 of this Regulation for provisions on conflicts of interest under 18 U.S.C. 208 (reference (c)).

5-301. Applicability to Enlistees. The provisions of 18 U.S.C. 208 (reference (c)) and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 (reference (c)) do apply to enlisted members as follows: *except as approved by the DoD Component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest.*

5-302. Waiver of 18 U.S.C. 208(a). Miscellaneous exemptions from application of 18 U.S.C. 208(a) (reference (c)) appear in 5 C.F.R. 2640 (reference (b)) in subsection 5-200 of this Regulation. Pursuant to 18 U.S.C. 208(b) (reference (c)), application of 18 U.S.C. 208(a) (reference (c)) may be waived by individual Agencies.

a. The regulatory waivers for DoD under 18 U.S.C. 208(b)(2) (reference (c)) have been preserved and are reprinted in Appendix D of this Regulation as follows (see 5 C.F.R. 2635.402(d) (reference (d))):

- (1) For civilian DoD Components, such waivers appear in 32 C.F.R. 40.1 (reference (f));
- (2) For the Department of the Army, such waivers appear in AR 600-50 (reference (g));
- (3) For the Department of the Air Force, such waivers appear in AFR 30-30 (reference (h));
- (4) For the Department of the Navy, such waivers appear in SECNAVINST 5370.2J (reference (i)).

b. Application of 18 U.S.C. 208(a) (reference (c)) may be waived for individuals when a financial interest is not so substantial as to be likely to affect the integrity of the services that the Federal Government may expect from the DoD employee. Considerations in determining whether the interest is not so substantial as to be deemed likely to affect the integrity of the services that the Federal Government may expect from the DoD

employee include:

- (1) The extent to which the DoD employee's exercise of authority and responsibility can affect his interest;
- (2) The relative importance of the interest in the DoD employee's life or finances;
- (3) The potential for harm to the Federal Government and to the DoD employee if the DoD employee's interests influence his decision-making;
- (4) How the situation would appear to an informed public;
- (5) The nature of the relationship between the DoD employee and the individual who has the interest concerned.

c. In order to pursue an individual waiver under 18 U.S.C. 208(b)(1) (reference (c)), the following steps are mandatory:

(1) Before a waiver is requested, consideration should first be given to alternative resolutions, such as disqualification, divestiture, reassignment, or rearrangement of duties. Individual waivers are to be considered only when all alternatives have been exhausted. The supervisor should also consider, with the advice of the Ethics Counselor, whether a potential violation of 18 U.S.C. 208(a) (reference (c)) exists. See subsection 5-303 of this Regulation, below. Even if the interests are insubstantial, consideration should be given to whether the particular matter will have a direct and predictable effect on the financial interest. See 5 C.F.R. 2635.402(b)(1) (reference (d)) in subsection 2-100 of this Regulation;

(2) A request for a waiver shall be forwarded through the chain of command or supervision to the DoD Component DAEO. The DoD Component DAEO shall consult, if practicable, on the action with OGE;

(3) Pending the approval of the waiver, the DoD employee shall be disqualified from participation in the particular matter that will have an effect on the financial interest;

(4) The waiver request shall include the Ethics Counselor's findings of fact on the following:

(a) The manner in which the financial interest was acquired;

(b) The purpose behind the DoD employee's acquisition of the interest;

- (1) Cause actual or perceived partiality or unfairness;
- (2) Involve the actual or apparent use of rank or position for personal gain; or
- (3) Otherwise undermine discipline, morale, or authority.

5-410. Related Rules

a. There is a prohibition on holding conflicting financial interests. See 5 C.F.R. 2635.403 (reference (d)) in subsection 2-100 of this Regulation, 18 U.S.C. 208 (reference (c)), and 5 C.F.R. 2640 (reference (b)) in subsection 5-200 of this Regulation, above.

b. There are requirements regarding seeking outside employment. See 5 C.F.R. 2635.601-606 (reference (d)) in subsection 2-100 of this Regulation and Chapter 8 of this Regulation.

c. There is a prohibition on engaging in outside employment or activities that conflict with official duties. See 5 C.F.R. 2635.802 (reference (d)) in subsection 2-100 of this Regulation.

d. There are limitations on certain outside activities such as receipt of outside earned income by certain DoD Presidential appointees or non-career DoD employees, service as an expert witness, participation in professional associations, teaching, writing, speaking, or fundraising. See 5 C.F.R. 2635.804-808 (reference (d)) in subsection 2-100 of this Regulation.

e. There is a prohibition on the receipt of honoraria. See 5 C.F.R. 2636 (reference (q)) in subsection 3-100 of this Regulation.

f. There are prohibitions on the misuse of official position such as improper endorsements or improper use of non-public information. See 5 C.F.R. 2635.701-705 (reference (d)) in subsection 2-100 of this Regulation.

g. There are prohibitions on certain post-Government service employment. See Chapter 9 of this Regulation.

SECTION 5. REFERENCES

5-500. References

- (a) Title 5, Code of Federal Regulations, Part 2639, "Interpretation of 18 U.S.C. 209" [TO BE PUBLISHED]

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- (b) Title 5, Code of Federal Regulations, Part 2640, "Interpretation of 18 U.S.C. 208," current edition
- (c) Title 18, United States Code, Sections 201, 203, 205, 208 and 209
- (d) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (e) Office of Government Ethics Opinions 83x1 (January 7, 1983), 85x10 (July 15, 1985), 86x9 (August 8, 1986), 87x6 (April 1, 1987), and 88x13 (September 12, 1988)
- (f) Title 32, Code of Federal Regulations, Part 40, "Standards of Conduct,"
- (g) AR 600-50, "Standards of Conduct for Department of Army Personnel," January 28, 1988
- (h) AFR 30-30, "Standards of Conduct," May 26, 1989
- (i) SECNAVINST 5370, "Standards of Conduct and Government Ethics," March 15, 1989
- (j) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989, as amended
- (k) Title 5, United States Code, Sections 5515, 5536, and 5751
- (l) Title 10, United States Code, sections 801 through 940 (Uniform Code of Military Justice, Manual for Courts-Martial), 973 and 1033
- (m) Federal Acquisition Regulation, Parts 3.601 and 3.602, current edition
- (n) Title 50, United States Code, Appendix, Section 454
- (o) Decisions of the Comptroller General, Volume 52, page 471 (1973)
- (p) Decisions of the Comptroller General, Volume 22, page 127 (1942)
- (q) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition

- b. Collect political contributions unless both the collector and the donor are members of the same Federal labor organization or employee organization and the donor is not a subordinate;
- c. Knowingly solicit or discourage the political activity of any person who has business with DoD;
- d. Engage in political activity while on duty;
- e. Engage in political activity while in any Federal workplace;
- f. Engage in political activity while wearing an official uniform or displaying official insignia identifying the office or position of the DoD employee;
- g. Engage in political activity while using a Government owned or leased vehicle;
- h. Solicit political contributions from the general public;
- i. Be a candidate for public office in partisan elections;
- j. Wear political buttons on duty;
- k. Contribute to the political campaign of another Federal Government employee who is in the DoD employee's chain of command or supervision or who is the employing authority.

* 6-204. DoD Employees Residing in Designated Localities. Notwithstanding the prohibitions of subsection 6-203 of this Regulations, above, a DoD employee (except those DoD employees listed in subsection 6-202.c. of this Regulation, above) who resides in a municipality or political subdivision, either in the immediate vicinity of the District of Columbia or in which the majority of voters are employed by the Federal Government, as designated by OPM under 5 C.F.R. 733.102(d) (reference (c)) may:

- a. Run as an independent candidate for election to a partisan political office in an election for local office of the municipality or political subdivision provided the candidacy for, and service in, the partisan political office shall not result in neglect of, or interference with, the performance of the duties of the DoD employee or create an actual or

apparent conflict of interest; and

b. Accept or receive political contributions in connection with a local election of the municipality or political subdivision provided the DoD employee does not solicit political contributions from the general public.

6-205. Political Recommendations

a. The restrictions of 5 U.S.C. 3303 (reference (b)) apply to all personnel actions described in 5 U.S.C. 2302(a)(2)(A)(i) through (x) (reference (b)) for individuals in or applicants to the following DoD positions:

- (1) Competitive service employees;
- (2) Career appointees in the Senior Executive Service; and
- (3) Excepted service employees other than one who is appointed by the President or whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character.

b. Each personnel action with respect to a DoD employee or applicant, as described in subsection 6-205.a. of this Regulation, above, shall be taken without regard to any recommendation or statement, oral or written, made by the following types of individuals:

- (1) Members of Congress or Congressional employees;
- (2) Elected officials of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;
- (3) Officials of political parties; or
- (4) Other individuals or organizations making such recommendations or statements on the basis of the party affiliations of the DoD employee or applicant recommended.

c. DoD employees may solicit, accept, and consider any statement with respect to a DoD employee or applicant described in subsection 6-205.a. of this Regulation, above, if the statement meets one of the following conditions:

- (1) It is pursuant to a request or requirement of the

SECTION 2. PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278)7-200. Individuals Required to File

a. Covered Positions. For purposes of this section, the following individuals are in "covered positions" and are required by the Ethics in Government Act of 1978, Pub. L. 95-521 (reference (b)) to file an SF 278, Appendix C of this Regulation, with their DoD Component DAEO or designee as set out in subsection 7-205 of this Regulation, below:

- (1) Civilian Presidential appointees;
- (2) Regular and Reserve military officers whose pay grade is 0-7 or above;
- (3) Members of the Senior Executive Service;
- (4) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM-15 prescribed by 5 U.S.C. 5332 (reference (c)) or civilian DoD employees under other pay systems whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM-15;
- (5) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See subsection 7-200.d. of this Regulation, below;
- (6) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c));
- (7) Civilian individuals who are detailed to positions described in subsection 7-200.a.(3) through 7-200.a.(5) of this Regulation, above;
- (8) DoD Component DAEOs.

b. Waiver. An individual otherwise required to file an SF 278, Appendix C of this Regulation, but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above.

c. Exception. An individual who is nominated to or assumes a covered position is not required to file an SF 278, Appendix C of this Regulation, if the Secretary

concerned or the DoD Component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the duties of the position for more than 60 days in a calendar year, an SF 278, Appendix C of this Regulation, shall be filed within 15 days after the 61st day of duty.

d. Exclusion. The Director, OGE, may exclude an individual who is in a covered position under subsection 7-200.a.(5) of this Regulation, above, from the requirement to file an SF 278, Appendix C of this Regulation, in accordance with 5 C.F.R. 2634.203 (reference (a)) in subsection 7-100 of this Regulation, above.

7-201. Information on Covered Positions. The directors of DoD Component personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees:

a. The name, position, grade, organization and entrance-on-duty or termination date of each individual assigned to the DoD Component who is required to file a new entrant or termination SF 278, Appendix C of this Regulation, immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, "Request for Personnel Action," August 1988, Appendix C of this Regulation, requesting approval of the retirement, resignation, or removal of the individual from such a position;

b. By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD Component who is required to file an annual SF 278, Appendix C of this Regulation.

7-202. Notification of Requirement to File. Each DoD Component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing. The SF 278, Appendix C of this Regulation, may be accessed through the internet at <http://web1.whs.osd.mil/diorhome.htm>.

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7-203. Time of Filing

a. Nomination Reports

(1) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD Component DAEO shall ensure the nominee's SF 278, Appendix C of this Regulation, is filed with appropriate authorities.

(2) The report shall contain the information prescribed in the "Instructions for Completing SF 278" attached to the SF 278,

reviewed by the appropriate DoD Component DAEO or designee in relation to the position for which he is being considered.

(2) Secretaries of Military Departments shall cause a review of all relevant systems of records maintained by their departments, including investigative files, to determine if there is any evidence that the nominee has violated the rules or standards of conduct.

(3) Each nomination forwarded to the Secretary of Defense shall be accompanied by a certification by the Secretary of the Military Department concerned that the required review has been conducted and has or has not disclosed a violation of the rules or standards of conduct.

7-207. Disposition

a. Designation of Certifying Official. Only the Head of the DoD Component or the DoD Component DAEO may certify nomination reports required to be filed by a reporting individual who is nominated by the President to a position requiring the advice and consent of the Senate. For all other reports, the DoD Component DAEO may delegate this responsibility to other officials within the DoD Component.

b. Disposition. The SF 278, Appendix C of this Regulation, and a complete record of all action taken thereon shall be retained for a period of six years by the DoD Component DAEO or designee, and a copy of the report shall be forwarded to OGE, when required. For filers who are military members in joint, unified or combined commands, the original SF 278, Appendix C of this Regulation, shall be forwarded for retention to the DAEO or designee of the Military Department concerned. After the six-year period, the report shall be destroyed, unless needed in an ongoing investigation. In the case of a reporting individual who filed a report as a nominee and was not subsequently confirmed by the Senate, the report shall be destroyed one year after the reporting individual is no longer under consideration by the Senate.

7-208. Public Availability of Reports. SF 278s, Appendix C of this Regulation, must be made available for public inspection 30 days after the reports are filed unless otherwise exempted under law. OGE Form 201, "Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report," Appendix C of this Regulation, shall be filed by a requestor before inspecting an SF 278, Appendix C of this Regulation.

7-209. Penalties

a. Action within a DoD Component. The Head of the DoD Component may take appropriate action, including adverse action, in accordance with applicable laws or regulations, against any reporting individual who fails to file an SF 278, Appendix C of this Regulation, or who falsifies or fails to report required information.

b. Action by the U.S. Attorney General. The U.S. Attorney General may bring a civil action in the U.S. District Court against any individual who knowingly and willfully falsifies or fails to file or report information required to be reported. The court may assess a civil penalty. Knowing and willful falsification of information required to be filed may also result in criminal prosecution under 18 U.S.C. 1001 (reference (d)), leading to a fine or imprisonment of not more than five years, or both.

c. Misuse of Reports

(1) The U.S. Attorney General may bring a civil action against an individual who obtains or uses an SF 278, Appendix C of this Regulation, filed under Pub. L. 95-521 (reference (b)), for the following reasons:

- (a) Any unlawful purpose;
- (b) Any commercial purpose other than by news and communications media for dissemination to the general public;
- (c) Determining or establishing the credit rating of any individual;
- (d) Directly or indirectly, for the solicitation of money for any political, charitable or other purpose.

(2) The court in which the action is brought may assess a penalty against a person in any amount, not to exceed \$10,000. This shall be in addition to any other remedy available under statutory or common law.

SECTION 3. CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (SF 450)

7-300. Individuals Required to File

a. Covered Positions. For purposes of this section, unless required to file an SF 278, Appendix C of this Regulation, or unless expressly exempted, the following individuals are in "covered positions" and are required by 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above, to file initial and annual SF 450, Appendix C of this Regulation, through their supervisor to their Ethics Counselor as set out in subsection 7-305 of this Regulation, below:

- (1) Commanding officers, heads and deputy heads, and executive officers of:

(a) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect hire personnel regularly attached but excluding personnel attached for temporary duty); and

(b) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(2) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(a) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(b) Veterinarians providing only veterinary services;

(c) Lecturers participating only in educational activities;

(d) Chaplains performing only religious services;

(e) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(f) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(g) Members of selection panels for ROTC candidates.

(3) DoD employees classified at GS/GM-15 or below under 5 U.S.C. 5332 (reference (c)) or a comparable pay level under other authority, and members of the military below the grade of O-7 as follows:

(a) When the official responsibilities of such DoD employees require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(b) Any DoD employees serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD

employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(4) Individuals who are detailed to positions described in subsection 7-300.a.(3) of this Regulation, above.

(5) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c)).

b. Exclusion

(1) Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD Component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE.

(2) DoD employees who are not employed in contracting or procurement and who have decisionmaking responsibilities regarding expenditures of less than \$2,500 per purchase and less than \$20,000 cumulatively per year are excluded from the requirement to file the SF 450, Appendix C of this Regulation. However, Agency Designees may require such DoD employees, in individual cases, to file the SF 450, Appendix C of this Regulation. Such DoD employees remain subject to conflict of interest statutes and regulations.

7-301. Information on Covered Positions

a. The directors of personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees they service:

(1) Immediately upon the appointment of covered DoD employees, the name, position, organization and entrance-on-duty date of DoD employees required by their supervisor to file a new entrant SF 450, Appendix C of this Regulation;

(2) By October 3 of each year, a list of the names, positions and organizations, when applicable, of DoD employees who are required to file an annual SF 450, Appendix C of this Regulation.

b. Coordination is required as follows:

shall coordinate with the supervisors within their organization, in consultation with the DoD Component DAEO or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In addition, it is the Administrative Officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(2) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in subsection 7-300 of this Regulation, above, contain a statement that an SF 450, Appendix C of this Regulation, must be filed. All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

7-302. Notification of Requirement to File. DoD Component DAEOs or designees shall provide appropriate notices and instructions to ensure the timely preparation of the reports and submission to their supervisors and their Ethics Counselors for review and filing. The SF 450, Appendix C of this Regulation, may be accessed through the internet at <http://web1.whs.csd.mil/diorhome.htm>.

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7-303. Time of Filing

a. New Entrant Reports

(1) Except for a special Government employee, a reporting individual shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(2) A special Government employee shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

b. Annual Reports. A reporting individual (except a special Government employee) who was employed at least 61 days during the preceding reporting period must submit an SF 450, Appendix C of this Regulation, to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual

who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for 61 days.

c. Extension of Filing Deadline

(1) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual, the DoD Component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(2) Requests for extensions shall be submitted in writing.

(3) Each annual reporting individual is automatically granted a 30 day extension by this Regulation to make the reporting deadline November 30 as stated in subsection 7-303.b. of this Regulation, above. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

7-304. Content of Report

a. Instructions for completing the SF 450, Appendix C of this Regulation, are included on the report. See instructions at 5 C.F.R. 2634.907 and 908 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

b. A complete report is required even though no changes have occurred since the last submission.

c. A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

7-305. Chain of Submission. A reporting individual shall submit his SF 450, Appendix C of this Regulation, through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

7-306. Review

a. Upon receipt of an SF 450, Appendix C of this Regulation, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in subsection 7-306.b. of this Regulation, below, and forward it with any comments to the local Ethics Counselor for further review.

7-309. Status Reports

a. Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450, Appendix C of this Regulation. The status report shall be sent through the head of the DoD Component command or organization to the respective DoD Component DAEO or designee and shall contain the following information:

(1) The number of individuals required to file an annual SF 450, Appendix C of this Regulation; and

(2) The number of individuals who have not filed an SF 450 as of November 30.

b. Subsequent to December 15, monthly reports may be required by the DoD Component DAEO to be filed for those organizations which have not received an SF 450, Appendix C of this Regulation, from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in subsection 7-309.a., above.

7-310. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

b. Criminal Liability. Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

* SECTION 4. REFERENCES *

* 7-400. References *

- (a) Title 5, Code of Federal Regulations, Part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition
- (b) Public Law 95-521, "Ethics in Government Act of 1979," October 26, 1978, as amended
- (c) Title 5, United States Code, Sections 552, 552a, 3371-3376, and 5332
- (d) Title 18, United States Code, Chapter 11, Sections 208 and 1001
- (e) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees,"

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April 12, 1989, as amended

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CHAPTER 8

SEEKING OTHER EMPLOYMENT

SECTION 1. GENERAL RULES

8-100. Office of Government Ethics Regulation. 5 C.F.R. 2635, Subpart F (reference (a)) in subsection 2-100 of this Regulation, provides rules on seeking other employment that apply to all DoD employees.

SECTION 2. CONFLICT OF INTEREST - (18 U.S.C. 208) (reference (b))

8-200. Negotiating for Employment. See 5 C.F.R. 2635.603 (reference (a)) in subsection 2-100 of this Regulation for provisions on conflicts of interest in employment negotiations under 18 U.S.C. 208 (reference (b)). The provisions of 18 U.S.C. 208 (reference (b)) and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 (reference (b)) do apply to enlisted members as follows: *except as approved by the DoD Component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest.* See 18 U.S.C. 208 (reference (b)), subsections

1-300(b)(1)(a) and 5-301 of this Regulation, and 5 C.F.R. 2635.603 (reference (a)) in subsection 2-100 of this Regulation.

8-201. Penalties. Violation of 18 U.S.C. 208 (reference (b)) is punishable by a fine and imprisonment. The full range of administrative sanctions may also be imposed.

SECTION 3. PROCUREMENT INTEGRITY - (41 U.S.C. 423(b))
(reference (c))

8-300. Soliciting, Accepting, or Discussing Employment

a. During the conduct of a procurement, a procurement official may not knowingly, directly or indirectly, solicit or accept from, or discuss with, any officer, employee, representative, agent, or consultant of a competing contractor, any future employment or business opportunity. See FAR 3.104-6 (reference (d)) in Appendix B of this Regulation.

b. This prohibition does not apply to a procurement official:

- (1) After he leaves Federal Government service;
- (2) Who is employed by a contractor, subcontractor, consultant, expert, or advisor after he ceases to act on behalf of, or provide advice to, the procuring agency concerning the procurement;

(3) Who has been granted recusal, in writing, in accordance with the provisions of FAR 3.104-6 (reference (d)) in Appendix B of this Regulation and subsection 8-300.d. of this Regulation, below, and who has in fact discontinued participation in the procurement;

(4) Whose only communication with a competing contractor is to reject an unsolicited offer of employment or business opportunity or advise the competing contractor that he must seek recusal prior to any discussions regarding the unsolicited offer;

(5) Who has made inquiry in good faith of the potential contractor and been advised that the contractor is not or will not become a competing contractor on a procurement on which the individual is a procurement official; or

(6) Where the procurement official engages in conduct in good faith reliance upon a written ethics advisory opinion;

(7) After the procurement has been concluded by the award or modification of a contract or the cancellation of the procurement.

c. A procurement official may discuss employment or business opportunities with a competing contractor only if a written recusal request was submitted and approved in accordance with the policy and procedures contained in FAR 3.104-6(c) through (h) (reference (d)) in Appendix B of this

Regulation. The head of the contracting activity has the authority to approve or disapprove a request for recusal; however, he may not approve recusal for a procurement official who has participated personally and substantially in certain evaluation functions listed in subsection 3.104-6(c) of the FAR in Appendix B of this Regulation.

d. Any DoD procurement official or former DoD procurement official may, by written request, seek advice from his DoD Component DAEO or designee regarding whether he may be precluded by the procurement integrity rules from engaging in a specified activity. See FAR 3.104-8 (reference (d)) in Appendix B of this Regulation.

(1) The request must provide the DoD Component DAEO or designee with sufficient information to make a determination.

(2) The DoD Component DAEO shall make his determination, in writing, within 30 days, or as soon thereafter as practicable.

(3) A copy of the request and the ethics advisory opinion shall be retained for six years, in accordance with DoD Component procedures.

8-301. **Penalties.** Violation of the provisions of 41 U.S.C. 423 (reference (c)) is punishable by the full range of sanctions, including the following:

a. Civil Penalties. Individual violators may be subject to a civil fine not to exceed \$100,000. Violators, other than individuals, may be subject to a civil fine not to exceed \$1 million.

* b. Administrative Sanctions. See subsection 10-300 *
* through 10-304 of this Regulation. *

* SECTION 4. DoD GUIDANCE *

* 8-400. Appearances. DoD employees shall: *

a. Ensure that the prospect of employment does not affect the performance or non-performance of their official duties;

b. Ensure that they do not communicate inside information to a prospective employer; and

c. Avoid any activity that would affect the public's confidence in the integrity of the Federal Government, even if it is not an actual violation of the law.

* 8-401. Written Guidance. DoD employees may obtain *
* counseling and written advice concerning restrictions on seeking other
* employment from their Ethics Counselor: *

a. Although the counseling and advice are given by DoD attorneys and involve the interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

b. This counseling and advice is personal to the current or former DoD employee. It does not extend to the individual's business, employer, or prospective employer.

* SECTION 5. REFERENCES *

* 8-500. References *

- (a) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (b) Title 18, United States Code, Section 208
- (c) Title 41, United States Code, Section 423
- (d) Federal Acquisition Regulation, Part 3.104, current edition *

SECTION 4. DoD GUIDANCE ON 18 U.S.C. 207 (reference (c))

9-400. Exceptions to Restrictions of 18 U.S.C. 207

(reference (c)). The restrictions imposed by 18 U.S.C. 207(a), (c) and (d) (reference (c)) do not apply to communications made solely to furnish scientific and technical information that are authorized by the Head of the DoD Component.

a. To obtain such an authorization in the case of former DoD employees:

(1) The head of the DoD Component command or organization involved shall submit, in writing, to the Head of the DoD Component a request that the former DoD employee be permitted to participate in a particular matter from which he would ordinarily be barred under 18 U.S.C. 207 (reference (c));

(2) The Head of the DoD Component or designee may determine in writing that such participation is appropriate if:

(a) The former DoD employee has outstanding scientific or technological qualifications;

(b) The national interest of the United

States would be served by such participation;

(c) The former DoD employee has qualifications that are otherwise unavailable; and

(d) The Head of the DoD Component or designee has consulted with the DoD Component DAEO.

b. In cases involving former Federal Government employees other than former DoD employees, authorization may be obtained in accordance with procedures in 18 U.S.C. 207(j)(5) (reference (c)).

SECTION 5. POST-EMPLOYMENT COUNSELING AND ADVICE

9-500. **Written Advice.** Current and former DoD employees may obtain counseling and written advice concerning post-employment restrictions from the Ethics Counselor of the DoD Component command or organization from which they are leaving, or have left, Federal Government service. Current and former DoD employees are, by statute, entitled to written advice from the DoD Component DAEO or designee under 41 U.S.C. 423 (reference (e)). See subsections 9-600.c. of this Regulation, below.

a. Although ethics counseling and advice are given by DoD attorneys and involve interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created.

Communications made to an Ethics Counselor in seeking such advice are not privileged.

b. Ethics counseling and advice are personal to the current or former DoD employee. They do not extend to anyone else, including his business, employer, or prospective employer.

9-501. Delegation of Authority. The DoD Component DAEO may specifically delegate authority in writing for Ethics Counselors within the DoD Component to provide written advice under 41 U.S.C. 423 (reference (e)). In any case where the local Ethics Counselor does not have the authority by written delegation, he shall provide the counseling and obtain the request for advice and necessary supporting information from the DoD employee and forward it to the DoD Component DAEO or designee who has been specifically delegated the authority in writing to issue the written advice.

SECTION 6. RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES

9-600. 41 U.S.C. 423 (reference (e))

a. Restrictions. This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(1) Participating in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a defense contract for such procurement; or

(2) Participating personally and substantially on behalf of the competing contractor in the performance of such defense contract.

b. Period of Restrictions. Both restrictions apply for a period of two years from the date of the former DoD employee's last personal and substantial participation in the procurement on behalf of the Federal Government. Neither applies unless the individual was a DoD employee of the Federal Government at the time he served as a procurement official.

c. Written Opinion

(1) A DoD employee or former DoD employee who is or was a procurement official is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such an opinion shall be submitted in writing to the Ethics Counselor serving the DoD Component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request. See FAR 3.104-8(e) (reference (f)) in Appendix B of this Regulation.

(2) Ethics Counselors who have not been

* delegated specific authority in writing to issue 41 U.S.C. 423 (reference (e)) *
written opinions shall promptly forward the request to the DoD Component
DAEO or designee who has such authority.

(3) Written opinions shall be issued within 30
days of receiving the request, together with all necessary information.

(4) Where the DoD employee or former DoD
employee relies in good faith on a written opinion that this statute is not
applicable to a specific situation, the DoD employee or former DoD employee
shall not be found to have knowingly violated the restrictions of the statute.

(5) A copy of each 41 U.S.C. 423 (reference (e)) *
opinion shall be retained by the DoD Component DAEO or designee for three
years. *

SECTION 7. RESTRICTIONS ON RETIRED MILITARY MEMBERS

* 9-700. Restrictions on Federal Government Employment *

a. Dual Compensation Laws. A retired member of any
uniformed service who holds a civilian position with the Federal Government is
subject to reduction of retired pay while receiving pay from a Federal
Government civilian position. The term "retired member" means anyone, officer

or enlisted, entitled to receive retired pay. The term "retired pay" includes both retired and retainer pay. The current law generally applies to retired Regular officers, retired at any time, and to all former members of the uniformed services who left active duty after January 11, 1979. See 5 U.S.C. 5532 (reference (g)) for exceptions to this general rule.

(1) The Dual Compensation Reduction Formulas.

There are two provisions in the current dual compensation law which may operate to reduce the retired pay of retired members of the uniformed services who hold Federal Government civilian positions.

(a) The First Reduction Provision.

The first reduction provision applies only to retired Regular officers who retired at any time. This provision operates to reduce the retired pay of a retired Regular military officer receiving pay from a Federal Government civilian position regardless of the amount of salary from that civilian position. It provides that such retired military officer is entitled to receive the full pay of the civilian position, but retired pay will be reduced to an annual rate equal to a base amount plus one-half of the remainder of the retired pay, if any. The base amount is increased periodically to reflect changes in the Consumer Price Index. See 5 U.S.C. 5532(b) (reference (g)).

(b) The Second Reduction Provision.

The second reduction provision applies, in general, to all retired military members who first received retired pay after January 11, 1979. The reduction depends

upon the amount of pay received from the Federal Government civilian position. This provision operates to reduce the retired pay of a retired member when the annual rate of pay for the civilian position combined with the annual rate of retired pay (reduced in the case of retired Regular officers as discussed in subsection 9-702.a.(1)(a) of this Regulation, above) exceeds the annual rate of basic pay for level V of the Executive Schedule. Reductions are computed as follows:

1 If the combination of pay from the civilian position and retired pay exceeds the amount currently paid for level V of the Executive Schedule, the retired pay will be reduced to keep the total at the level V limit.

2 Reductions to retired pay are made per pay period whenever the combination of the two salaries for the pay period exceeds the pay for a level V position for that pay period. Reductions made in such pay periods are not refundable even when the combined pay amounts for the total year is less than the annual rate for level V of the Executive Schedule;

3 The amount of retired pay may not be reduced to an amount less than the amount deducted from the retired pay as a result of participation in any survivor's benefits in connection with retired pay or veterans insurance programs and no reductions shall be made to retired

pay based, in whole or in part, upon disability incurred in the line of duty as a direct result of armed conflict or during a period of war.

(2) Waivers

(a) A retired member may, in certain limited circumstances, obtain a waiver so that his retired pay would not be reduced while holding a Federal Government civilian position. See 5 U.S.C. 5532(g) (reference (g)). The circumstances under which a waiver may be granted are:

1 On a case-by-case basis for a retired member holding a Federal Government civilian position for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

2 For temporary employment that is necessary due to an emergency involving a direct threat to life or property, or under other unusual circumstances.

(b) The Director, OPM, may grant a waiver at the request of the Head of an Executive Agency. Additionally, the Director, OPM, may delegate to an agency the authority to grant waivers for the temporary employment of retired members during emergencies or other unusual circumstances, but not for employment necessitated by exceptional difficulties in recruiting or retaining qualified individuals. The Director, OPM, has delegated to

DoD authority to approve dual compensation restriction waivers in certain circumstances at installations scheduled for closure.

(c) Waivers are to be the exception, not the rule. If appropriate, however, a waiver may be obtained for either or both of the dual compensation reductions. See 5 C.F.R. 553 (reference (h)) for procedures for obtaining a waiver.

b. Post-Military Service Employment in DoD under 5 U.S.C. 3326 (reference (g)). As of November 6, 1992, the suspension of this provision ended. See DoD Directive 1402.1 (reference (i)). To avoid appearances of favoritism or preferential treatment, retired military members may not be selected to fill civil service positions in DoD (including non-appropriated fund instrumentalities) within 180 days following retirement unless:

(1) The appointment is authorized by the Secretary of a Military Department or designee, or by OPM if the position is in the competitive service;

(2) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305 (reference (g)); or

(3) A state of national emergency exists.

* 9-701. Foreign Employment Restrictions *

* a. Article I, Section 9, Clause 8, of the Constitution of
* the United States (reference (j)), prohibits any person holding any office of profit
* or trust under the Federal Government from accepting any present, emolument,
* office, or title of any kind whatever from any king, prince, or foreign state
* without the consent of Congress.

* (1) This provision prohibits employment of all
* retired military members, both officer and enlisted and both Regular and Reserve,
* by a foreign government unless Congressional consent is first granted. See
* 44 Comp. Gen. 130 (reference (k)). *

(2) Employment by educational or commercial
institutions owned, operated, or controlled by a foreign government is included
within the scope of this restriction.

* (3) The penalty for violation is withholding the
* retired military member's retired pay in an amount equal to the foreign salary
* illegally received. See 61 Comp. Gen. 306 (reference (l)). *

b. Congress has consented to the acceptance of civil
employment with a foreign government by, among others, retired Regular
military members and Reserve military members, if both the Secretary of the
Military Department and the Secretary of State approve the employment. See

* 37 U.S.C. 908 (reference (m)). Because approval is prospective only, foreign civil employment should not be accepted until approval has been obtained. Retired military members who wish to accept such employment should submit a written request for approval to the Secretary of their Military Department through appropriate channels. The request must fully describe the contemplated employment and the nature and extent of the involvement with the foreign government.

c. A former military member desiring employment with a foreign government or any foreign business interest may be required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 et. seq. (reference (n)). Any person who acts as an agent of a foreign principal must file a registration statement with the U.S. Attorney General.

SECTION 8. RESTRICTIONS ON FORMER SENIOR APPOINTEES

* 9-800. Executive Order 12834. E.O. 12834 (reference (o)), in subsection 12-200 of this Regulation, requires contractual ethics commitments regarding post-Government service employment from full-time, non-career Presidential, Vice-Presidential or Agency Head appointees in an Executive Agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule, except for those appointed as members of the senior foreign service or solely as uniformed service commissioned officers. See E.O. 12834

* (reference (o)) in subsection 12-200 of this Regulation and OGE Form 203, *
"Senior Appointee Pledge," January 1993, and OGE Form 204, "Trade
Negotiation Pledge," January 1993, Appendix C of this Regulation.

**SECTION 9. RESTRICTIONS ON DEALING WITH CURRENT OR FORMER
DoD EMPLOYEES**

9-900. General Rule. Current DoD employees shall not knowingly
deal, on behalf of the Federal Government, with current or former DoD
employees whose participation in the transaction violates any statute or DoD
directive, regulation or policy.

9-901. Terminal Leave

a. Military members on terminal leave may accept
civilian employment with the Federal Government and are entitled to the pay of
that civilian position in addition to the pay and allowances to which entitled
* while on terminal leave. See 5 U.S.C. 5534a (reference (g)). *

b. A military officer on active duty may not accept a
civil office with a State or local government, nor may he perform the duties of
* such an office. See 10 U.S.C. 973(b)(3) (reference (p)). This applies while the *
* military officer is on terminal leave. See 56 Comp. Gen. 855 (reference (q)). *

* **SECTION 10. REFERENCES** *

*

9-1000. References

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- (a) Title 5, Code of Federal Regulations, Part 2637, "Regulations Concerning Post-Employment Conflict of Interest," current edition
- (b) Title 5, Code of Federal Regulations, Part 2641, "Post-Employment Conflict of Interest Restrictions," current edition
- (c) Title 18, United States Code, Sections 207, 281, and 1001
- (d) Office of Government Ethics Memorandum, "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992
- (e) Title 41, United States Code, Section 423
- (f) Federal Acquisition Regulation, Part 3.104, current edition
- (g) Title 5, United States Code, Sections 3326, 5305, 5532, and 5534
- (h) Title 5, Code of Federal Regulations, Part 553, "Reemployment of Military and Civilian Retirees to Meet Exceptional Employment Needs," current edition
- (i) DoD Directive 1402.1, "Employment of Retired Members of the Armed Forces (NOTAL),"

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January 21, 1982

- * (j) United States Constitution, Article I, Section 9,
Clause 8 *
- * (k) Decision of the Comptroller General, Volume 44,
page 130 (1964) *
- * (l) Decision of the Comptroller General, Volume 61,
page 306 (1982) *
- * (m) Title 37, United States Code, Section 908 *
- * (n) Title 22, United States Code, Section 611 et seq. *
- * (o) Executive Order 12834, "Ethics Commitments by
Executive Branch Appointees," January 20, 1993 *
- * (p) Title 10, United States Code, Section 973 *
- * (q) Decision of the Comptroller General, Volume 56,
page 855 (1977) *

CHAPTER 10

ENFORCEMENT

**SECTION 1. ENFORCEMENT OF THE PROVISIONS OF THE JOINT
ETHICS REGULATION**

10-100. **Penalties.** Penalties for violation of the rules republished in, and prescribed by, this Regulation include the full range of applicable criminal, civil and administrative sanctions for current DoD employees, including punishment under the UCMJ (reference (a)) for military members. Many of the statutes that regulate the post-Government service employment activities of former or retired DoD employees also provide for specific criminal and administrative sanctions. This Chapter sets out the requirements for reporting and inquiry to ensure that ethics-related laws and regulations are properly enforced and that appropriate administrative or disciplinary action is taken.

SECTION 2. REPORTING PROCEDURES

10-200. **Reporting Suspected Violations.** With the exception of the provisions of 41 U.S.C. 423 (reference (b)) that are addressed in subsection 10-202 of this Regulation, below, DoD employees who suspect that a violation of

this Regulation has occurred shall report the matter to any of the following:

- a. The DoD employee's Agency Designee;
- b. The suspected violator's Agency Designee;
- c. The head of the DoD Component command or organization;
- d. Any Ethics Counselor;
- e. The DoD Component's IG;
- f. The DoD Component's criminal investigative office;
or
- g. The DoD hotline or DoD Component hotline.

10-201. Receipt of Report

a. DoD Component investigative offices shall consult local Ethics Counselors as appropriate to ensure that up-to-date expertise is applied in the investigation of each suspected violation of this Regulation in recognition of rapidly changing rules and statutes in the ethics area.

b. If a suspected violation is reported to some entity other than those named in 10-200.d. through g. of this Regulation, above, then the notified person shall promptly report the matter to his Ethics Counselor.

c. An Ethics Counselor who receives a report shall review the facts and, if the facts tend to support a violation, report the allegation to the appropriate investigative organization or, through the chain of command or supervision, to the head of the DoD Component command or organization of the suspected violator. In addition, the Ethics Counselor must ensure that the following is accomplished:

(1) If a violation of 18 U.S.C. 203, 205, 207, 208 or 209 (reference (c)) is suspected, the matter shall be reported to the DoD Component's criminal investigative organization. The investigative organization is responsible for investigating the allegation and notifying DoJ in accordance with DoD Directive 5525.7 (reference (d)). In addition, the Ethics Counselor shall:

(a) Report to the DoD Component DAEO as follows:

1 The name and position (optional) of the informant;

- 2 The name and position of the suspect;
- 3 The suspected offense;
- 4 The facts, as known or believed;
- 5 The status of any action being taken.

(b) File periodic follow-up reports with the DoD Component DAEO until a final determination is made;

(c) If the matter is referred to the DoJ or the U.S. Attorney, include OGE Form 202, "Notification of Conflict of Interest Referral," January 1992, Appendix C of this Regulation, in the referral packet and send a copy to the DoD Component DAEO for forwarding to OGE.

* (2) If a violation of 18 U.S.C. 201 (reference (c)) is suspected, it shall be handled in the same manner as subsection 10-201.c.(1)(a) *

of this Regulation, above, except that OGE Form 202, Appendix C of this Regulation, is not used for referrals;

* (3) If a violation of 5 C.F.R. 2635 (reference (e)) *
in subsection 2-100 of this Regulation involving a loss to the Federal
Government of \$5,000 or more is suspected, the Ethics Counselor shall report the
matter to the DoD Component DAEO in the same manner as in subsection
10-201.c.(1)(a) of this Regulation, above.

d. In addition, if any of the above violations fall within a
DoD Component's procurement fraud program, the Ethics Counselor shall ensure
that referrals, coordinations, and reports required by that program are
accomplished. If the matter includes a suspected violation of the Gratuities
Clause in a defense contract, the Ethics Counselor shall report the matter in
accordance with DoD Component procedures issued pursuant to FAR 3.203
* (reference (f)) in Appendix B of this Regulation. See subsection 10-202 of this *
Regulation, below.

e. For matters not handled within the DoD Component's
procurement fraud program, any civil or criminal referrals to DoJ or the local
U.S. Attorney of violations of this Regulation shall be coordinated with the DoD
Component DAEO. The DoD Component DAEO shall be informed of referrals
of violations of this Regulation handled within the DoD Component's
procurement fraud program.

10-202. Violations of 41 U.S.C. 423 (reference (b))

* a. Administrative Sanctions. Suspected violations of 41 U.S.C. 423 (reference (b)) shall be processed in accordance with FAR 3.104-11 (reference (f)) in Appendix B of this Regulation. See 41 U.S.C. 423(h)(2) (reference (b)). *

b. Civil Sanctions. Suspected civil violations may be referred through the DoD Component DAEO to DoJ. See 41 U.S.C. 423(i) (reference (b)).

c. Criminal Sanctions. Suspected violations that involve the improper release of source selection information should be referred to the appropriate criminal investigative organization. See 41 U.S.C. 423(j) (reference (b)).

d. Reporting. Any suspected violation of the provisions of 41 U.S.C. 423 (reference (b)) shall be reported as soon as practicable to the appropriate contracting officer. See 41 U.S.C. 423(h)(1) (reference (b)). Any actions taken as the result of the above referrals shall be reported to the DoD Component DAEO in accordance with subsection 10-201.c.(1)(a) of this Regulation, above.

* **SECTION 3. REFERENCES** *

* 10-300. References *

- (a) Title 10, United States Code, Sections 801-940
(Uniform Code of Military Justice)
- (b) Title 41, United States Code, Section 423
- (c) Title 18, United States Code, Sections 201, 203, 205,
207, 208, 209
- (d) DoD Directive 5525.7, "Implementation of the
Memorandum of Understanding Between the
Department of Justice and the Department of Defense
Relating to the Investigation and Prosecution of
Certain Crimes," January 22, 1985
- (e) Title 5, Code of Federal Regulations, Part 2635, *
"Standards of Ethical Conduct for Employees of the
Executive Branch," current edition
- (f) Federal Acquisition Regulation, Parts 3.104 and *
3.203, current edition

(3) If the DoD Component DAEO makes, with the approval of OGE, a written determination that it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's.

d. CIAET shall be a minimum of one hour.

e. Those DoD employees who are required to receive AET will satisfy their 1993 annual ethics training obligation if they attended CIAET in 1992 or 1993.

11-301. Initial Ethics Training (IET) for New DoD Employees

a. Within 90 days of entering on duty, all DoD employees who did not receive CIAET, including those required to receive AET and enlisted members, shall receive IET for new DoD employees.

b. IET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, and such IET shall qualify as AET for the year the new DoD employees entered on duty, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish IET in the presence of a Qualified Individual, DoD employees who are not required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above;

(2) If the DoD Component DAEO determines that it is impractical to accomplish IET in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training

requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, provided that such DoD employees receive additional annual ethics training, either CIAET, IET or AET, if more than three months remain of the calendar year in which those DoD employees entered on duty.

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's office.

d. IET shall be a minimum of one hour.

11-302. Annual Ethics Training (AET)

a. Beginning in calendar year 1994, all DoD employees who file an SF 278 or SF 450, Appendix C of this Regulation, contracting officers and procurement officials, shall receive ethics training annually.

b. AET shall be accomplished in person by a Qualified Individual or by telecommunications, computer-based methods, or recorded means, that are prepared by a Qualified Individual, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish AET by the means described in subsection 11-302.b. of this Regulation, above, then special Government employees and military officers serving fewer than 30 consecutive days annually, may be trained by other means.

(2) If the DoD Component DAEO makes a written determination that it is impractical to accomplish AET by the means described in subsection 11-302.b. of this Regulation, above, then DoD employees other than special Government employees and military members serving fewer than 30 days annually may be trained by other means as long as a minimum of one hour of official time is set aside for such employees to review training materials.

11-303. Annual Ethics Training Plans. DoD Agency (see definition of "Agency") ethics training plans for 1994 and subsequent ethics training plans in accordance with subsections 11-301 and 11-302 of this Regulation, above, shall be submitted by DoD Component DAEOs or designees directly to OGE with copies furnished to SOCO. DoD Components that are not Agencies shall submit annual ethics training plans to SOCO for approval and inclusion in the ethics training plan SOCO submits to OGE.

APPENDIX ADIGEST OF LAWSSECTION 1. DoD-SPECIFIC STATUTES

A-100. Synopsis of Laws. DoD employees and former DoD employees are cautioned that the descriptions of the laws and regulations in this Regulation should not be the only source relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, the descriptions are not exhaustive and restrictions are dependent on the specific facts in a particular case. Accordingly, DoD employees and former DoD employees are encouraged to discuss specific cases with a DoD Component Ethics Counselor (no attorney-client privilege) or with private counsel.

A-101. 10 U.S.C. 2397a. "Requirements Relating to Private Employment Contacts Between Certain DoD Procurement Officials and Defense Contractors"

* a. This statute was repealed on February 10, 1996, by Pub. L. 104-106. It *
 * applied to civilian DoD employees at pay rates of GS/GM-11 or above and to military officers in *
 * grades 0-4 or above. If such an individual participated in the performance of a procurement *
 * function in connection with a DoD awarded defense contract and was contacted by the defense *
 * contractor to whom the defense contract was awarded regarding future employment opportunities *
 * with the defense contractor, the individual was required to:

(1) Promptly report the contact to his supervisor and to the DoD
 Component DAEO; and

(2) Disqualify himself from all participation in the performance of
 procurement functions relating to contracts of the defense contractor.

* b. A DoD employee was not required to report an initial contact with a defense *
 * contractor or disqualify himself if he terminated the contact immediately and rejected any offer of *
 * employment. The individual had to make a report and disqualify himself, however, if subsequent *
 * contacts were made.

* A-102. 10 U.S.C. 2397. "Employees or Former Employees of Defense Contractors: *
 * Reports." This statute was repealed on February 10, 1996, by Pub. L. 104-106. It required all *
 * former civilian DoD employees GS/GM-13 or above, or military officers 0-4 or above, to file DD *
 * Form 1787, Appendix C of this Regulation, for a period of two-years after leaving Federal *
 * Government service, if the former DoD employee was employed with a defense contractor who *
 * had been awarded \$10 million in defense contracts during the year preceding employment of the *
 * former DoD employee, and the former DoD employee received at least \$25,000 a year (\$12 per *
 * year)

hour) from the defense contractor.

* A-103. 10 U.S.C. 2397b. "Certain Former DoD Procurement Officials: Limitations
* on Employment by Contractors". This statute was repealed on February 10, 1996, by Pub. L. 104-
106. It imposed a two year prohibition on former civilian DoD employees GS/GM-13 and above,
and former military officers 0-4 and above, from accepting more than \$250 in payment, gift,
benefit, reward, favor, or gratuity (i.e., compensation) from defense contractors who had defense
contracts in a total amount greater than \$10 million during the fiscal year preceding the fiscal year
that such compensation was accepted, if the individual:

a. Spent the majority of his working days during the two-year period prior to
leaving Federal Government service performing a procurement function at a site or plant owned or
operated by the defense contractor; or

b. Performed procurement functions relating to a major system, on a majority
of the individual's working days during the two-year period prior to leaving Federal Government
service, and in the performance of those functions participated personally and substantially in a
manner involving decision-making responsibilities, through contact with the defense contractor; or

c. In the case of former DoD employees, Senior Executive Service and above,
and former military officers 0-7 and above, acted as a primary representative of the United States
during the two-year period prior to leaving Federal Government service, in the negotiation of a
defense contract in an amount in excess of \$10 million with the defense contractor, or in the
negotiation of an unresolved claim in excess of \$10 million.

A-104. 18 U.S.C. 281. "Restriction on Retired Military Officers Regarding Certain
Matters Affecting the Government"

* a. This statute was repealed on February 10, 1996, by Pub. L. 104-106. It
* prohibited a retired military officer of the Armed Forces from accepting any compensation, for a
* period of two-years after release from active duty, for the representation of any individual in the
* sale of anything to the United States through the Military Department from which the military
* officer retired.

* b. The statute also prohibited a retired military officer, during the two-year
* period following the military officer's release from active duty, from prosecuting or assisting in
prosecution of any claim against the United States involving the Military Department from which
the military officer retired, or involving any subject matter with which the military officer was
directly connected while in an active duty status.

* A-105. 37 U.S.C. 801. "Restriction on Payment to Certain Officers". This statute
* was repealed on October 13, 1994, by Pub. L. 103-335. It prohibited the Federal Government
from paying any retired officer, for a period of three years after such military officer's name was
placed on a retired list of the Regular Army, Navy, Air Force or Marine Corps, who was engaged

for himself or others in selling, or contracting or negotiating to sell, supplies or war material to an agency of DoD, the Coast Guard, the Public Health Service, or the National Oceanic and Atmospheric Administration.

SECTION 2. OTHER LAWS RELATED TO STANDARDS OF ETHICAL CONDUCT

A-200. OGE Digest. Other ethics statutes are summarized in 5 C.F.R. 2635.801(d) and 902 in subsection 2-100 of this Regulation.

A-201. Related Statutes. Engaging in the following activities may subject current and former DoD employees to criminal and/or other penalties:

- a. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 2);
- b. Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if the individual knew of the actual commission of the crime (18 U.S.C. 4);
- c. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to further the object of the conspiracy (18 U.S.C. 371);
- d. Misuse of a Federal Government vehicle (31 U.S.C. 1344 and 1349(b));
- e. Interference in an examination or personnel action in connection with Federal Government employment (18 U.S.C. 1917);
- f. Conversion of Federal Government property (18 U.S.C. 641);
- g. Private use of public money (18 U.S.C. 653), embezzlement of the money or property of another individual in the possession of a DoD employee by reason of his Federal Government employment (18 U.S.C. 654);
- h. Certain political activities (5 U.S.C. 7321-7327, 18 U.S.C. 600-603 and 606-607 apply to civilian DoD employees, and DoD Directive 1344.10 applies to military members);
- i. Failing to register under the Foreign Agents Registration Act of 1983 and acting as an agent of a foreign principal when required to register (18 U.S.C. 219);
- j. Soliciting contributions for gifts or giving gifts to superiors, or accepting

gifts from subordinates (5 U.S.C. 7351) applies to civilians; regulations set out in 5 C.F.R. 2635.301 through 304 in subsection 2-100 of this Regulation, and subsection 2-203 of this Regulation, apply to both military and civilian DoD employees;

k. Accepting, without statutory authority, any present, emolument, office or title, or employment of any kind, from any king, prince, or foreign state without the consent of the Congress; this restriction applies to any person holding any office or profit in or trust of the Federal Government, including all retired military members and Regular enlisted members (Article I, Section 9, Clause 8, of the Constitution of the United States; exceptions to this restriction are at 37 U.S.C. 908);

- l. Union activities of military members (10 U.S.C. 976);
- m. Violating merit system principles (5 U.S.C. 2301).

* SECTION 8. RESERVED *

* C-800. Reserved *

DEPARTMENT OF DEFENSE
PUBLICATION SYSTEM TRANSMITTAL

OFFICE OF THE SECRETARY OF DEFENSE
General Counsel of the Department of Defense

CHANGE NO. 1
DoD 5500.7-R
November 2, 1994

ERRATA

JOINT ETHICS REGULATION (JER)

AD-A-275132

The General Counsel of the Department of Defense has authorized the following page changes to DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 1993:

PAGE CHANGES

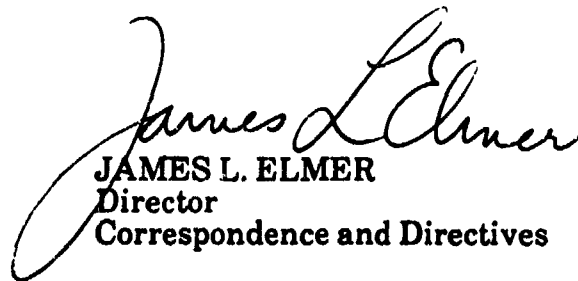
Remove: Pages 9&10, 27 through 30, 33 through 46, 51&52, 65&66, 69 through 78, 80-1 through 82, 87&88, 93 through 96, 101 through 104, 107&108, 116-1 through 116-8, 121 through 132, 135&136, 140-5 through 140-8, 143&144, 150-1&150-2, 152-1&152-2, 163&164, and 182-1 through 182-4

Insert: Attached replacement pages

Changes that appear on these pages are indicated by marginal asterisks and change bars.

EFFECTIVE DATE

The above changes are effective immediately.


JAMES L. ELMER
Director
Correspondence and Directives

Attachments
160 Pages

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

A275132

f. Individual conduct, official programs and daily activities within DoD shall be accomplished lawfully and ethically;

g. DoD employees shall adhere strictly to DoD policy of equal opportunity, regardless of race, color, religion, gender, age, national origin, or handicap, in accordance with applicable laws and regulations.

SECTION 4. GENERAL RESPONSIBILITIES

1-400. The Head of each DoD Component shall:

* a. Exercise personal leadership and take personal responsibility through the DoD Component DAEO or designee for establishing and maintaining the DoD Component's ethics program and be personally accountable for the DoD Component's compliance with every requirement of this Regulation, including the ethics and procurement integrity training requirements; *

b. When authorized, appoint a DoD Component DAEO, through a formal written delegation of authority, who is qualified to oversee and supervise the DoD Component's ethics programs for DoD employees, both civilian and military. (The GC, DoD, may serve as the DAEO for several DoD Components);

c. When authorized, appoint a DoD Component Alternate DAEO who shall serve in the absence of the DoD Component DAEO;

* d. Provide sufficient resources (including funding and investigative, audit, legal, training and administrative staff) to enable the DoD Component DAEO or designee to implement and administer the DoD Component's ethics programs in a positive and effective manner. *

1-401. Each DoD Component Designated Agency Ethics Official (DAEO) shall:

a. Be responsible for the implementation and administration of all aspects of the DoD Component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this Regulation.

b. Appoint DoD Component Deputy DAEOs and Ethics Counselors and delegate to them written authority to act on behalf of the DoD Component DAEO;

c. Ensure that ethics advice (and facts relied upon for such advice) is in writing, when practicable;

d. Ensure that written opinions regarding the applicability of 10 U.S.C. 2397b (reference (c)) and 41 U.S.C. 423 (reference (b)) are provided within 30 days of request by any DoD employee provided that the request is accompanied by complete and full information necessary to render an opinion;

e. Ensure the proper collection, review, and handling of the DoD Component's financial and employment disclosure reports, including those submitted by Presidential appointees for confirmation purposes;

f. Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

g. Provide periodic ethics and procurement integrity training for Ethics Counselors;

h. Certify Qualified Individuals to conduct ethics training;

i. Assist Agency Designees, through the chain of command or supervision, in initiating prompt, effective action to evaluate and process violations, potential violations, and appearances of violations of ethics laws or regulations, in accordance with applicable procedures as discussed in Chapter 10 of this Regulation;

j. Provide advice and assistance to DoD employees of the DoD Component not otherwise served by a local Ethics Counselor;

k. Oversee and coordinate local ethics programs through a system for periodic evaluation and ensure that the DoD Component provides and maintains sufficient funding, staff, space and resources to administer the DoD Component's ethics programs;

l. Maintain liaison with the DoD EOC, OGE, and the DoD Standards of Conduct Office (SOCO), and provide to SOCO and OGE all information required by law or regulation;

m. Represent the DoD Component to OGE, Congress, the Executive Branch and the public on matters relating to ethics and standards of conduct.

1-402. Each DoD Component Alternate Designated Agency Ethics Official (Alternate DAEO) shall serve in the absence of the DoD Component DAEO and, when so serving, is authorized to take any action this Regulation indicates may be taken only by the DoD Component DAEO.

Government. When such gifts exceed the \$100 limit, the recipient shall pursue one of the following alternatives:

- (a) Return the gift to the donor;
- (b) Retain the gift after reimbursing the donor the full value of the gift; or
- (c) Forward the gift to the appropriate DoD Component official for disposition as a gift to the Federal Government in accordance with statute. See 10 U.S.C. 2601 (reference (g)).

2-301. Use of Federal Government Telephone Systems. See GSA regulation 41 C.F.R. Subpart 201-21.6 (reference (h)), on management of Federal Government telecommunications resources.

a. The use of Federal Government telephone systems (including calls over commercial systems which will be paid for by the Federal Government), except as provided in subsection 2-301.b. of this Regulation, below, shall be limited to the conduct of official business. Such official business calls may include emergency calls and calls that the DoD Components determine are necessary in the interest of the Federal Government.

b. Personal calls (such as calls to speak to spouse/minor children or to arrange for emergency repairs to residence or automobile) that must be made during working hours over the commercial local/long distance network may properly be authorized as being in the best interest of the Federal Government if the call is consistent with the following criteria:

- (1) It does not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;
- (2) It is of reasonable duration and frequency; and
- (3) It could not reasonably have been made at another time;
- (4) And, in the case of long distance calls, is:

- (a) Charged to the employee's home telephone number or other non-Federal Government number (third number call);
- (b) Made to an 800 toll-free number;
- (c) Charged to the called party if a non-Federal Government number (collect call);
- (d) Charged to a personal telephone credit card; or
- (e) When traveling for more than one night on Federal Government business in the United States, a brief call to his residence to notify family of a schedule change.

2-302. Gambling

a. *A DoD employee shall not participate while on Federally-owned or leased property or while on duty (for military members, this means, in this context, present for duty) for the Federal Government in any gambling activity prohibited by 5 C.F.R. 735.201 (reference (i)) except:*

(1) *Activities necessitated by a DoD employee's law enforcement duties;*

(2) *Activities by organizations composed primarily of DoD employees or their dependents for the benefit of welfare funds for their own members or for the benefit of other DoD employees or their dependents, subject to the limitations of local law and subsections 3-210 and 3-211 of this Regulation, below, when approved by the Head of the DoD Component or designee; or*

(3) *Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned Federal Government living quarters and within the limitations of local laws.*

(4) *Purchases of lottery tickets authorized by any State from blind vendors licensed to operate vending facilities in accordance with 20 U.S.C. 107a(5) (reference (j)).*

b. *Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice (UCMJ) (reference (g)).*

- * c. Gambling may be prohibited by Federal Government building and grounds regulations, such as 32 C.F.R. Part 40b (reference (k)) which prohibits gambling in the Pentagon. *

* 2-303. Outside Employment and Activity. In addition to subsection 2-206 of this Regulation, above, except to the extent that when procedures have been established by higher authority for any class of DoD employee (e.g., DoD Directive 6025.7 (reference (l))), Agency Designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity. See subsection 3-306 of this Regulation. *

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

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

2-304. Use of Military Title by Retirees or Reserves. Retired military members and members of Reserve Components, not on active duty, may use military titles in connection with commercial enterprises, provided they clearly indicate their retired or inactive Reserve status. However, any use of military titles is prohibited if it in any way casts discredit on DoD or gives the appearance of sponsorship, sanction, endorsement, or approval by DoD. In addition, in overseas areas, commanders may further restrict the use of titles by retired military members and members of Reserve Components.

SECTION 4. REFERENCES

2-400. References

- (a) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (b) Title 26, United States Code, Section 501
- (c) Title 41, United States Code, Section 423
- (d) Federal Acquisition Regulation, Part 3.104, current edition
- (e) Title 5, United States Code, Sections 7301 and 7342

- (f) DoD Directive 1005.13, "Gifts from Foreign Governments," October 13, 1988
- (g) Title 10, United States Code, Sections 801 through 940 (Uniform Code of Military Justice), 2397a and 2601
- (h) Title 41, Code of Federal Regulations, 201-21.6, "Use of Government Telephone Systems," current edition
- (i) Title 5, Code of Federal Regulations, 735.208, "Gambling," current edition
- (j) Title 20, United States Code, Section 107a
- (k) Title 32, Code of Federal Regulations, Part 40b, "Conduct on the Pentagon Reservation," current edition
- (l) DoD Directive 6025.7, "Off-Duty Employment by DoD Health Care Providers," October 21, 1985

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SECTION 2. OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-200. Attendance

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

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

3-201. Membership. DoD employees may serve as DoD liaisons to non-Federal entities when appointed by the head of the DoD Component command or organization who determines there is a significant and continuing DoD interest to be served by such representation. Liaisons serve as part of their official DoD duties and under DoD Component memberships. DoD employees may not accept DoD Component membership in a non-Federal entity on behalf of DoD except as provided by statute or regulation. DoD may pay for DoD Component memberships in accordance with opinions of the Comptroller General, such as 24 Comp. Gen. 814 (reference (e)). DoD is prohibited from paying for individual memberships by 5 U.S.C. 5946 (reference (b)). See also 10 U.S.C. 2601 (reference (f)).

3-202. Management. DoD employees may not participate in their official DoD capacities in the management of non-Federal entities without authorization from the Head of the DoD Component. However, authorized DoD employees may officially represent DoD in discussions of matters of mutual interest with non-Federal entities, may participate in the determinations and conclusions of non-Federal entities, and may cast a vote on issues within the scope of the DoD employees' official responsibilities.

3-203. Impartiality of Agency Designee and Travel-Approving Authority. When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the Agency Designee or travel approving authority is an active participant in the non-Federal entity, that Agency Designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (g)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (h)).

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

3-205. Endorsement. *Endorsement of a non-Federal entity may be neither stated nor implied by DoD or DoD employees and DoD employees may not use their titles or positions to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-210 of this Regulation, below.* Use of military grade as part of an individual's name in relationship to membership in private organizations is permissible. See 5 C.F.R. 2635.702(c) (reference (g)) in subsection 2-100 of this Regulation. *

3-206. Distributing Information. In accordance with public affairs regulations, official channels may be used to notify DoD employees of events sponsored by non-Federal entities.

3-207. Remuneration. DoD employees may not receive any salary or salary supplement from a non-Federal entity for performance of DoD duties.

3-208. Co-sponsorship. A DoD Component is a sponsor or co-sponsor of an event when that DoD Component is one of the organizations holding the event or in whose name the event is held. Co-sponsorship of events with a non-Federal entity is prohibited except as follows:

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

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

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

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

(3) The non-Federal entity is a recognized scientific,

technical or professional organization approved by the DoD Component DAEO for this purpose; and

(4) The DoD Component accomplishes the co-sponsorship through a contract, grant or cooperative agreement as identified in 31 U.S.C. 6303 through 6306 (reference (d)); or a Cooperative Research and Development Agreement (CRDA) as defined in 15 U.S.C. 3710a (reference (j)); or a cooperative agreement or other transaction identified in 10 U.S.C. 2371 (reference (f)).

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

3-209. Participation in Conferences and Similar Events. Subject to the provisions of subsection 3-211 of this Regulation, below, and in accordance with public affairs regulations and 31 U.S.C. 1345 (reference (d)), DoD employees may participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities.

3-210. Fundraising and Membership Drives

a. *Except as provided in subsection 3-211 of this Regulation, below, DoD Components shall not officially support and DoD employees shall not officially endorse or officially participate in membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of subsection 3-211 of this Regulation, below:*

- (1) *The Combined Federal Campaign (CFC);*
- (2) *Emergency and disaster appeals approved by the Office of Personnel Management (OPM);*
- (3) *Army Emergency Relief;*
- (4) *Navy-Marine Corps Relief Society;*
- (5) *Air Force Assistance Fund, including:*

- (a) *Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;*
- (b) *Air Force Village;*
- (c) *Air Force Aid Society;*
- (d) *General and Mrs. Curtis E. LeMay Foundation.*

(6) Other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members when approved by the head of the DoD Component command or organization.

b. Fundraising by DoD employees is strictly regulated by E.O. 12353 (reference (k)), 5 C.F.R. 950 (reference (l)), DoD Directive 5035.1 (reference (m)), DoD Instruction 5035.5 (reference (n)), DoD Directive 5410.18 (reference (o)), 5 C.F.R. 2635.808 (reference (g)) in subsection 2-100 of this Regulation, and by the prohibition against preferential treatment established in subsection 3-205 of this Regulation, above.

3-211. Support of Non-Federal Entity Events

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

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

(2) The sponsoring non-Federal entity is not affiliated with the CFC (including local CFC) or, if affiliated with the CFC, the Director, OPM or designee has no objection to DoD support of the event (OPM generally has no objection to support of events that do not specifically target Federal employees for fundraising);

(3) The community relations with the immediate community and/or other legitimate DoD interests are served by the support;

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

(5) The event is of interest and benefit to the local civilian or military community as a whole;

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

(7) The use is not restricted by other statutes or regulations; and

(8) Except for a charitable fundraising event that meets all other criteria for DoD participation, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the event, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the portion of the event supported by DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

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

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

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

- a. Certain banks and credit unions (DoD Directive 1000.11 (reference (p)));
- b. United Service Organization (DoD Directive 1330.12 (reference (q)));
- c. Labor organizations (5 U.S.C. Chapter 71 (reference (b))); DoD 1400.25-M, Chapter 711 (reference (r)));

- d. Combined Federal Campaign (E.O. 10927 (reference (s)), DoD Directive 5035.1 (reference (m)));
- e. Association of Management Officials and Supervisors (DoD Instruction 5010.30 (reference (t)));
- f. American Registry of Pathology (10 U.S.C. 177); Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. 178); American National Red Cross (10 U.S.C. 2542); Boy Scouts Jamborees (10 U.S.C. 2544); Girl Scouts International Events (10 U.S.C. 2545); Shelter for Homeless (10 U.S.C. 2546); National Military Associations; Assistance at National Conventions (10 U.S.C. 2548); Assistance from American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation and Assistance in Foreign Areas (10 U.S.C. 2606); and Civil Air Patrol (10 U.S.C. 9441-9442) (reference (f)).

SECTION 3. PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-300. Participation

a. Fundraising and Other Activities. Subject to other provisions of this Regulation, DoD employees may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities provided they act exclusively outside the scope of their official position. Purely personal, unofficial, volunteer efforts to support fundraising are not prohibited where the efforts do not imply DoD endorsement. The head of the DoD Component command or organization may authorize such activities outside the Federal Government workplace, such as at public entrances, in community support facilities and in personal quarters. See 5 C.F.R. 950 (reference (l)) and E.O. 12353 (reference (k)). These activities may be further limited by Federal Government building and grounds regulations.

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

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

(2) The Agency can derive some benefit from the

* participation or preparation, such as expansion of professional expertise by DoD employees or
* improved public confidence derived from the professional recognition of the DoD employee's
* competence;

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

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

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

3-301. Membership and Management. DoD employees may become
members and may participate in the management of non-Federal entities as individuals in a
personal capacity provided they act exclusively outside the scope of their official position.
* Except for such service in the organizations listed in subsection 3-210.a. of this Regulation,
* above, a DoD employee may not serve in a personal capacity as an officer, member of the Board
of Directors, or in any other similar position in any non-Federal entity offered because of their
DoD assignment or position.

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

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

3-304 Competition with Civilian Musicians. Members of military bands

are very restricted in the degree to which they may compete off base with civilian musicians. See 10 U.S.C. 3634, 6223 and 8634 (reference (f)).

3-305. Use of Federal Government Resources

a. **Authorized Uses.** Other than Federal Government time authorized in subsections 3-300.b. and 3-300.c. of this Regulation, above, Federal Government assets, employees, or property may not be used in support of personal participation in non-Federal entities, except as follows:

(1) Agency Designees may permit occasional use of Federal Government telephone systems in keeping with GSA rules on personal calls, provided that such use does not interfere with the performance of official duties. See subsection 2-301 of this Regulation and 41 C.F.R. 201-21.6 (reference (u));

(2) Because the cost to the Federal Government is minimal, the use of office telecommunications equipment for local calls, word processing equipment, libraries and similar resources and facilities whose use would not affect Federal Government costs significantly, may be permitted by the Agency Designee if:

- (a) The non-Federal entity is not a prohibited source;
- (b) The Agency Designee determines that:
 - 1 A legitimate public interest is served by the use; or
 - 2 The use would enhance the professional development or skills of the DoD employee in his current position.
- (c) The use of such resources is made only during personal time, such as excused absence, lunch period, or after duty hours; and
- (d) The use does not interfere with the performance of official duties.

b. **Prohibited Uses**

(1) Because of the potential for significant cost to the Federal Government, and the potential for abuse, DoD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DoD employee in support of non-Federal entities except as provided in subsection 3-300.b. of this Regulation, above.

(2) For the same reasons, copiers and other duplicating equipment may not be used for unofficial activity in support of non-Federal entities.

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

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

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

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

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

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

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

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

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

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

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

3-307. Teaching, Speaking and Writing

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

(1) *The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components.*

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

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

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c. Honoraria. Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of 5 U.S.C. App. 501 (reference (b)) and 5 C.F.R. 2636 (reference (a)) in subsection 3-100 of this Regulation, above, and by 5 C.F.R. 2635.807 (reference (g)) in subsection 2-100 of this Regulation. However, the U.S. Office of Government Ethics, by memorandum dated February 2, 1994, (reference (w)), determined, in accordance with a Department of Justice letter to the Director, Office of Government Ethics, that the Department of Justice will not seek to impose penalties for violations of 5 U.S.C. App. 501 (reference (b)) with respect to receipt of honoraria between September 28, 1993 and the date on which the Supreme Court issues its decision on this matter.

SECTION 4. REFERENCES

3-400. References

- (a) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition
- (b) Title 5, United States Code, Chapter 71, App. 501, 4101 and 5946
- (c) Title 37, United States Code, Section 412
- (d) Title 31, United States Code, Sections 6303 through 6306 and 1345
- (e) Decisions of the Comptroller General, Volume 24, page 814, 1945
- (f) Title 10, United States Code, Sections 177, 178, 974, 2371, 2541, 2542, 2544, 2545, 2546, 2548, 2601, 2602, 2604, 2606, 3634, 6223, 8634, 9441 and 9442
- (g) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (h) Title 18, United States Code, Section 208
- (i) DoD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business", January 16, 1974
- (j) Title 15, United States Code, Section 3710a

- (k) Executive Order 12353, "Charitable Fund-Raising," March 23, 1982, as amended
- (l) Title 5, Code of Federal Regulations, Part 950, "Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations," current edition
- (m) DoD Directive 5035.1, "Fund-raising within the Department of Defense," August 28, 1990
- (n) DoD Instruction 5035.5, "DoD Combined Federal Campaign - Overseas Area," August 17, 1990
- (o) DoD Directive 5410.18, "Community Relations," July 3, 1974
- (p) DoD Directive 1000.11, "Financial Institutions on DoD Installations," July 26, 1989
- (q) DoD Directive 1330.12, "United Service Organizations, Inc.," November 9, 1987
- (r) DoD 1400.25-M, "DoD Civilian Personnel Manual," January 24, 1978, authorized by DoD Directive 1400.25, "Department of Defense Civilian Personnel Manual System," January 24, 1978
- (s) Executive Order 10927, "Abolishing the President's Committee on Fund-Raising Within the Federal Service and Providing for the Conduct of Fund-Raising Activities," March 18, 1961
- (t) DoD Instruction 5010.30, "Intramangement Communication and Construction," May 2, 1989
- (u) Title 41, Code of Federal Regulations, Part 201-21.6, "Management and Use of Federal Information Processing Resources," current edition
- (v) DoD Directive 6025.7, "Off Duty Employment by DoD Health Care Providers," October 21, 1985
- (w) Office of Government Ethics Memorandum, "Honoraria," February 2, 1994

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CHAPTER 4

TRAVEL BENEFITS

SECTION 1. ACCEPTANCE OF OFFICIAL TRAVEL BENEFITS IN KIND OR PAYMENT FOR OFFICIAL TRAVEL EXPENSES

4-100. Acceptance from Non-Federal Sources

a. Official Travel. Official travel by DoD employees shall be funded by the Federal Government except that DoD Components may accept official travel benefits, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources as provided in this Chapter of this Regulation.

b. Personal Travel. This Chapter does not apply to travel benefits provided to DoD employees in their personal capacities. However, DoD employees must report such travel expenses when appropriate in accordance with Chapter 7 of this Regulation. There may be limitations on acceptance of travel benefits in a personal capacity, including limitations on acceptance from prohibited sources, because of official position, and under 41 U.S.C. 423 (reference (a)).

c. Acceptance Procedures. 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 (reference (b)), approved in advance of travel.

d. Spousal Travel. The travel approving authorities for travel of a spouse accompanying a DoD employee on official travel that is paid for or provided in kind by a non-Federal source are as follows:

(1) For DoD employees of OSD, Defense Agencies and DoD Field Activities, the Executive Secretary, OSD;

(2) For DoD employees of Military Departments, the Secretaries concerned or their designees;

(3) For DoD employees of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified or Specified Commands, and the Combined Commands and Agencies, the Chairman, Joint Chiefs of Staff, or his designee.

4-101. Acceptance of Travel and Related Expenses by a DoD Component From Non-Federal Sources

a. Attendance at a Meeting or Similar Function (31 U.S.C. 1353 (reference (b)))

(1) In accordance with 31 U.S.C. 1353 (reference (b)) and GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), Heads of DoD Components may accept travel benefits from a non-Federal source incurred by DoD employees in connection with their attendance in an official capacity at a meeting or similar function. The Joint Federal Travel Regulations (JFTR), Chapter 7, Part W, Paragraphs U7900-7908 (DoD Uniformed Services) (reference (d)) and Joint Travel Regulations (JTR), Chapter 4, Part Q, Paragraphs C4900-4908 (DoD Civilian Personnel) (reference (e)) implement 41 C.F.R. 301-1.2 and 304 (reference (c)). For detailed guidance as to the applicability and application of specific authority, these regulations should be consulted directly.

(2) Where the GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), are inconsistent with the JFTR (reference (d)) and JTR (reference (e)), 41 C.F.R. 301-1.2 and 304 (reference (c)) are the controlling authorities. *

(3) A DoD Component may not accept travel benefits from non-Federal sources under any other gift acceptance authority if 31 U.S.C. 1353 (reference (b)) applies.

(4) Payment Guidelines. DoD employees (or their spouses) shall not accept cash payments on behalf of the Federal Government.

(a) When travel benefits are paid for rather than provided in kind, payments from the non-Federal source will be by check or similar instrument made payable to the United States Treasury. Any such payment received by the DoD employee (or spouse) shall be submitted with his travel voucher as soon as practicable.

(b) The DoD employee shall exclude from his travel voucher any request for reimbursement for travel benefits furnished in kind by a non-Federal source on the travel voucher to ensure that appropriate deductions are made in the travel, per diem, or other allowances payable by the United States.

(5) Reporting. Each travel-approving authority designated by the DoD Component Head to accept travel benefits from non-Federal sources shall submit a report to the DoD Component DAEO or

DoD employees who have not met the usual requirements for membership, however, primarily because of the DoD employee's grade or position, neither the membership nor its benefits may be accepted.

c. Prizes in "Open" and "Closed" Contests. When travel companies and related organizations offer prizes in a competition that is open to the general public, so that no one must perform official travel to win, a DoD employee may keep any prize he wins, even if he happened to enter the contest only because of official travel (e.g., a DoD employee flying on official business receives the winning entry blank in an airline's contest while on the flight, but individuals not using the airline will be given the entry blank on request). Some travel companies and related organizations offer prizes in connection with official travel. The prize usually is given as a result of a drawing or some kind of contest. If competition for a prize is limited to individuals using a certain kind of travel accommodation, which in the case of the DoD employee is paid for by the Federal Government, any prize won belongs to the Federal Government (e.g., an airline provides contest entry blanks only to passengers on its planes, and the DoD employee receives the winning entry blank while flying on official travel!).

d. Incentives for Voluntary Surrender of Flight Reservations. DoD employees may keep payments or free tickets received from a carrier for voluntarily giving up a seat on an overbooked flight. DoD employees on official travel may not voluntarily surrender their seats if the resulting delay would interfere with the performance of duties. The delay may not increase the cost to the Federal Government. Therefore, travel vouchers should disclose the voluntary surrender and resulting delays and leave must be taken as appropriate.

SECTION 3. PROCEDURES AND RESPONSIBILITIES

4-300. The travel-approving authority shall:

a. Approve or disapprove acceptance of travel benefits in kind or payments of travel expenses from non-Federal sources in accordance with subsections 4-102 and 4-103 of this Regulation, above;

b. Acquire the concurrence of the DoD Component DAEO or designee when approving travel benefits in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5 (reference (c));

c. Prepare and submit a report to the DoD Component DAEO or designee reporting all travel benefits over \$250 accepted in accordance with the authority granted under 31 U.S.C. 1353 (reference (b)) as implemented in subsection 4-101 of this Regulation above;

d. Prepare and submit a report to the DoD Component DAEO or designee within 30 days after completion of travel during which travel benefits have been paid by non-Federal sources under 5 U.S.C. 4111 (reference (g)). See subsection 4-102.c. of this Regulation, above.

4-301. Each DoD Component DAEO or Designee shall:

a. Prepare and submit semiannual reports to OGE on acceptance of payments under 31 U.S.C. 1353 (reference (b)) due May 31 and November 30 each year. See subsection 4-101.a.(5) of this Regulation, above;

b. Retain reports from the travel approving authority under 5 U.S.C. 4111 (reference (g)) for two years. See subsection 4-102.c. of this Regulation, above; *

c. Provide written concurrence for the approval of travel benefits in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5 (reference (c)).

4-302. Each traveling DoD employee shall:

a. Provide all necessary information to the travel approving authority for a semiannual report to the DoD Component DAEO;

b. Turn in any merchandise, frequent flyer miles or other benefits as required under subsection 4-200 of this Regulation, above.

SECTION 4. REFERENCES

4-400. References

- (a) Title 41, United States Code, Section 423
- (b) Title 31, United States Code, Section 1353
- (c) Title 41, Code of Federal Regulations, Parts 301 through 304, "Federal Travel Regulation System," current edition
- (d) Joint Federal Travel Regulations, Paragraphs U2010B and U7900 through 7908 (DoD Uniformed Services)
- (e) Joint Travel Regulations, Paragraphs C1200 and C4900 through 4908 (DoD Civilian Personnel)
- (f) Title 10, United States Code, Section 2601
- (g) Title 5, United States Code, Sections 4111 and 7342
- (h) Title 5, Code of Federal Regulations, Section 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (i) Title 26, United States Code, Section 501

benefit plan maintained by his former employer. See 18 U.S.C. 209(b) (reference (c)).

d. Reserve military officers and certain temporarily commissioned military officers who are ordered to active duty may continue to receive compensation from individuals who furnished compensation to them prior to being ordered to active duty. See 10 U.S.C. 1033 (reference (l)) and 50 U.S.C. App. 454(f) (reference (n)).

5-405. Additional Pay or Allowances. *DoD employees may not receive additional pay or allowances for disbursement of public money or for the performance of any other service or duty unless specifically authorized by law. See 5 U.S.C. 5536 (reference (k)).*

a. 5 U.S.C. 5536 (reference (k)) precludes extra pay from the Federal Government for the performance of official duties. Subject to certain limitations, civilian DoD employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed. Absent specific authority, however, military members may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties. That a military member may have leisure hours during which no official duty is performed does not alter the result. See 52 Comp. Gen. 471 (reference (o)) and 22 Comp. Gen. 127, 149 (reference (p)).

b. 5 U.S.C. 5536 (reference (k)) applies to enlisted members and precludes enlisted members from supplementing their official salaries from outside sources for performing their official duties.

5-406. Interference with Military Duties. Military officers on active duty (except while on terminal leave) may not accept employment if it requires separation from their organization, branch, or unit, or interferes with the performance of military duties. See 10 U.S.C. 973(a) (reference (l)).

5-407. Civil Office Prohibition. Regular military officers on the active duty list and retired Regular military officers on active duty for more than 180 days may not hold civil office, unless expressly authorized by law. See 10 U.S.C. 973(b) (reference (l)).

5-408. Assignment of Reserves for Training

a. Personnel who assign Reserves for training shall not assign them to duties in which they will obtain information that they or their private employers may use to gain unfair advantage over competitors. Reservists must disclose to superiors and assignment personnel information necessary to ensure that no conflict exists between their duty assignment and their private interests.

b. Commanders, or their designees, shall screen Reservists performing training to ensure that no actual or apparent conflict exists between their private interests and their duty assignment. While Reservists have an affirmative obligation under this rule to disclose material facts in this regard, receiving commands cannot assume compliance and shall independently screen incoming personnel to avoid conflicts of interests.

5-409. Commercial Dealings Involving DoD Employees. *A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this subsection.*

* a. *This prohibition includes the solicited sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services.* *

* b. *Both the act of soliciting and the act of selling as a result of soliciting are prohibited. In both cases, however, a solicitation is necessary for a violation to occur. While the standard prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion or intimidation by the senior.* *

* c. Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may: *

CHAPTER 6

POLITICAL ACTIVITIES

SECTION 1. OFFICE OF PERSONNEL MANAGEMENT REGULATION

* 6-100. 5 C.F.R. 734, "Political Activities of Federal Employees" *

(reference (a)).

POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

5 CFR 734¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	2
Sec. 734.101 Definitions	2
Sec. 734.102 Jurisdiction	5
Sec. 734.104 Restriction of political activity	6
SUBPART B: PERMITTED ACTIVITIES	6
Sec. 734.201 Exclusion from coverage	6
Sec. 734.202 Permitted activities	6
Sec. 734.203 Participation in nonpartisan activities	6
Sec. 734.204 Participation in political organizations	7
Sec. 734.205 Participation in political campaigns	8
Sec. 734.206 Participation in elections	9
Sec. 734.207 Candidacy for public office	9
Sec. 734.208 Participation in fundraising	9
SUBPART C: PROHIBITED ACTIVITIES	11
Sec. 734.301 Exclusion from coverage	11
Sec. 734.302 Use of official authority; prohibition	12
Sec. 734.303 Fundraising	12
Sec. 734.304 Candidacy for public office	12
Sec. 734.305 Soliciting or discouraging the political participation of certain persons	12
Sec. 734.306 Participation in political activities while on duty	13
Sec. 734.307 Campaigning for a spouse or family member	15
SUBPART D: EMPLOYEES IN CERTAIN AGENCIES AND POSITIONS	15
Sec. 734.401 Coverage	15
Sec. 734.402 Expression of an employee's individual opinion	16
Sec. 734.403 Participation in elections	17
Sec. 734.404 Participation in political organizations	18
Sec. 734.405 Campaigning for a spouse or family member	18
Sec. 734.406 Participation in political activities while on duty	19
Sec. 734.407 Use of official authority; prohibition	19
Sec. 734.408 Participation in political management and political campaigning; prohibitions	19
Sec. 734.409 Participation in political organizations; prohibitions	19
Sec. 734.410 Participation in political fundraising; prohibitions	20
Sec. 734.411 Participation in political campaigning; prohibitions	20
Sec. 734.412 Participation in elections; prohibitions	20
Sec. 734.413 Employees of the Federal Election Commission; prohibitions	21
SUBPART E: SPECIAL PROVISIONS FOR CERTAIN PRESIDENTIAL APPOINTEES AND EMPLOYEES PAID FROM THE APPROPRIATION FOR THE EXECUTIVE OFFICE OF THE PRESIDENT	21
Sec. 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle	21
Sec. 734.503 Allocation and reimbursement of costs associated with political activities	23
SUBPART F: EMPLOYEES WHO WORK ON AN IRREGULAR OR OCCASIONAL BASIS	25
Sec. 734.601 Employees who work on an irregular or occasional basis	25
SUBPART G: RELATED STATUTES AND EXECUTIVE ORDERS	25
Sec. 734.701 General	25
Sec. 734.702 Related statutes and Executive orders	25

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

SUBPART A: GENERAL PROVISIONS

Sec. 734.101 Definitions.

For the purposes of this part:

Accept means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group.

Candidate means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

Campaign means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

Election includes a primary, special, runoff, or general election.

Employee means any individual (other than the President, Vice President, or a member of the uniformed services) employed or holding office in--

- (1) An Executive agency other than the General Accounting Office;
- (2) A position within the competitive service which is not in an Executive agency;
- (3) The Government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds; or
- (4) The United States Postal Service or the Postal Rate Commission.

Employing office shall have the meaning given by the head of each agency or instrumentality of the United States Government or District of Columbia Government covered by this part. Each agency or instrumentality shall provide notice identifying the appropriate employing offices within it through internal agency notice procedures.

Federal employee organization means any lawful nonprofit organization, association, society, or club composed of Federal employees.

Federal labor organization means an organization defined in 5 U.S.C. 7103(a)(4).
Multicandidate political committee means an organization defined in 2 U.S.C. 441a(a)(4).

Nonpartisan election means--

- (1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or
- (2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

Office means the U.S. Office of Personnel Management.

On Duty means the time period when an employee is:

- (1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or
- (2) Representing any agency or instrumentality of the United States Government or any agency or instrumentality of the District of Columbia Government in an official capacity.

Partisan when used as an adjective means related to a political party.

POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, 5 CFR 734

Partisan political group means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

Partisan political office means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

Person means an individual; a State, local, or foreign government; or a corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

Political contribution means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(a) A political contribution includes:

(1) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(2) Any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(3) The provision of personal services, paid or unpaid, for any political purpose.

(b) A political contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

Political management means the direction or supervision of a partisan political group or campaign for partisan political office.

Political party means a national political party, a State political party, or an affiliated organization.

Political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

Receive means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group.

Solicit means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

Subordinate refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

Uniformed services means uniformed services as defined in 5 U.S.C. 2101(3).

Sec. 734.102 Jurisdiction.

(a) The United States Office of Special Counsel is authorized to investigate allegations of political activity prohibited by 5 CFR part 734, prosecute alleged violations before the United States Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 CFR part 734 to the political activity of Federal employees and employees of the District of Columbia Government. Advice concerning the Hatch Act Reform Amendments may be requested from the Office of Special Counsel:

(1) By letter addressed to the Office of Special Counsel at 1730 M Street NW., Suite 300, Washington, DC 20036,
or

(2) By telephone on (202) 653-7188, or (1-800) 854-2824.

(b) The Merit Systems Protection Board is authorized to determine whether a violation has occurred and to impose a minimum penalty of suspension for 30 days and a maximum penalty of removal for violation of the political activity restrictions regulated by this part. (5 U.S.C. 1204, 1212, 1216, and 7326).

POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, 5 CFR 734

(c) The Office of Personnel Management is authorized to issue regulations describing the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993. (5 U.S.C. 1103, 1104, 7325; Reorganization Plan No. 2 of 1978, 92 Stat. 3783, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.)

Sec. 734.103 Multicandidate political committees of Federal labor organizations and Federal employee organizations.

(a) In order to qualify under this part, each multicandidate political committee of a Federal labor organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined by 2 U.S.C. 441a(a)(4);

(2) Information identifying the Federal labor organization to which the multicandidate political committee is connected; and

(3) Information that identifies the Federal labor organization as a labor organization defined at 5 U.S.C. 7103(4).

(b) In order to qualify under this part, each multicandidate political committee of a Federal employee organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined in 2 U.S.C. 441a(a)(4);

(2) Information identifying the Federal employee organization to which the multicandidate political committee is connected; and

(3) Information indicating that the multicandidate political committee was in existence as of October 6, 1993.

Sec. 734.104 Restriction of political activity.

No further proscriptions or restrictions may be imposed upon employees covered under this regulation except:

(a) Employees who are appointed by the President by and with the advice and consent of the Senate;

(b) Employees who are appointed by the President;

(c) Non-career senior executive service members;

(d) Schedule C employees, 5 CFR 213.3301, 213.3302; and

(e) Any other employees who serve at the pleasure of the President.

SUBPART B: PERMITTED ACTIVITIES

Sec. 734.201 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in subpart D of this part.

Sec. 734.202 Permitted activities.

Employees may take an active part in political activities, including political management and political campaigns, to the extent not expressly prohibited by law and this part.

Sec. 734.203 Participation in nonpartisan activities.

An employee may:

(a) Express his or her opinion privately and publicly on political subjects;

(b) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(c) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar

POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, 5 CFR 734

organization; and

(d) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government or the District of Columbia Government in which he or she is employed.

Example 1: An employee may participate, including holding office, in any nonpartisan group. Such participation may include fundraising as long as the fundraising is not in any way connected with any partisan political issue, group, or candidate, and as long as the fundraising complies with part 2635 of this title as well as any other directives that may apply, e.g., the Federal Property Management Regulations in 41 CFR chapter 101.

Sec. 734.204 Participation in political organizations.

An employee may:

- (a) Be a member of a political party or other political group and participate in its activities;
- (b) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;
- (c) Attend and participate fully in the business of nominating caucuses of political parties;
- (d) Organize or reorganize a political party organization or political group; and
- (e) Participate in a political convention, rally, or other political gathering.

Example 1: An employee of the Department of Education may serve as a delegate, alternate, or proxy to a State or national party convention.

Example 2: An employee of the Department of Health and Human Services may serve as a vice-president of a partisan or non-partisan political action committee, as long as the duties of the office do not involve personal solicitation, acceptance, or receipt of political contributions. Sections 734.208 and 734.303 of this part describe in detail permitted and prohibited activities which are related to fundraising.

Example 3: An employee of the Federal Communications Commission may make motions or place a name in nomination at a nominating caucus.

Example 4: An employee of the Department of the Interior may serve as an officer of a candidate's campaign committee as long as he does not personally solicit, accept, or receive political contributions. Sections 734.208 and 734.303 of this part describe in detail permitted and prohibited activities which are related to fundraising.

Sec. 734.205 Participation in political campaigns.

Subject to the prohibitions in section 734.306, an employee may:

- (a) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the provisions of section 734.306 of subpart C of this part;
- (b) Initiate or circulate a nominating petition for a candidate for partisan political office;
- (c) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;
- (d) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material;
- (e) Address a convention, caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office; and
- (f) Take an active part in managing the political campaign of a partisan political candidate or a candidate for political party office.

Example 1: An employee of the Environmental Protection Agency may broadcast endorsements for a partisan political candidate via a public address system attached to his or her private automobile.

Example 2: An employee of the Department of Interior may canvass voters by telephone on behalf of a political party or partisan political candidate.

Example 3: An employee of the Department of Agriculture may stand outside of polling places on election day and hand out brochures on behalf of a partisan political candidate or political party.

Example 4: An employee may appear in a television or radio broadcast which endorses a partisan political candidate and is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 5: An independent contractor is not covered by this part and may display a political button while performing the duties for which he or she is contracted.

Example 6: An employee of the Department of Commerce who is on official travel may take annual leave in the morning to give an address at a breakfast for a candidate for partisan political office.

Example 7: An employee may manage the political campaign of a candidate for public office including supervising paid and unpaid campaign workers.

Sec. 734.206 Participation in elections.

An employee may:

- (a) Register and vote in any election;
- (b) Act as recorder, watcher, challenger, or similar officer at polling places;
- (c) Serve as an election judge or clerk, or in a similar position; and
- (d) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

Example: An employee may drive voters to polling places in a privately owned vehicle, but not in a Government-owned or leased vehicle.

Sec. 734.207 Candidacy for public office.

An employee may:

- (a) Run as an independent candidate in a partisan election covered by 5 CFR part 733; and
- (b) Run as a candidate in a nonpartisan election.

Example 1: An employee who is a candidate for public office in a nonpartisan election is not barred by the Hatch Act from soliciting, accepting, or receiving political contributions for his or her own campaign; however, such solicitation, acceptance, or receipt must comply with part 2635 of this title as well as any other directives that may apply, e.g., The Federal Property Management Regulations in 41 CFR chapter 101.

Sec. 734.208 Participation in fundraising.

(a) An employee may make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election and multicandidate political committee of a Federal labor or Federal employee organization.

(b) Subject to the prohibitions stated in section 734.303, an employee may--

- (1) Attend a political fundraiser;
- (2) Accept and receive political contributions in a partisan election described in 5 CFR part 733;
- (3) Solicit, accept, or receive uncompensated volunteer services from any individual; and
- (4) Solicit, accept, or receive political contributions, as long as:

(i) The person who is solicited for a political contribution belongs to the same Federal labor organization, or Federal employee organization, as the employee who solicits, accepts, or receives the contribution;

(ii) The person who is solicited for a political contribution is not a subordinate employee; and

(iii) The request is for a contribution to the multicandidate political committee of a Federal labor organization or to the multicandidate political committee of a Federal employee organization in existence on October 6, 1993.

Example 1: An GS-12 employee of the Department of Treasury who belongs to the same Federal employee organization as a GS-5 employee of the Department of Treasury may solicit a contribution for the multicandidate political committee when she is not on duty as long as the GS-5 employee is not under the supervisory authority of the GS-12 employee.

Example 2: An employee of the National Park Service may give a speech or keynote address at a political fundraiser when he is not on duty, as long as the employee does not solicit political contributions, as prohibited in s 734.303(b) of this part.

Example 3: An employee's name may appear on an invitation to a political fundraiser as a guest speaker as long as the reference in no way suggests that the employee solicits or encourages contributions, as prohibited in section 734.303 of this part and described in example 2 thereunder. However, the employee's official title may not appear on invitations to any political fundraiser, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," may use or permit the use of that term of address for such purposes.

Example 4: When an employee of the Department of Transportation is not on duty, she may engage in activities which do not require personal solicitations of contributions, such as organizing mail or phone solicitations for political contributions. However, the employee may not sign the solicitation letter unless the solicitation is for the contribution of uncompensated services of individuals. Activities such as stuffing envelopes with requests for political contributions are permitted.

Example 5: An employee who is not on duty may participate in a phone bank soliciting the uncompensated services of individuals. However, an employee may not make phone solicitations for political contributions even anonymously.

Example 6: An employee of the Department of Agriculture who is on official travel and is not in a pay status nor officially representing the Department may write invitations in his hotel room to a meet-the-candidate reception which he plans to hold in his home.

Example 7: An employee may serve as an officer or chairperson of a political fundraising organization or committee as long as he or she does not personally solicit, accept, or receive political contributions. For example, the employee may organize or manage fundraising activities as long as he or she does not violate the above prohibition.

Example 8: The head of a cabinet-level department may contribute one of her worn-out cowboy boots to the campaign committee of a Senatorial candidate to be auctioned off in a fundraising raffle for the benefit of the candidate's campaign.

Example 9: An employee may help organize a fundraiser including supplying names for the invitation list as long as he or she does not personally solicit, accept, or receive contributions.

Example 10: An employee on travel may engage in political activity when he or she is not on duty without taking annual leave.

Example 11: A Federal employee may solicit, accept, or receive the uncompensated volunteer services of any individual, except a subordinate employee, to work on behalf of a partisan political candidate or organization. However, such solicitation, acceptance, or receipt must comply with part 2635 of this title as well as any other directives that may apply, e.g., the Federal Property Management Regulations in 41 CFR chapter 101. Further, Federal employees are subject to criminal anti-coercion provisions found at 18 U.S.C. 610.

SUBPART C: PROHIBITED ACTIVITIES

Sec. 734.301 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in subpart D of this part.

Sec. 734.302 Use of official authority; prohibition.

An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, 5 C.F.R. 734

Sec. 734.303 Fundraising.

An employee may not knowingly:

- (a) Personally solicit, accept or receive a political contribution from another person, except under the circumstances specified in section 734.208(b);
- (b) Personally solicit political contributions in a speech or keynote address given at a fundraiser;
- (c) Allow his or her official title to be used in connection with fundraising activities; or
- (d) Solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate.

Example 1: An employee may not host a fundraiser at his or her home. However, a spouse who is not covered under this part may host such a fundraiser and the employee may attend. The employee may not personally solicit contributions to the fundraiser. Moreover, the employee may not accept, or receive political contributions, except under the circumstances stated in section 734.208(b).

Example 2: An employee's name may not appear on an invitation to a fundraiser as a sponsor of the fundraiser, or as a point of contact for the fundraiser.

Example 3: An employee may not ask a subordinate employee to volunteer on behalf of a partisan political campaign.

Example 4: An employee may not call the personnel office of a business or corporation and request that the corporation or business provide volunteers or services for a campaign. However, an employee may call an individual who works for a business or corporation and request that specific individual's services for a campaign.

Sec. 734.304 Candidacy for public office.

An employee may not run for the nomination or as a candidate for election to partisan political office, except as specified in section 734.207.

Sec. 734.305 Soliciting or discouraging the political participation of certain persons.

- (a) An employee may not knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation grant, contract, ruling, license, permit, or certificate pending before the employee's employing office.
- (b) An employee may not knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by the employee's employing office.
- (c) Each agency or instrumentality of the United States or District of Columbia Government shall determine when a matter is pending and ongoing within employing offices of the agency or instrumentality for the purposes of this part.

Example 1: An employee with agency-wide responsibility may address a large, diverse group to seek support for a partisan political candidate as long as the group has not been specifically targeted as having matters before the employing office.

Example 2: An employee of the Federal Deposit Insurance Corporation (FDIC) may not solicit or discourage the participation of an insured financial institution or its employees if the institution is undergoing examination by the FDIC.

Example 3: An employee of the Food and Drug Administration may address a banquet for a partisan political candidate which is sponsored by the candidate's campaign committee, even though the audience includes three individuals who are employed by or are officials of a pharmaceutical company. However, she may not deliver the address if the banquet is sponsored by a lobbying group for pharmaceutical companies, or if she knows that the audience will be composed primarily of employees or officials of such companies.

Sec. 734.306 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

(a) An employee may not participate in political activities subject to the provisions of subpart E of this part:

- (1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, insignia, or other similar item that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(b) The prohibitions in paragraph (a) of this section do not apply to employees covered under subpart E of this part.

Example 1: While on leave without pay, an employee is not subject to the prohibition in section 734.306(a)(1) because he or she is not on duty. However, while on leave without pay, the employee remains subject to the other prohibitions in subpart C.

Example 2: A Postal Service employee who uses her private vehicle to deliver mail may place a political bumper sticker on the vehicle, as long as she covers the bumper sticker while she is on duty.

Example 3: An employee who is being compensated for mileage when driving a privately owned vehicle may place a bumper sticker on the vehicle, as long as he covers the bumper sticker while the vehicle is being used for official duties.

Example 4: An employee may place a bumper sticker on his privately owned vehicle and park his vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 5: If an employee is not on duty, he or she may engage in political activity in the office of his or her labor organization local even if the space is provided by an agency or instrumentality of the United States Government to the labor organization.

Example 6: An agency or instrumentality of the United States Government leases offices in a commercial building; the headquarters of a candidate for partisan political office are situated in the same building. An employee of that agency or instrumentality may do volunteer work at the candidate's headquarters when he is not on duty.

Example 7: An employee of the National Aeronautics and Space Administration (NASA) may not engage in political activities while wearing a NASA flight patch, NASA twenty-year pin or anything with an official NASA insignia.

Example 8: If a political event begins while an employee is on duty and continues into the time when he or she is not on duty, the employee must wait until he or she is not on duty to attend the event. Alternatively, an employee may request annual leave to attend the political event when it begins.

Example 9: Officials of labor organizations who have been given official time to perform representational duties are on duty.

Example 10: An employee may stuff envelopes for a mailing on behalf of a candidate for partisan political office while the employee is sitting in the park during his lunch period if he is not considered to be on duty during his lunch period.

Example 11: An employee may engage in political activity in the courtyard outside of a Federal building where no official duties are discharged as long as the employee is not on duty.

Example 12: An employee who works at home may engage in political activities at home when he or she is not in a pay status or representing the Government in an official capacity.

Example 13: An employee who is appointed by the President by and with the advice and consent of the Senate (PAS) may attend a political event with a non-PAS employee whose official duties do not require accompanying the PAS as long as the non-PAS employee is not on duty.

Sec. 734.307 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election, is subject to the same prohibitions as other employees covered under this subpart.

Example 1: An employee who is married to a candidate for partisan political office may attend a fundraiser for his spouse, stand in the receiving line, sit at the head table, and urge others to vote for his spouse. However, the employee may not personally solicit, accept, or receive contributions of money or personal services, or sell or collect money for tickets

to the fundraiser.

Example 2: An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier. She may distribute fliers at a campaign rally as long as she does not personally solicit contributions.

Example 3: An employee who is married to a candidate for political partisan political office may appear with her spouse in a political advertisement or a broadcast, and urge others to vote for her spouse, as long as the employee does not personally solicit political contributions.

SUBPART D: EMPLOYEES IN CERTAIN AGENCIES AND POSITIONS

Sec. 734.401 Coverage.

(a) This subpart applies to employees in the following agencies and positions:

- (1) The Federal Election Commission;
- (2) The Federal Bureau of Investigation;
- (3) The Secret Service;
- (4) The Central Intelligence Agency;
- (5) The National Security Council;
- (6) The National Security Agency;
- (7) The Defense Intelligence Agency;
- (8) The Merit Systems Protection Board;
- (9) The Office of Special Counsel;
- (10) The Office of Criminal Investigation of the Internal Revenue Service.
- (11) The Office of Investigative Programs of the United States Customs Service;
- (12) The Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;
- (13) The Criminal Division of the Department of Justice;
- (14) Career Senior Executive Service positions described in 5 U.S.C. 3132(a)(4);
- (15) Administrative Law Judge positions described in 5 U.S.C. 5372;
- (16) Contract Appeals Board Member positions described in 5 U.S.C. 5372a.

(b) Employees appointed by the President by and with the advice and consent of the Senate in the agencies and positions described in paragraph (a) of this section are excluded from coverage under this subpart.

(c) All employees covered under this subpart are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart.

Sec. 734.402 Expression of an employee's individual opinion.

Each employee covered under this subpart retains the right to participate in any of the following political activities, as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office:

- (a) Express his or her opinion as an individual privately and publicly on political subjects and candidates;
- (b) Display a political picture, sign, sticker, badge, or button, as long as those items are displayed in accordance with the provisions of section 734.408 of subpart D of this part;

(c) Sign a political petition as an individual;

(d) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character; and

(e) Otherwise participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.

Example 1: An employee may purchase air time on a radio or television station to endorse a partisan political candidate. However, he or she may not endorse such a candidate in a commercial or program which is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 2: An employee may address a political convention or rally but not on behalf, or at the request of, a political party, partisan political group, or an individual who is running for the nomination or as a candidate for election to partisan political office.

Example 3: An employee may print at her own expense one thousand fliers which state her personal opinion that a partisan political candidate is the best suited for the job. She may distribute the fliers at a shopping mall on the weekend. However, she may not distribute fliers printed by the candidate's campaign committee, a political party, or a partisan political group.

Example 4: An employee may stand outside of a political party convention with a homemade sign which states her individual opinion that one of the candidates for nomination is the best qualified candidate.

Example 5: An employee may not wear a button with a partisan political theme while she is on duty.

Sec. 734.403 Participation in elections.

Each employee covered under this subpart retains the right to:

- (a) Register and vote in any election;
- (b) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election; and
- (c) Serve as an election judge or clerk, or in a similar position, to perform nonpartisan duties as prescribed by State or local law.

Sec. 734.404 Participation in political organizations.

Each employee covered under this subpart retains the right to:

- (a) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (b) Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with other Federal law;
- (c) Attend a political convention, rally, fund-raising function, or other political gathering; and
- (d) Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office.

Example 1: An employee may attend a political convention or rally. However, the employee may not participate in demonstrations or parades which are sponsored by a political party, a partisan political group, or an individual who is running for nomination to be a candidate for partisan political office.

Example 2: An employee may attend a political party's annual barbecue, but he or she may not organize, distribute invitations to, or sell tickets to the barbecue.

Sec. 734.405 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, or a candidate for political party office, may appear in photographs of the candidate's family which might appear in a

political advertisement, a broadcast, campaign literature, or similar material. A spouse or a family member who is covered by the Hatch Act Reform Amendments also may attend political functions with the candidate. However, the spouse or family member may not distribute campaign literature or solicit, accept, or receive political contributions.

Example 1: An employee who is the spouse of a candidate for partisan political office may stand in the receiving line and sit at the head table during a political dinner honoring the spouse.

Example 2: An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

Sec. 734.406 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle; prohibition.

(a) An employee covered under this subpart may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(b) [Reserved]

Sec. 734.407 Use of official authority; prohibition.

An employee covered under this subpart may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

Sec. 734.408 Participation in political management and political campaigning; prohibitions.

An employee covered under this subpart may not take an active part in political management or in a political campaign, except as permitted by this part.

Sec. 734.409 Participation in political organizations; prohibitions.

An employee covered under this subpart may not:

(a) Serve as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;

(b) Organize or reorganize a political party organization or partisan political group;

(c) Serve as a delegate, alternate, or proxy to a political party convention; and

(d) Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group.

Sec. 734.410 Participation in political fundraising; prohibitions.

An employee covered under this subpart may not:

(a) Solicit, accept, or receive political contributions; or

(b) Organize, sell tickets to, promote, or actively participate in a fundraising activity of a candidate for partisan political office or of a political party, or partisan political group.

Sec. 734.411 Participation in political campaigning; prohibitions.

An employee covered under this subpart may not:

- (a) Take an active part in managing the political campaign of a candidate for partisan political office or a candidate for political party office;
- (b) Campaign for partisan political office;
- (c) Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, or of a political party, or partisan political group;
- (d) Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
- (e) Initiate or circulate a partisan nominating petition.

Sec. 734.412 Participation in elections; prohibitions.

An employee covered under this subpart may not:

- (a) Be a candidate for partisan political office except as described in s 734.403;
- (b) Act as recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office;
- (c) Drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

Sec. 734.413 Employees of the Federal Election Commission; prohibitions.

- (a) An employee of the Federal Election Commission may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.
- (b) This section does not cover employee of the Federal Election Commission who are appointed by the President by and with the advice and consent of the Senate.

SUBPART E: SPECIAL PROVISIONS FOR CERTAIN PRESIDENTIAL APPOINTEES AND EMPLOYEES PAID FROM THE APPROPRIATION FOR THE EXECUTIVE OFFICE OF THE PRESIDENT

Sec. 734.501 Permitted and prohibited activities.

Except as otherwise specified in this part 734, employees who are appointed by the President by and with the advice and consent of the Senate are subject to the provisions of subparts B and C of this part.

Sec. 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

(a) This section applies to an employee:

(1) The duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(2) Who is--

(i) An employee paid from an appropriation for the Executive Office of President; or

(ii) An employee appointed by the President by and with the advice and consent of the Senate whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws;

(b) For the purposes of this subpart, normal duty hours and normal duty post will be determined by the head of each agency or instrumentality of the United States or District of Columbia Government.

(c) An employee described in paragraph (a) of this section may participate, subject to any restrictions that may be imposed in accordance with section 734.104, in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the agency or instrumentality of the United States Government or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(d) An employee, to whom subpart E of this part does not apply, who is not on duty may participate in political activities in rooms of the White House which are part of the private Residence area or which are not regularly used solely in the discharge of official duties.

Example 1: An Inspector General is appointed under the Inspector General Act of 1978, as amended. According to section 3(c) of that Act, he or she does not qualify as an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws. Therefore, he or she may not participate in political activities while on duty, while wearing a uniform, badge, or insignia that identifies his or her office or position, while in any room or building occupied in the discharge of official duties, or while using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

Example 2: An employee who is covered by this subpart and wears a uniform as an incident of her office may wear the uniform while she is giving a speech at a political fundraiser.

Example 3: The head of an executive department may hold a partisan political meeting or host a reception which is not a fundraiser in his conference room during normal business hours.

Example 4: An employee accompanies the Secretary of Transportation to a political party convention as part of the Secretary's security or administrative detail. The employee is considered to be on duty while protecting or performing official duties for the Secretary regardless of the nature of the function that the Secretary is attending.

Example 5: An American Ambassador overseas obtains authorization from the Department of State to depart post in order to take a vacation away from post. During the period she is authorized to be on vacation away from post, she is not considered to be on duty for the purpose of the Hatch Act Reform Amendments and may engage in any political activity permitted under the Hatch Act Reform Amendments of 1993.

Sec. 734.503 Allocation and reimbursement of costs associated with political activities.

(a) The costs associated with the political activities described in § 733.502(c) of this chapter may not be paid for by money derived from the Treasury of the United States. Costs associated with a political activity are deemed not to be paid for by money derived from the Treasury of the United States if the Treasury is reimbursed for the costs within a reasonable period of time.

(b) For the purposes of this section, costs associated with a political activity do not include any costs that the Government would have or have incurred regardless of whether the activity was political. Examples of such costs are:

(1) The compensation of the employee described in section 734.502(a);

(2) The value of any office or other real property owned or leased by the Government;

(3) The compensation and expenses of any Government employee that is required in the performance of his or her duties to accompany or assist the person engaging in the political activity; and

(4) The cost of special security arrangements for the person engaging in the political activity, including special transportation vehicles or methods.

(c) (1) An employee covered under this subpart must apportion the costs of mixed travel based on the time spent on political activities and the time spent performing official duties. Prorating the cost of travel involves determining the "total activity time" which is the amount of time actually spent by the employee in meetings, receptions, rallies, and similar activities. Time spent in actual travel, private study, or rest and recreation is not included in the computation of the "total activity time". The proration of the cost then is determined based on how the "total activity time" was spent. The formula is as follows:

Time spent in official meetings, receptions, etc. + Time spent in political meetings, receptions, rallies = Total activity time

Time spent in official activity + Total activity time = Percentage of trip that is official

Time spent in political activity ÷ Total activity time = Percentage of trip that is political

The percentage figure that represents the political portion of the trip is then multiplied by the amount that would be reimbursed to the Government if all of the travel was political. The product of that calculation represents the amount to be paid by the political entity or organization.

(2) The allocation method must be applied to all of the relevant costs of mixed travel.

(3) Expenses that are associated specifically with a political activity and not with any official activity must be treated as political, and expenses associated specifically with an official activity and not with any political activity must be treated as official.

(4) In allocating the costs of travel other than air travel, the allocation formula should be applied to any Government maximum for that type of expenditure.

(5) The determination of the proper amount of allocation must be based on the facts and circumstances involved.

(6) In the event that a minor, clearly incidental percentage of the activity of a mixed trip is devoted to either official or political activity, e.g. less than 3%, the entire trip should be treated as if it was wholly of the type represented by the substantial figure. The balance should be treated as de minimis and need not be reimbursed as political or charged as official.

(d) For any cost of a political activity of an employee that is required to be reported to the Federal Election Commission under the Federal Election Campaign Act (FECA) or the Presidential Election Campaign Fund Act (PECF), the employee shall use the same method of allocation as used under the FECA or PECFA and regulations thereunder in lieu of the allocation method in paragraph (c) of this section.

Example 1: The Secretary, an employee described by section 7324(b)(2) of title 5 of the United States Code, holds a catered political activity (other than a fundraiser) in her office. Her security detail attends the reception as part of their duty to provide security for her. The Secretary will not be in violation of the Hatch Act Reform Amendments if the costs of her office, her compensation, and her security detail are not reimbursed to the Treasury. A violation of the Hatch Act Amendments occurs if Government funds, including reception or discretionary funds, are used to cater the political activity, unless the Treasury is reimbursed for the cost of the catering within a reasonable time.

Example 2: There should be no allocation between official and political funds for a sound system rented for a single event.

Example 3: If on a mixed trip a Government employee is only entitled to \$26 per diem for food on a wholly official trip and the trip is 50% political and 50% official, the Government share would be 50% of \$26, not 50% of the actual amount spent.

Example 4: The President is transported by special motorcade to and from the site of the political event. The expense of the motorcade is for special security arrangements. Thus, it would not be a violation of the Hatch Act Reform Amendments if the costs of the security arrangements, including the cost of the motorcade, are not reimbursed to the Treasury.

SUBPART F: EMPLOYEES WHO WORK ON AN IRREGULAR OR OCCASIONAL BASIS

Sec. 734.601 Employees who work on an irregular or occasional basis.

An employee who works on an irregular or occasional basis or is a special Government employee as defined in 18 U.S.C. 202(a) is subject to the provisions of the applicable subpart of this part when he or she is on duty.

Example: An employee appointed to a special commission or task force who does not have a regular tour of duty may run as a partisan political candidate, but may actively campaign only when he or she is not on duty.

SUBPART G: RELATED STATUTES AND EXECUTIVE ORDERS

Sec. 734.701 General.

In addition to the provisions regulating political activity set forth in subparts A through G of this part, there are a number of statutes and Executive orders that establish standards to which the political activity of an employee, a Federal labor organization, a Federal employee organization, and a multicandidate political committee must conform. The list set forth in § 734.702 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability.

Sec. 734.702 Related statutes and Executive orders.

- (a) The prohibition against offering anything of value in consideration of the use or promise of use of influence to procure appointive office (18 U.S.C. 210).
- (b) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).
- (c) The prohibition against intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).
- (d) The prohibition against use of official authority to interfere with a Federal election by a person employed in any administrative position by the United States in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).
- (e) The prohibition against the promise of employment, compensation, or benefits from Federal funds in exchange for political activity (18 U.S.C. 600).
- (f) The prohibition against the deprivation of or threat of deprivation of employment in exchange for political contributions (18 U.S.C. 601).
- (g) The prohibition against soliciting political contributions (18 U.S.C. 602).
- (h) The prohibition against making certain political contributions (18 U.S.C. 603).
- (i) The prohibition against soliciting or receiving assessments, subscriptions, or contributions for political purposes from persons on Federal relief or work relief (18 U.S.C. 604).
- (j) The prohibition against disclosing and receiving lists or names of persons on relief for political purposes (18 U.S.C. 605).
- (k) The prohibition against intimidating employees to give or withhold a political contribution (18 U.S.C. 606).
- (l) The prohibition against soliciting political contributions in navy yards, forts, or arsenals (18 U.S.C. 607).
- (m) The prohibition against coercing employees of the Federal Government to engage in, or not to engage in, any political activity (18 U.S.C. 610).
- (n) The prohibition against certain personnel practices (5 U.S.C. 2302).
- (o) The prohibition against making, requesting, considering, or accepting political recommendations (5 U.S.C. 3303).
- (p) The prohibitions against misuse of a Government vehicle (31 U.S.C. 1344).
- (q) The requirements and prohibitions stated in the Federal Election Campaign Act (2 U.S.C. 431-455).
- (r) The prohibitions against soliciting for gifts to superiors, giving donations for such gifts, and accepting gifts from employees who receive a lower rate of pay (5 U.S.C. 7351).
- (s) The prohibitions against soliciting or accepting things of value from specified persons (5 U.S.C. 7353).
- (t) The prohibitions and requirements stated in the Ethics in Government Act of 1978 (5 U.S.C. App.) and Executive Order 12674 (54 FR 15159-15162; 3 CFR 1989 Comp. 215-218) as modified by Executive Order 12731 (55 FR 42547-42550; 3 CFR 1990 Comp. 306-311).

Nov 2, 94
DoD 5500.7-R

POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, 5 CFR 734

SECTION 2. POLITICAL ACTIVITIES OF CIVILIAN DoD EMPLOYEES

6-200. Policy

* a. The policy governing the political activities of civilian DoD *
* employees is derived from the Hatch Act Amendments, 5 U.S.C. 7321 through 7325 *
* (reference (b)). Guidance on the application of the Hatch Act Amendments is provided by the *
* Hatch Act Hotline at the Office of Special Counsel at 1-(800) 854-2824. *

* b. Primary enforcement responsibility under the Hatch Act *
* Amendments (reference (b)) lies with the Office of Special Counsel under 5 U.S.C. 1216(c) *
* (reference (b)); however, DoD Components have responsibility to investigate allegations of *
* prohibited political activity by excepted service employees of the DoD Component. *

c. It is DoD policy to encourage civilian DoD employees and *
members of the Armed Forces to carry out the obligations of citizenship to the maximum extent *
possible consistent with the restrictions imposed by law and by this Regulation. *

* 6-201. Permissible Activities. Subject to subsections 6-202 and 6-203 of *
* this Regulation, below, civilian DoD employees may, in their personal capacities: *

* a. Be candidates for public office in nonpartisan elections; *

* b. Register and vote as they choose; *

* c. Assist in voter registration drives; *

* d. Express opinions about candidates and issues; *

* e. Contribute money to political organizations; *

* f. Attend political fundraising functions; *

* g. Attend and be active at political rallies and meetings; *

* h. Join and be an active member of a political party or club; *

* i. Sign nominating petitions; *

* j. Campaign for or against referendum questions, *
* constitutional amendments, or municipal ordinances; *

- k. Campaign for or against candidates in partisan elections (see subsection 6-202.c. of this Regulation, below);
- l. Make campaign speeches for candidates in partisan elections (see subsection 6-202.c. of this Regulation, below);
- m. Distribute campaign literature in partisan elections (see subsection 6-202.c. of this Regulation, below);
- n. Hold office in political clubs or parties (see subsection 6-202.c. of this Regulation, below).

6-202. Limitations

a. Military members are not covered by the Hatch Act Amendments, 5 U.S.C. 7321 through 7327, (reference (b)). Political activities of Military members are covered in Section 3 of this Chapter, below.

b. Notwithstanding subsection 6-201 of this Regulation, above, as a matter of longstanding DoD policy, DoD employees who are appointed by the President, by and with the advice and consent of the Senate (e.g. the Secretary of Defense, the Secretaries of the Military Departments, etc.), and DoD employees who are appointed by the Secretary of Defense to non-career Senior Executive Service positions may not engage in activities that could be interpreted as associating the DoD with any partisan political cause or issue.

c. The following DoD employees (except for Presidential appointees who are confirmed by and with the consent of the Senate) are prohibited from engaging in the activities described in 6-201.k. through 6-201.n. of this Regulation, above:

- (1) Employees of the National Security Agency;
- (2) Employees of the Defense Intelligence Agency;
- (3) Career members of the senior executive service;
- (4) Administrative Law Judges; and
- (5) Contract appeals board members.

6-203. Prohibited Activities. Civilian DoD employees may not:

- a. Use official authority or influence for the purpose of interfering with or affecting the result of an election;

- b. Collect political contributions unless both the collector and the donor are members of the same Federal labor organization or employee organization and the donor is not a subordinate;
- c. Knowingly solicit or discourage the political activity of any person who has business with DoD;
- d. Engage in political activity while on duty;
- e. Engage in political activity while in any Federal workplace;
- f. Engage in political activity while wearing an official uniform or displaying official insignia identifying the office or position of the DoD employee;
- g. Engage in political activity while using a Government owned or leased vehicle;
- h. Solicit political contributions from the general public;
- i. Be a candidate for public office in partisan elections;
- j. Wear political buttons on duty;
- k. Contribute to the political campaign of another Federal Government employee who is in the DoD employee's chain of command or supervision or who is the employing authority, including the political campaign to re-elect the President or Vice President.

6-204 DoD Employees Residing in Designated Localities

Notwithstanding the prohibitions of subsection 6-203 of this Regulations, above, a DoD employee (except those DoD employees listed in subsection 6-202.c. of this Regulation, above) who resides in a municipality or political subdivision, either in the immediate vicinity of the District of Columbia or in which the majority of voters are employed by the Federal Government, as designated by OPM under 5 C.F.R. 733.102(d) (reference (c)) may:

- a. Run as an independent candidate for election to a partisan political office in an election for local office of the municipality or political subdivision provided the candidacy for, and service in, the partisan political office shall not result in

neglect of, or interference with, the performance of the duties of the DoD employee or create an actual or apparent conflict of interest; and

b. Accept or receive political contributions in connection with a local election of the municipality or political subdivision provided the DoD employee does not solicit political contributions from the general public.

6-205. Political Recommendations

a. The restrictions of 5 U.S.C. 3303 (reference (b)) apply to all personnel actions described in 5 U.S.C. 2302(a)(2)(A)(i) through (x) (reference (b)) for individuals in or applicants to the following DoD positions:

(1) Competitive service employees;

(2) Career appointees in the Senior Executive Service;

and

(3) Excepted service employees other than one who is appointed by the President or whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character.

b. Each personnel action with respect to a DoD employee or applicant, as described in subsection 6-205.a. of this Regulation, above, shall be taken without regard to any recommendation or statement, oral or written, made by the following types of individuals:

(1) Members of Congress or Congressional employees;

(2) Elected officials of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;

(3) Officials of political parties; or

(4) Other individuals or organizations making such recommendations or statements on the basis of the party affiliations of the DoD employee or applicant recommended.

c. DoD employees may solicit, accept, and consider any statement with respect to a DoD employee or applicant described in subsection 6-205.a. of this Regulation, above, if the statement meets one of the following conditions:

(1) It is pursuant to a request or requirement of the

* DoD Component and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the DoD employee or applicant; *

(2) It relates solely to the character and residence of the DoD employee or applicant;

(3) It is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether the DoD employee or applicant meets suitability or security standards;

(4) It is furnished by a former employer of the DoD employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such DoD employee or applicant during employment with such former employer; or

(5) It is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

c. DoD Component Heads are required by 5 C.F.R. 300.801 (reference (d)) to ensure that DoD employees and applicants described in subsection 6-205.a. of this Regulation, above, are notified of the provisions of 5 U.S.C. 3303 (reference (b)).

SECTION 3. POLITICAL ACTIVITIES OF MILITARY MEMBERS

6-300. DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990 (reference (e))

* *

DoD DIRECTIVE 1344.10¹

June 15, 1990
ASD(FM&P)

SUBJECT: Political Activities by Members of the Armed Forces on Active Duty

- References:
- (a) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces," September 25, 1986 (hereby canceled)
 - (b) Title 10, United States Code
 - (c) DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979
 - (d) DoD Directive 1325.6, "Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces," September 12, 1969
 - (e) through (h), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a) to update DoD policies on political activities of members of the Armed Forces on active duty (AD).
2. Implements Section 973(b) of reference (b).

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; and the Coast Guard when it is not operating as a Service in the Navy, by agreement with the Department of Transportation.

C. DEFINITIONS

The terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy that a member of the Armed Forces (hereafter referred to as "member") is encouraged to carry out the obligations of a citizen. While on AD, however, members are prohibited from engaging in certain political activities. Subject to the guidelines in enclosure 3, the following DoD policy shall apply:

1. General

a. A member on AD may:

- (1) Register, vote, and express his or her personal opinion on political candidates and issues, but not as a representative of the Armed Forces.
- (2) Make monetary contributions to a political organization.
- (3) Attend partisan and nonpartisan political meetings or rallies as a spectator when not in uniform.

b. A member on AD shall not:

- (1) Use his or her official authority or influence for interfering with an election; affecting the course or outcome of an election; soliciting votes for a particular candidate or issue; or requiring or soliciting political contributions from others.
- (2) Be a candidate for, or hold, civil office except as authorized in subsections D.2. and D.3., below.
- (3) Participate in partisan political management, campaigns, or conventions.
- (4) Make campaign contributions to another member of the Armed Forces or an employee of the Federal Government.

c. To assist in applying paragraphs D.1.a. and D.1.b., above, to particular situations, enclosure 3 provides guidelines and examples of permissible and prohibited political activities. The guidelines in enclosure 3 do not supersede other specific

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

requirements and policies, such as those established in DoD Directives 5200.2 and 1325.6 (references (c) and (d)).

d. Enclosure 4 provides a summary of Federal statutes restricting certain types of political activities by members of the Armed Forces.

2. Candidacy for Elective Office. A member on AD may not:

a. Campaign as a nominee, or as a candidate for nomination, for civil office, except as authorized in paragraph D.3.c., below. When circumstances warrant, the Secretary concerned or the Secretary's designee may permit a member to file such evidence of nomination or candidacy for nomination, as may be required by law. Such permission shall not authorize activity while on AD that is otherwise prohibited in paragraph D.1.b., above, or enclosure 3 or 4.

t. Become a candidate for any civil office while serving an initial tour of extended active duty (EAD) or a tour of EAD that the member agreed to perform as a condition of receiving schooling or other training wholly or partly at U.S. Government expense.

3. Election or Appointment to Civil Office

a. Except as authorized by paragraph D.3.c., below, or otherwise provided for by law, no member on AD may hold or exercise the functions of civil office:

(1) In the U.S. Government that:

- (a) Is an elective office.
- (b) Requires an appointment by the President by and with the advice and consent of the Senate.
- (c) Is a position on the executive schedule under sections 5312 through 5317 of reference (e).

(2) In the government of a State; the District of Columbia; a territory, possession, or commonwealth of the United States; or in any political subdivision thereof.

b. A member may hold or exercise the functions of a civil office in the U.S. Government that is not described in subparagraph D.3.a.(1), above, when assigned or detailed to such office or to perform such functions.

c. As long as they are not serving on EAD, enlisted members and Reserve officers may hold partisan or nonpartisan civil office if such office is held in a private capacity and does not interfere with the performance of military duties. Additionally, enlisted members on EAD may seek and hold nonpartisan civil office as a notary public or member of a school board, neighborhood planning commission, or similar local agency, as long as such office is held in a private capacity and does not interfere with the performance of military duties. Officers on active duty may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

d. Unless prohibited by Service regulations, a member on AD may serve as a regular or reserve civilian law enforcement officer or as a member of a civilian fire or rescue squad. Such service shall be in a private capacity, shall not involve the exercise of military authority, and shall not interfere with the performance of military duties.

e. A member elected or appointed to a prohibited civil office may request retirement and shall be retired if eligible for retirement. If such member does not request or is not eligible for retirement, the member shall be discharged or released from AD, as determined by the Secretary concerned.

f. The separation and retirement requirements of paragraph D.3.e., above, do not apply if the member declines to serve in the prohibited office; if the Secretary concerned determines that the member should not be released from active duty based on the needs of the Service; or if the member is:

- (1) Obligated to fulfill an AD Service commitment.
- (2) Serving or has been issued orders to serve afloat or in an area that is overseas, remote, a combat zone, or a hostile fire pay area.
- (3) Ordered to remain on AD while the subject of an investigation or inquiry.
- (4) Accused of an offense under the Uniform Code of Military Justice (UCMJ), 10 U.S.C., chapter 43 (reference (b)), or serving a sentence or punishment for such offense.

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

(5) Pending administrative separation action or proceedings.

(6) Indebted to the United States.

(7) On AD during a period of declared war, a national emergency, or other period when a unit of the Reserves or National Guard has been called to AD.

* (8) In violation of an order or regulation prohibiting such member from assuming or exercising the functions of civil office. *

g. A member who refuses to decline to serve in a prohibited civil office after being denied separation or retirement in accordance with paragraph D.3.f., above, may be subject to disciplinary or adverse administrative action under Service regulations.

h. No actions undertaken by a member in carrying out assigned military duties shall be invalidated solely by virtue of such member having assumed or exercised the functions of a civil office in violation of subsection D.3., above.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel,(ASD(FM&P)) shall be responsible for the administration of this Directive.

2. The Secretaries of the Military Departments shall be responsible for issuance of appropriate implementing documents for their respective Departments.

F. PROCEDURES

All members of the Armed Forces on AD engaging in political activities shall follow the guidelines in enclosure 3.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. The Secretaries of the Military Departments shall forward one copy of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

Donald Atwood
Deputy Secretary of Defense

Enclosures - 4

1. References
2. Definitions
3. Guidelines on Political Activities
4. Statutory Restrictions Pertaining to Political Activities by Members of the Armed Forces

Enclosure 1 - REFERENCES CONTINUED

- (e) Title 5, United States Code
- (f) DoD Directive 1334.1, "Wearing of the Uniform," August 11, 1969
- (g) Title 2, United States Code, Sections 441a, 441f, and 441g
- (h) Title 18, United States Code, Sections 592 through 594, 596, 602 through 603, 606 through 607, and 609

Enclosure 2 - DEFINITIONS

1. **Active Duty (AD).** Full-time duty in the active military Service of the United States without regard to duration or purpose, including full-time training duty; annual training duty; attendance, while in the active Military Service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned; and National Guard duty, as defined in 10 U.S.C. 101(42) (reference (b)).
2. **Armed Forces.** The U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve components and the National Guard, as defined in 10 U.S.C. 101(9), 101(10), and 101(12) (reference (b)).
3. **Civil Office.** A nonmilitary office involving the exercise of the powers or authority of civil government, to include elective and appointive office in the U.S. Government, a U.S. territory or possession, State, county, municipality, or official subdivision thereof.
4. **Extended Active Duty (EAD).** AD under a call or order for a period in excess of 180 days.
5. **Nonpartisan Political Activity** supporting or relating to candidates not representing, or issues not specifically identified with, national or State political parties and associated or ancillary organizations. Issues relating to constitutional amendments, referendums, approval of municipal ordinances, and others of similar character are not considered under this Directive as specifically being identified with national or State political parties.
6. **Partisan Political Activity.** Activity supporting or relating to candidates representing, or issues specifically identified with, national or State political parties and associated or ancillary organizations.
7. **Secretary Concerned.** Defined in 10 U.S.C. 101(8)(reference (b)).

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

Enclosure 3 - GUIDELINES ON POLITICAL ACTIVITIES

A. PURPOSE

This enclosure provides guidance for implementing this Directive-

B. EXAMPLES OF PERMISSIBLE POLITICAL ACTIVITIES

A member on active duty may:

1. Register, vote, and express a personal opinion on political candidates and issues, but not as a representative of the Armed Forces.
2. Promote and encourage other military members to exercise their voting franchise, if such promotion does not constitute an attempt to influence or interfere with the outcome of an election.
3. Join a political club and attend its meetings when not in uniform (See DoD Directive 1334.1, reference (f).)
4. Serve as an election official, if such service is not as a representative of a partisan political party, does not interfere with military duties, is performed while out of uniform, and has the prior approval of the Secretary concerned or the Secretary's designee-
5. Sign a petition for specific legislative action or a petition to place a candidate's name on an official election ballot, if the signing does not obligate the member to engage in partisan political activity and is done as a private citizen and not as a representative of the Armed Forces.
6. Write a letter to the editor of a newspaper expressing the member's personal views on public issues or political candidates, if such action is not part of an organized letter-writing campaign or concerted solicitation of votes for or against a political party or partisan political cause or candidate.
7. Make monetary contributions to a political organization, party, or committee favoring a particular candidate or slate of candidates, subject to the limitations under 2 U.S.C. 441a and 18 U.S.C. 609 (references (g) and (h)).
8. Display a political sticker on the member's private vehicle.

C. EXAMPLES OF PROHIBITED POLITICAL ACTIVITIES

In accordance with the statutory restrictions in 10 U.S.C. 973(b) (reference (b)) and references (g) and (h), and the policies established in section D., above, of this Directive, a member on AD shall not:

1. Use official authority or influence to interfere with an election, affect the course or outcome of an election, solicit votes for a particular candidate or issue, or require or solicit political contributions from others.
2. Be a candidate for civil office in Federal, State, or local government, except as authorized in section D., above, of this Directive, or engage in public or organized soliciting of others to become partisan candidates for nomination or election to civil office.
3. Participate in partisan political management or campaigns, or make public speeches in the course thereof.
4. Make a campaign contribution to another member of the Armed Forces or to a civilian officer or employee of the United States for promoting a political objective or cause.
5. Solicit or receive a campaign contribution from another member of the Armed Forces or from a civilian officer or employee of the United States for promoting a political objective or cause.
6. Allow or cause to be published partisan political articles signed or written by the member that solicit votes for or against a partisan political party or candidate.
7. Serve in any official capacity or be listed as a sponsor of a partisan political club.
8. Speak before a partisan political gathering of any kind for promoting a partisan political party or candidate.
9. Participate in any radio, television, or other program or group discussion as an advocate of a partisan political party or candidate.
10. Conduct a political opinion survey under the auspices of a partisan political group or distribute partisan political literature
11. Use contemptuous words against the officeholders described in 10 U.S.C. 888 (reference (b)), or participate in activities proscribed by DOD Directives 5200.2 and 1325-6 (references (c) and (d)).
12. Perform clerical or other duties for a partisan political committee during a campaign or on an election day.
13. Solicit or otherwise engage in fundraising activities in Federal offices or facilities, including military reservations, for a partisan political cause or candidate.
14. March or ride in a partisan political parade.
15. Display a large political sign, banner, or poster (as distinguished from a bumper sticker) on the top or side of a private vehicle.
16. Participate in any organized effort to provide voters with transportation to the polls if the effort is organized by, or associated with, a partisan political party or candidate.
17. Sell tickets for, or otherwise actively promote, political dinners and similar fundraising events.
18. Attend partisan political events as an official representative of the Armed Forces.

D. POLITICAL ACTIVITIES NOT EXPRESSLY PERMITTED OR PROHIBITED

Some activities not expressly prohibited may be contrary to the spirit and intent of section D. of the Directive or section C. of this enclosure. In determining whether an activity violates the traditional concept that Service members should not engage in partisan political activity, rules of reason and common sense shall apply. Any activity that may be viewed as associating the Department of Defense or the Department of Transportation, in the case of the Coast Guard, or any components of such Departments directly or indirectly with a partisan political cause or candidate shall be avoided.

E. LOCAL NONPARTISAN POLITICAL ACTIVITIES

This Directive does not preclude participation in local nonpartisan political campaigns, initiatives, or referendums. A member taking part in local nonpartisan political activity, however, shall not:

1. Wear a uniform or use any Government property or facilities while participating.
2. Allow such participation to interfere with, or prejudice, the member's performance of military duties.
3. Engage in conduct that in any way may imply that the Department concerned or any component of such Department has taken an official position on, or is otherwise involved in, the local political campaign or issue.

F. ADDITIONAL REQUIREMENTS

Members of the Armed Forces on AD engaging in permissible political activities shall:

1. Give full time and attention to the performance of military duties during prescribed duty hours.
2. Avoid any outside activities that may be prejudicial to the performance of military duties or are likely to bring discredit upon the Armed Forces.
3. Refrain from participating in any political activity while in military uniform, as proscribed by DoD Directive 1334.1 (reference (f)), or using Government facilities or resources for furthering political activities.

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

Enclosure 4 - STATUTORY RESTRICTIONS PERTAINING TO POLITICAL
ACTIVITIES BY MEMBERS OF THE ARMED FORCES

Members of the Armed Forces are prohibited by various provisions of titles 10, 2, and 18, United States Code (references (b), (g), and (h)), from engaging in certain types of political activities. The statutory provisions most directly applicable to members of the Armed Forces are as follows:

* "Title 10 U.S.C. 973. Duties: officers on active duty; performance of civil functions restricted *

"(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties-

"(b) (1) This subsection applies--

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days.

(2) (A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States--

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate;

or

(iii) that is a position in the Executive Schedule under sections 5312 through 5313 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the function of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

(4) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

* (c) an officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that *
* is located exclusively on a military reservation. *

* (d) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating in *
* the Navy, shall prescribe regulations to implement this section. *

"Title 2 U.S.C. 441a. Limitations on contributions and expenditures

"(a) Dollar limits on contributions

(1) No person shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate in any calendar year which, in the aggregate, exceed \$20,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(2) No multi-candidate political committee shall make contributions--

ODD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed \$15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(3) No individual shall make contributions aggregating more than \$25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made is considered to be made during the calendar year in which such election is held.

*

...

*

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

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...

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"Title 2 U.S.C. 441f. Contributions in the name of another prohibited

"No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."

"Title 2 U.S.C. 441g. Limitation on contribution of currency

"No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office."

"Title 18 U.S.C. 592. Troops at polls

"Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such forces be necessary to repel armed enemies of the United States, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

"This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote."

"Title 18 U.S.C. 593. Interference by armed forces

"Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

"Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

"Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

"Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

"Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties--

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

"This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any

district to which he may belong, if otherwise qualified according to the laws of the State of such district."

"Title 18 U.S.C. 594. Intimidation of voters

"Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"Title 18 U.S.C. 596. Polling armed forces

"Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

"The word 'poll' means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form."

"Title 18 U.S.C. 602. Solicitation of political contributions

"It shall be unlawful for--

- (1) a candidate for the Congress;
- (2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;
- (3) an officer or employee of the United States or Any department or agency thereof; or
- (4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both."

"Title 18 U.S.C. 603. Making political contributions

"(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for service from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

"(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee."

"Title 18 U.S.C. 606. Intimidation to secure political contributions

"Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than \$5,000 or imprisoned not more than three years, or both."

"Title 18 U.S.C. 607. Place of solicitation

"(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in

section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.1."

"Title 18 U.S.C. 609. Use of military authority to influence vote of member of Armed Forces

"Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

SECTION 4. REFERENCES

6-400. References

- (a) Title 5, Code of Federal Regulations, Part 734, "Political Activities of Federal Employees," September 23, 1994
- (b) Title 5, United States Code, Sections 1216, 2302, 3303 and 7321 through 7325
- (c) Title 5, Code of Federal Regulations, Part 733, "Political Activity - Federal Employees Residing in Designated Localities," February 4, 1994
- (d) Title 5, Code of Federal Regulations, Part 300, "Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations," February 22, 1994
- (e) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990

EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF
DIVESTITURE

5 CFR 2634¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	5	
Sec. 2634.101 Authority	5	
Sec. 2634.102 Purpose and overview	5	
Sec. 2634.103 Executive agency supplemental regulations	5	
Sec. 2634.104 Policies	5	
Sec. 2634.105 Definitions	6	
Act (6); Agency (6); Confidential filer (6); Dependent child (6); Designated agency ethics official (6); Executive branch (6); Filer (6); Gift (6); Honorarium (6); Income (6); Personal hospitality of any individual (7); Personal residence (7); Public filer (7); Reimbursement (7); Relative (7); Reporting individual (7); Reviewing official (7); Secretary concerned (7); Special Government employee (7); Value (7)		
SUBPART B: PERSONS REQUIRED TO FILE PUBLIC FINANCIAL DISCLOSURE REPORTS	8	
Sec. 2634.201 General requirements, filing dates, and extensions	8	
Incumbents (8); New entrants (8); Nominees (8); Candidates (8); Termination of employment (9); Extensions (9)		
Sec. 2634.202 Public filer defined	9	
The President (9); The Vice President (9); Each officer or employee (9); administrative law judge (9); Any employee not otherwise described in paragraph (c) (9); The Postmaster General (9); The Director of the Office of Government Ethics (9); Any civilian employee not otherwise described in paragraph (c) (9); Anyone whose employment in a position or office described in paragraphs (a) through (h) (9)		
Sec. 2634.203 Persons excluded by rule	9	
In general (9); Exclusion determination (10); Procedure (10)		
Sec. 2634.204 Employment of sixty days or less	10	
In general (10); Alternative reporting (10); Exception (10)		
Sec. 2634.205 Special waiver of public reporting requirements	10	
General rule (10); Procedure (11)		
SUBPART C: CONTENTS OF REPORTS	11	
Sec. 2634.301 Interests in property	11	
In general (11); Types of property reportable (11); Exceptions (12); Valuation categories (12); Valuation of interests in property (12)		
Sec. 2634.302 Income	13	
Noninvestment income (13); Investment income (13)		
Sec. 2634.303 Purchases, sales, and exchanges	14	
In general (14)		
Sec. 2634.304 Gifts and reimbursements	15	
Gifts (15); Reimbursements (15); Exclusions (15); Aggregation exception (15); Valuation of gifts and reimbursements (16); Waiver rule in the case of certain gifts (16)		
Sec. 2634.305 Liabilities	16	
In general (16); Exceptions (16)		
Sec. 2634.306 Agreements and arrangements	17	
Sec. 2634.307 Outside positions	17	
In general (17); Exceptions (17)		
Sec. 2634.308 Reporting periods and contents of public financial disclosure reports	17	
Incumbent (17); New entrants, nominees, and candidates (17); Termination reports (18)		
Sec. 2634.309 Spouses and dependent children	18	
Special disclosure rules (18); Exception (19); Divorce and separation (19)		
Sec. 2634.310 Trusts, estates, and investment funds	19	
In general (19); Qualified trusts and excepted trusts (19); Excepted investment funds (20)		
Sec. 2634.311 Special rules	20	
Political campaign funds (20); Certificates of Divestiture (20); Reporting standards (20)		
* SUBPART D: QUALIFIED TRUSTS	20	*
* Sec. 2634.401 General considerations	20	*
Statutory standards governing qualified trusts (20); Policy considerations and objectives underlying the qualified trust program (21); Qualified trust provisions of the regulation (22); Drafting and implementation of the qualified trust instrument (22)		
* Sec. 2634.402 Special notice for advice-and-consent nominees	23	*
* Sec. 2634.403 Qualified blind trusts	23	*
* Sec. 2634.404 Qualified diversified trusts	25	*

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

Definition (25); Required portfolio (25); Required provisions (26); Personal income tax returns (28)	
Sec. 2634.405 Certification of trusts	28
Standards (28); Certification procedures (28); Certification of pre-existing trusts (28); Review of certification (28); Revocation of certification and modification of trust investment (28)	
Sec. 2634.406 Independent trustees	28
Standards (28); Approval procedures (29); Review of approval (29); Revocation of approval (29)	
Sec. 2634.407 Restrictions on fiduciaries and interested parties	29
Restrictions applicable to trustees and other fiduciaries (29); Restrictions applicable to interested parties (30)	
Sec. 2634.408 Special filing requirement for qualified trusts	30
The interested party (30); Trustees and other designated fiduciaries (30); Written communications (30); Public access (30)	
SUBPART E: REVOCATION OF TRUST	
CERTIFICATES AND TRUSTEE APPROVALS	
Sec. 2634.501 Purpose and scope	30
Purpose (30); Scope (30)	
Sec. 2634.502 Definitions	30
Senior Attorney (30); Trust restrictions (31)	
Sec. 2634.503 Determinations	31
Where the Senior Attorney concludes that violations (31); Review procedure (31); Determination (31)	
SUBPART F: PROCEDURE	
Sec. 2634.601 Report forms	31
The Office of Government Ethics provides (31); Subject to the prior written approval of the Director of the Office of Government Ethics (31); Reports concerning payments made to charitable organizations in lieu of honoraria (32)	
Sec. 2634.602 Filing of reports	32
Except as otherwise provided (32); The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 40 (32); The Director of the Office of Government Ethics (32); Candidates for President and Vice President identified in 2634.201(d), other than an incumbent President or Vice President (32); Members of the uniformed services identified in 2634.202(c) (32)	
Sec. 2634.603 Custody of and access to public reports	32
Each agency shall make available to the public (32); This section does not require public availability of those reports filed by: (32); Each agency shall, within thirty days after any public report is received by the agency, permit inspection (33); Applications for the inspection of or copies of public reports (33); The agency may require a reasonable fee (33); It is unlawful for any person to obtain or use (33)	
Sec. 2634.604 Custody of and denial of public access to confidential reports	33
Any report filed with an agency (34); The reports filed pursuant to subpart (34)	
Sec. 2634.605 Review of reports	34
In general (34); Responsibilities of reviewing officials (34); Expedited procedure (35)	
Sec. 2634.606 Updated disclosure of advice-and-consent nominees	36
General rule (36); Additional certification (36)	
Sec. 2634.607 Advice and opinions	36
SUBPART G: PENALTIES	
Sec. 2634.701 Failure to file or falsifying reports	36
Referral of cases (36); Civil action (36); Criminal action (37); Administrative remedies (37)	
Sec. 2634.702 Breaches by trust fiduciaries and interested parties	37
Sec. 2634.703 Misuse of public reports	37
Sec. 2634.704 Late filing fee	37
In general (37); Exceptions (37); Procedure (37); Late filing fee not exclusive remedy (38); Confidential filers (38)	
SUBPART H: ETHICS AGREEMENTS	
Sec. 2634.801 Scope	38
Sec. 2634.802 Requirements	38
Ethics agreement defined (38); Time limit (38)	
Sec. 2634.803 Notification of ethics agreements	38
Nominees to positions require the advice and consent of the Senate (38); Incumbents in positions requiring the advice and consent of the Senate (38); Designated agency ethics official not holding advice-and-consent positions (39); Other reporting individuals (39)	
Sec. 2634.804 Evidence of compliance	39
Requisite evidence of action taken (39)	
Sec. 2634.805 Retention	39
SUBPART I: CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS	
Sec. 2634.901 Policies of confidential financial disclosure reporting	40

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . , 5 CFR 2634

Sec. 2634.902 Transition to the new confidential financial disclosure reporting system.	40
Sec. 2634.903 General requirements, filing dates, and extensions.	41
Incumbents (41); New entrants (41); Advisory committee definition (41); Extensions (41)	
Sec. 2634.904 Confidential filer defined.	41
Sec. 2634.905 Exclusions from filing requirements.	42
Sec. 2634.906 Review of confidential filer status.	43
Sec. 2634.907 Report contents.	43
Sec. 2634.908 Reporting periods.	43
Incumbents (43); New entrants (44)	
Sec. 2634.909 Procedures, penalties, and ethics agreements.	44
SUBPART J: CERTIFICATES OF DIVESTITURE	44
Sec. 2634.1001 Nonrecognition for sales to comply with conflict of interest requirements	44
Purpose (44); Scope (44); Policy (44)	
Sec. 2634.1002 issuance of Certificates of Divestiture.	44
General rule (44); Procedural requirements (44); Eligible person (45)	
Sec. 2634.1003 Permitted property.	45
In general (45); Definition of "permitted property" (45); Diversified investment fund (45)	
Sec. 2634.1004 Special rule.	46

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

SUBPART A: GENERAL PROVISIONS

Sec. 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of title I of the Ethics in Government Act of 1978, (Pub. L. 95-521, as amended) ("the Act") as modified by the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended by Pub. L. 101-280) ("the Reform Act"); section 502 of the Reform Act; and section 201(d) of Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

Sec. 2634.102 Purpose and overview.

(a) This regulation supplements and implements title I of the Act and section 201(d) of Executive Order 12674 (as modified by Executive Order 12731) with respect to executive branch employees, by setting forth more specifically the uniform procedures and requirements for financial disclosure and for the certification and use of qualified blind and diversified trusts. Additionally, this regulation implements section 502 of the Reform Act by establishing procedures for executive branch personnel to obtain Certificates of Divestiture, which permit deferred recognition of capital gain in certain instances.

(b) The rules in this part govern both the public and confidential (nonpublic) financial disclosure systems, except as otherwise indicated. Subpart I of this part contains special rules unique to the confidential disclosure system.

Sec. 2634.103 Executive agency supplemental regulations.

(a) This regulation is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Shall be consistent with the Act, Executive Orders 12674 and 12731, and this part; and

(2) Shall impose no additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government Ethics as supplemental confidential reporting.

Note: Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. App. (Ethics in Government Act of 1978, Section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section shall be submitted in writing to the Office of Government Ethics, and shall set forth the agency's need for any proposed supplemental reporting requirements. See 2634.901 (b) and (c).

(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform with the requirements of this part. Any amendatory agency regulations shall be processed in accordance with paragraphs (a) and (b) of this section.

Sec. 2634.104 Policies.

(a) Title I of the Act requires that high-level Federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust. Title I also authorizes the Office of Government Ethics to establish a confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict-of-interest review.

(b) Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programs and providing counseling to employees.

(c) Financial disclosure reports are not net worth statements. Financial disclosure systems seek only the information that the President, Congress, or OGE as the supervising ethics office for the executive branch has deemed relevant to the administration and application of the criminal conflict of interest laws, other statutes on ethical conduct or financial interests, and Executive orders or regulations on standards of ethical conduct.

(d) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize receipt of income, honoraria, gifts, or reimbursements; holding of assets, liabilities, or positions; or involvement in transactions that are prohibited by law, Executive order or regulation.

(e) The provisions of title I of the Act and this part requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. However, the provisions of title I and this part shall not supersede the requirements of 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act).

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

(f) This regulation is intended to be gender-neutral; therefore, use of the terms he, his, and him include she, hers, and her, and vice versa.

Sec. 2634.105 Definitions.

For purposes of this part:

(a) Act means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), as modified by the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended).

(b) Agency means any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office.

(c) Confidential filer. For the definition of "confidential filer," see 2634.904.

(d) Dependent child means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and living in the household of the reporting individual; or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

(e) Designated agency ethics official means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in his absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See subpart B of part 2638 of this chapter on the appointment and additional responsibilities of a designated agency ethics official and alternate.

(f) Executive branch means any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) Filer is used interchangeably with "reporting individual," and may refer to a "confidential filer" as defined in paragraph (c) of this section, a "public filer" as defined in paragraph (m) of this section, or a nominee or candidate as described in 2634.201.

(h) Gift means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance;

(2) Suitable mementos of a function honoring the reporting individual;

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages which are not consumed in connection with a gift of overnight lodging;

(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(6) Consumable products provided by home-State business to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President.

(i) Honorarium means a payment of money or anything of value for an appearance, speech, or article. For guidance on the propriety of receiving honoraria, see part 2638 of this subchapter.

(j) Income means all income from whatever source derived. It includes but is not limited to the following items: earned income such as compensation for services, fees, commissions, salaries, wages and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge or indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the Internal Revenue Service principles at 26 CFR 1.61-1 through 1.61-15 and 1.61-21.

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

(k) Personal hospitality of any individual means, hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family.

(l) Personal residence means any real property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. This term is not limited to one's domicile; there may be more than one personal residence, including a vacation home.

(m) Public filer. For the definition of "public filer," see 2634.202.

(n) Reimbursement means any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act); or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434)(relating to reports of campaign contributions).

Note: Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer's employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 CFR part 304-1, are not considered reimbursements under this part 2634, because they are not payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual's agency).

(o) Relative means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual.

(p) Reporting individual is used interchangeably with "filer," and may refer to a "confidential filer" as defined in 2634.904, a "public filer" as defined in 2634.202, or a nominee or candidate as described in 2634.201.

(q) Reviewing official means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) Secretary concerned has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) Special Government employee has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) Value means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in 2634.301(e). For gifts and reimbursements; see 2634.304(e).

SUBPART B: PERSONS REQUIRED TO FILE PUBLIC FINANCIAL DISCLOSURE REPORTS

Sec. 2634.201 General requirements, filing dates, and extensions.

(a) Incumbents. A public filer as defined in 2634.202 of this subpart who, during any calendar year, performs the duties of his position or office, as described in that section, for a period in excess of 60 days shall file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS-15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report.

(b) New entrants.

(1) Within 30 days of assuming a public filer position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 12, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in 2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report covering the 1990 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 1991, with Commerce, which should provide a copy to Treasury so that both may review it.

(c) Nominees.

(1) At any time after a public announcement by the President or President-elect of his intention to nominate an individual to an executive branch position, appointment to which requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate shall, file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement shall not apply to any individual who is nominated to a position as:

(i) An officer of the uniformed services; or

(ii) A Foreign Service Officer.

* Note: Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service officers only if they are nominated for appointment to a grade or rank for which the pay grade is O-6 or below, the Senate confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by the committee assigned. *

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports shall file new entrant reports, if required by paragraph (b) of this section.

(d) Candidates. A Candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 2 U.S.C. 431) for nomination or election to the office of President or Vice President (other than an incumbent) shall file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

(1) Within 30 days of becoming a candidate on or before May 15 of the calendar year in which the individual becomes a candidate, or whichever is later, but in no event later than 30 days before the election; and

(2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy were held in prior calendar years, the individual need not file a report unless he becomes a candidate for a vacancy during that year.

Example. P became a candidate for President in January 1991. P will be required to file a public financial disclosure report on or before May 15, 1991. If P had become a candidate on June 1, 1991, he would have been required to file a disclosure report within 30 days of that date.

(e) Termination of employment.

(1) On or before the thirtieth day after termination of employment from a public filer position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report shall be required by the provisions of this paragraph. See the related Example in paragraph (b) of this section.

(f) Extensions. The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which shall not exceed 45 days. The Director of the Office of Government Ethics, for good cause shown, may grant an additional extension of time which shall not exceed 45 days. The employee shall set forth specific reasons for such additional extension, which shall be forwarded to the Director through the reviewing official. The reviewing official shall also submit his comments on the request. (For extensions on confidential financial disclosure reports, see 2634.903(d).)

Sec. 2634.202 Public filer defined.

The term public filer includes:

- (a) The President;
- (b) The Vice President;
- (c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS-15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;
- (d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;
- (e) Any employee not otherwise described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, unless excluded by virtue of a determination under 2634.203 of this subpart;
- (f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule;
- (g) The Director of the Office of Government Ethics and each agency's primary designated agency ethics official;
- (h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and
- (i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of 2634.201(e) of this subpart.

Note: References in this section and in 2634.203 and 2634.904 to position classifications have been adjusted to reflect elimination of General Schedule classifications GS-16, GS-17, and GS-18 by the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509.

Sec. 2634.203 Persons excluded by rule.

(a) In general. Any individual or group of individuals described in 2634.202(e) of this subpart (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart

when the Director of the Office of Government Ethics determines, in his sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) Exclusion determination. The determination required by paragraph (a) of this section has been made for the following group of individuals who, therefore, may be excluded from the public reporting requirements of this subpart, pursuant to the procedures in paragraph (c) of this section: Individuals in any position classified at GS-15 of the General Schedule or below, or the rate of basic pay for which is less than 120% of the minimum rate of basic pay fixed for GS-15, who have no policy-making role with respect to agency programs. Such individuals may include chauffeurs, private secretaries, stenographers, and others holding positions of a similar nature whose exclusion would be consistent with the basic criterion set forth in paragraph (a) of this section. See 2634.904(d) for possible coverage by confidential disclosure rules.

(c) Procedure.

(1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file. A subsequent list or description showing any additions to or deletions from the original submissions, or a statement that no changes have been made, must be filed annually with the Office of Government Ethics on or before May 15.

(2) If the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency and set a date for the filing of the report.

Sec. 2634.204 Employment of sixty days or less.

(a) In general. Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in 2634.201(c) or 2634.202 of this subpart for more than 60 days in any calendar year shall not be subject to the reporting requirements of 2634.201 (b), (c), or (e) of this subpart. This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of 2634.201 (b) or (e) of this subpart (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of 2634.201(c) of this subpart (relating to nominee reports) would otherwise apply.

(b) Alternative reporting. Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under 2634.903(b). See 2634.904(b).

(c) Exception. If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 60 days in a calendar year, the public report otherwise required by:

(1) Section 2634.201 (b) or (c) of this subpart (relating to new entrant and nominee reports) shall be filed within 15 calendar days after the sixtieth day of duty; and

(2) Section 2634.201(e) of this subpart (relating to termination reports) shall be filed as provided in that paragraph.

Sec. 2634.205 Special waiver of public reporting requirements.

(a) General rule. In unusual circumstances, the Director of the Office of Government Ethics may grant a request for a waiver of the public reporting requirements under this subpart for an individual who is reasonably expected to perform, or has performed, the duties of an office or position for fewer than 130 days in a calendar year, but only if the Director determines that:

(1) The individual is a special Government employee, as defined in 18 U.S.C. 202(a), who performs temporary duties either on a full-time or intermittent basis;

(2) The individual is able to provide services specially needed by the Government;

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest; and

(4) Public financial disclosure by the individual is not necessary under the circumstances.

(a) Procedure.

(1) Requests for waivers must be submitted to the Office of Government Ethics, via the requester's agency, within 10 days after an employee learns that he will hold a position which requires reporting and that he will serve in that position for more than 60 days in any calendar year, or upon serving in such a position for more than 60 days, whichever is earlier.

(2) The request shall consist of:

(i) A cover letter which identifies the individual and his position, states the approximate number of days in a calendar year which he expects to serve in that position, and requests a waiver of public reporting requirements under this section;

(ii) An enclosure which states the reasons for the individual's belief that the conditions of paragraphs (a) (1) through (4) of this section are met in the particular case; and

(iii) The report otherwise required by this subpart B, as a factual basis for the determination required by this section. The report shall bear the legend at the top of page 1: "CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 2634.205."

(3) The agency in which the individual serves shall advise the Office of Government Ethics as to the justification for a waiver.

(4) In the event a waiver is granted, the report shall not be subject to the public disclosure requirements of 2634.603; however, the waiver request cover letter shall be subject to those requirements. In the event that a waiver is not granted, the confidential legend shall be removed from the report, and the report shall be subject to public disclosure; however, the waiver request cover letter shall not then be subject to public disclosure.

SUBPART C: CONTENTS OF REPORTS**Sec. 2634.301 Interests in property.**

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000. In the case of public financial disclosure reports, the report shall designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property shall be disclosed separately. Note that for Individual Retirement Accounts (IRA's), brokerage accounts, trusts, mutual or pension funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under 2634.310 of this subpart.

(b) Types of property reportable. Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

- (1) Real estate;
- (2) Stocks, bonds, securities, and futures contracts;
- (3) Livestock owned for commercial purposes;
- (4) Commercial crops, either standing or held in storage;
- (5) Antiques or art held for resale or investment;
- (6) Beneficial interests in trusts and estates;
- (7) Deposits in banks or other financial institutions;
- (8) Pensions and annuities;
- (9) Mutual funds;
- (10) Accounts or other funds receivable; and
- (11) Capital accounts or other asset ownership in a business.

(c) Exceptions. The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

(1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating \$5,000 or less in that institution or fund;

(3) A personal residence of the filer or spouse, as defined in 2634.105(l); and

(4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act.

(d) Valuation categories. The valuation categories specified for property items on public financial disclosure reports are as follows:

(1) Not more than \$15,000;

(2) Greater than \$15,000 but not more than \$50,000;

(3) Greater than \$50,000 but not more than \$100,000;

(4) Greater than \$100,000 but not more than \$250,000;

(5) Greater than \$250,000 but not more than \$500,000;

(6) Greater than \$500,000 but not more than \$1,000,000; and

(7) Greater than \$1,000,000.

(e) Valuation of interests in property. A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. Fair market value may also be determined by:

(1) The purchase price (in which case, the filer should indicate date of purchase);

(2) Recent appraisal;

(3) The assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);

(4) The year-end book value of nonpublicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;

(5) The net worth of a business partnership;

(6) The equity value of an individually owned business; or

(7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1. An official has a \$4,000 savings account in Bank A. His spouse has a \$2,500 certificate of deposit issued by Bank B and his dependent daughter has a \$200 savings account in Bank C. The official does not have to disclose the deposits, as the total value of the deposits in any one bank does not exceed \$5,000. Note, however, that the source, and if he is a public filer the amount, of interest income from any bank is required to be reported under 2634.302(b) of this subpart if it exceeds the reporting threshold for income. See 2634.309 of this subpart for disclosure coverage of spouses and dependent children.

Example 2. Public filer R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to 2634.302(b) of this subpart. Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3. A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a fair market value in excess of \$1,000 at the close of the reporting period must be separately listed, and also the value must be shown if she is a public filer. See 2634.311(c) of this subpart for attachment of

brokerage statements in lieu of listing, in the event of extensive holdings. Note that for a mutual fund held in this IRA investment account, its underlying assets must also be separately detailed, unless it qualifies as an excepted investment fund, pursuant to 2634.310 of this subpart.

Sec. 2634.302 Income.

(a) Noninvestment income.

(1) Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose the source, type, and in the case of public financial disclosure reports the actual amount or value, of earned or other noninvestment income in excess of \$200 from any one source which is received by the filer or has accrued to his benefit during the reporting period, including:

(i) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(ii) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security);

(iii) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

(iv) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness.

Note: In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. For example, if such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment; if the expenses are paid or reimbursed by the individual receiving the honorarium, the amount of honorarium shall be reduced by the amount of such expenses.

Example 1. An official is a participant in a retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge, and they receive passage on other flights at a discounted fare. The difference between what Coastal charges members of the public generally and what the official and his spouse are charged for a particular flight is deemed income in-kind and must be disclosed by this reporting individual if it exceeds the \$200 threshold.

Example 2. An official serves on the board of directors at a bank, for which he receives a \$500 fee each calendar quarter. He also receives an annual fee of \$1,500 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and if he is a public filer the actual amount must be shown.

(2) In the case of payments in lieu of honoraria made on or after January 1, 1991, the individual shall also file a separate confidential report of charitable recipients, in accordance with part 2636 of this chapter.

(b) Investment income. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose:

(1) The source and type of investment income, characterized as dividends, rents, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see 2634.310 of this subpart), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts (as defined in 2634.301(c)(2) of this subpart). Note that for entities with portfolio holdings, such as Individual Retirement Accounts (IRA's), brokerage accounts, trusts, and mutual or pension funds, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under 2634.310 of this subpart. For public financial disclosure reports, the amount or value of income from each reported source shall also be disclosed and categorized in accordance with the following table:

- (i) Not more than \$1,000;
- (ii) Greater than \$1,000 but not more than \$2,500;
- (iii) Greater than \$2,500 but not more than \$5,000;
- (iv) Greater than \$5,000 but not more than \$15,000;
- (v) Greater than \$15,000 but not more than \$50,000;
- (vi) Greater than \$50,000 but not more than \$100,000;

(vii) Greater than \$100,000 but not more than \$1,000,000; and

(viii) Greater than \$1,000,000.

(2) The source, type, and in the case of public financial disclosure reports the actual amount or value, of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer or accrued to his benefit during the reporting period and which exceed \$200 from any one source.

Example 1. An official rents out a portion of his residence. He receives rental income of \$600 from one individual for four months and \$1,200 from another individual for the remaining eight months of the year covered by his incumbent financial disclosure report. He must identify the property, specify the type of income (rent), and if he is a public filer indicate the category of the total amount of rent received. (He must also disclose the asset information required by 2634.301 of this subpart.)

Example 2. A reporting individual has three savings accounts with Bank A. One is in his name and earned \$85 in interest during the reporting period. One is in a joint account with his spouse and earned \$120 in interest. One is in his name and his dependent daughter's name and earned \$35 in interest. Since the aggregate interest income from this source exceeds \$200, the official must disclose the name of the bank, the type of income, and if he is a public filer, the category of the total amount of interest earned from all three accounts. (He must also disclose the accounts as assets under 2634.301 of this subpart if, in the aggregate, they total more than \$5,000 in that bank.)

Example 3. An official has an ownership interest in a fast-food restaurant, from which she receives \$10,000 in annual income. She must specify on her financial disclosure report the type of income, such as partnership distributive share or gross business income, and if she is a public filer indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to 2634.301 of this subpart.)

Sec. 2634.303 Purchases, sales, and exchanges.

(a) In general. Except as indicated in 2634.308(b) of this subpart, each public financial disclosure report filed pursuant to subpart B of this part shall include a brief description, the date and value (using the categories of value in 2634.301(d) of this subpart) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000:

(1) Of real property, other than a personal residence of the filer or spouse, as defined in 2634.105(l) of this part; and

(2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) Exceptions.

(1) Any transaction solely by and between the reporting individual, his spouse, and dependent children need not be reported under paragraph (a) of this section.

(2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and personal savings accounts (as defined in 2634.301(c)(2) of this subpart) need not be reported when occurring at rates, terms, and conditions available generally to members of the public. Likewise, transactions involving portfolio holdings of trusts and investment funds described in 2634.310 (b) and (c) of this subpart need not be reported.

(3) Any transaction which occurred at a time when the reporting individual was not a Federal Government officer or employee need not be reported under paragraph (a) of this section.

Example 1. An official sells her personal residence in Virginia for \$100,000 and purchases a personal residence in the District of Columbia for \$200,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence.

Example 2. An official sells his beach home in Maryland for \$50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under this section and any capital gain over \$200 realized on the sale under 2634.302 of this subpart.

Example 3. An official sells a ranch to his dependent daughter. The official need not report the sale because it is a transaction between the reporting individual and a dependent child; however, any capital gain, except for that portion attributable to a personal residence, is required to be reported under 2634.302 of this subpart.

Example 4. An official sells an apartment building and realizes a loss of \$100,000. He must report the sale of the building if the sale price of the property exceeds \$1,000; however, he need not report anything under 2634.302 of this subpart, as the sale did not result in a capital gain.

Sec. 2634.304 Gifts and reimbursements.

(a) Gifts. Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description, and in the case of public financial disclosure reports the value, of all gifts aggregating \$250 or more in value which are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

(b) Reimbursements. Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and in the case of public financial disclosure reports the value, of any travel-related reimbursements aggregating \$250 or more in value, which are received by the filer during the reporting period from any one source.

Note: The \$250 threshold in paragraphs (a) and (b) of this section will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102-90 established the threshold for financial disclosure of gifts and reimbursements as "more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater."

(c) Exclusions. Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply which are received from relatives (see 2634.205(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as "personal hospitality of any individual," as defined in 2634.105(k), need not be reported. See also exclusions specified in the definitions of gift and reimbursement, at 2634.105(h) and (n).

(d) Aggregation exception. Any gift or reimbursement with a fair market value of \$100 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Note: The aggregation exception for gifts or reimbursements with a fair market value of \$100 or less will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102-90 established the aggregation exception for "any gift with a fair market value of \$100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted" above \$250 pursuant to 5 U.S.C. 7342(a)(5).

Example 1. An official accepts a print, a pen and pencil set, and a letter opener from a community service organization he has worked with solely in his private capacity. He determines, in accordance with paragraph (e) of this section, that these gifts are valued as follows:

- Gift 1--Print: \$150
- Gift 2--Pen and pencil set: \$105
- Gift 3--Letter opener: \$20

The official must disclose Gifts 1 and 2, since together they aggregate \$250 or more in value from the same source. Gift 3 need not be aggregated, because its value does not exceed \$100.

Example 2. An official receives the following gifts from a single source:

1. Dinner for two at a local restaurant--\$120.
2. Round-trip taxi fare to meet donor at the restaurant--\$25.
3. Dinner at donor's city residence--(value uncertain).
4. Round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida--\$400.
5. Weekend at donor's country home, including duck hunting and tennis match--(value uncertain).

The official need only disclose Gift 4. Gift 1 falls within the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed \$100.

Example 3. An official receives free tickets from an outside source for himself and his spouse to attend an awards banquet at a local club. The value of each ticket is \$130. Even though this is a gift which exceeds the \$250 threshold amount for disclosure, the official need not report it, because of the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging.

Note: Prior to accepting this gift of tickets, the individual should consult ethics officials at his agency to determine whether standards of conduct rules will permit acceptance, depending on whether or not the donor is a prohibited source and the exact nature of the event.

Example 4. An official is asked to speak at an out-of-town meeting on a matter which is unrelated to her official duties and her agency. The round-trip airfare exceeds \$250. If the official pays for the ticket and is then reimbursed by the organization to which she spoke, she must disclose this reimbursement under paragraph (b) of this section. If the organization simply provided the ticket, that must be disclosed as a gift under paragraph (a) of this section.

(e) Valuation of gifts and reimbursements. The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(1) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(2) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(3) The term readily available in the market means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Example 1. Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

Example 2. The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value, based on the posted fare of the restaurant. The filer need not ask to see the check.

Note: The market value of a ticket entitling the holder to attend an event which includes food, refreshments, entertainment or other benefits is the face value of the ticket, which may exceed the actual cost of the food and other benefits.

(f) Waiver rule in the case of certain gifts--

(1) In general. In unusual cases, a gift as defined in 2634.105(h) need not be aggregated under this section by public filers, if the Director of the Office of Government Ethics receives a written request for and issues a waiver after determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal; and

(ii) No countervailing public purpose requires public disclosure of the nature, source, and value of the gift.

(2) Public disclosure of waiver request. If approved, the cover letter requesting the waiver shall be subject to the public disclosure requirements in 2634.603 of this part.

(3) Procedure. A public filer seeking a waiver under this paragraph shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section. On an enclosure to the cover letter, the filer shall set forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the filer is entirely personal in nature; and

(iii) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

Sec. 2634.305 Liabilities.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify and include a brief description of the filer's liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed. For public financial disclosure reports, the report shall designate the category of value of the liabilities in accordance with 2634.301(d) of this subpart, using the greatest amount owed to the creditor during the period.

(b) Exceptions. The following are not required to be reported under paragraph (a) of this section:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or his spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it; and

(4) Any revolving charge account with an outstanding liability which does not exceed \$10,000 at the close of the reporting period.

Example. An incumbent official has the following debts outstanding at the end of the calendar year:

1. Mortgage on personal residence—\$80,000.
2. Mortgage on rental property—\$50,000.
3. VISA Card—\$1,000.
4. Master Card—\$11,000.
5. Loan balance of \$15,000, secured by family automobile purchased for \$16,200.
6. Loan balance of \$10,500, secured by antique furniture purchased for \$8,000.
7. Loan from parents—\$20,000.

The loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure under paragraph (b)(2) of this section because it is secured by the personal residence. Loan 3 need not be disclosed under paragraph (b)(4) of this section because it is considered to be a revolving charge account with an outstanding liability that does not exceed \$10,000 at the end of the reporting period. Loan 5 need not be disclosed under paragraph (b)(3) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 7 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section.

Sec. 2634.306 Agreements and arrangements.

Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify the parties to and the date of, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

- (a) Future employment;
- (b) A leave of absence from employment during the period of the reporting individual's Government service;
- (c) Continuation of payments by a former employer other than the United States Government; and
- (d) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

Sec. 2634.307 Outside positions.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) Exceptions. The following need not be reported under paragraph (a) of this section:

- (1) Positions held in any religious, social, fraternal, or political entity; and
- (2) Positions solely of an honorary nature, such as those with an emeritus designation.

Sec. 2634.308 Reporting periods and contents of public financial disclosure reports.

(a) Incumbents. Each public financial disclosure report filed pursuant to 2634.201(a) shall include on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the preceding calendar year (or for any portion of that year not already covered by a new entrant or nominee report filed under paragraph (b) or (c) of 2634.201), and, in the case of 2634.306 and 2634.307, for the additional period up to the date of filing.

(b) New entrants, nominees, and candidates. Each public financial disclosure report filed pursuant to 2634.201(b), (c), or (d) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, except for 2634.303 (relating to purchases, sales, and exchanges of certain property) and 2634.304 (relating to gifts and reimbursements). The following special rules apply:

(1) Interests in property. For purposes of 2634.301 of this subpart, the report shall include all interests in property specified by that section which are held on or after a date which is lower than thirty-one days before the date on which the report is filed.

(2) **Income.** For purposes of 2634.302 of this subpart, the report shall include all income items specified by that section which are received or accrued during the period beginning on January 1 of the preceding calendar year and ending on the date on which the report is filed, except as otherwise provided by 2634.606 relating to updated disclosure for nominees.

(3) **Liabilities.** For purposes of 2634.305 of this subpart, the report shall include all liabilities specified by that section which are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than thirty-one days before the date on which the report is filed.

(4) **Agreements and arrangements.** For purposes of 2634.306 of this subpart, the report shall include only those agreements and arrangements which still exist at the time of filing.

(5) **Outside positions.** For purposes of 2634.307 of this subpart, the report shall include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

(6) **Certain sources of compensation.** Except in the case of the President, the Vice President, or a candidate referred to in 2634.201(d), the report shall also identify the filer's sources of compensation which exceed \$5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing, and shall briefly describe the nature of the duties performed or services rendered by the reporting individual for each such source of compensation. Information need not be reported, however, which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person. The report also need not contain any information with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless such individual was directly involved in the provision of such services.

Example. A nominee who is a partner or employee of a law firm and who has worked on a matter involving a client from which the firm received over \$5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the nominee exceeded \$5,000. The name of the client would not normally be considered confidential.

(c) **Termination reports.** Each public financial disclosure report filed under 2634.201(e) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the period beginning on the last date covered by the most recent public financial disclosure report filed by the reporting individual under this part, or on January 1 of the preceding calendar year, whichever is later, and ending on the date on which the filer's employment terminates.

Sec. 2634.309 Spouses and dependent children.

(a) **Special disclosure rules.** Each report required by the provisions of either subpart B or subpart I of this part shall also include the following information with respect to the spouse or dependent children of the reporting individual:

(1) **Income.** For purposes of 2634.302 of this subpart:

(i) With respect to a spouse, the source but not the amount of items of earned income (other than honoraria) which exceed \$1,000 from any one source; and if items of earned income are derived from a spouse's self-employment in a business or profession, the nature of the business or profession but not the amount of the earned income;

(ii) With respect to a spouse, the source, and for a public financial disclosure report the actual amount or value, of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) which exceed \$200 from any one source, and the date on which the services were provided; and

(iii) With respect to a spouse or dependent child, the type and source, and for a public financial disclosure report the amount or value (category or actual amount, in accordance with 2634.302 of this subpart), of all other income exceeding \$200 from any one source, such as investment income from interests in property (if the property itself is reportable according to 2634.301 of this subpart).

Example 1. The spouse of a filer is employed as a teller at Bank X and earns \$23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed, either on a public or confidential financial disclosure report.

Example 2. The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he is a physician, but need not disclose the amount of income, either on a public or confidential financial disclosure report.

(2) **Gifts and reimbursements.** For purposes of 2634.304 of this subpart, gifts and reimbursements received by a spouse or dependent child which are not received totally independent of their relationship to the filer.

(3) Interests in property, transactions, and liabilities. For purposes of 2634.301, 2634.303 (applicable only to public filers), and 2634.305 of this subpart, all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

- (i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no specific knowledge regarding that item;
- (ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and
- (iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure statement.

(b) Exception. For reports filed as a new entrant, nominee, or candidate under 2634.201(b), (c), or (d), or as a new entrant under 2634.908(b), no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

(c) Divorce and separation. A reporting individual need not report any information about:

- (1) A spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;
- (2) A former spouse or a spouse from whom the reporting individual is permanently separated; or
- (3) Any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

Sec. 2634.310 Trusts, estates, and investment funds.

(a) In general.

(1) Except as otherwise provided in this section, each financial disclosure report shall include the information required by this subpart or subpart I of this part about the holdings of and income from the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.

(2) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

(b) Qualified trusts and excepted trusts.

(1) A filer should not report information about the holdings of or income from holdings of, any qualified blind trust (as defined in 2634.403) or any qualified diversified trust (as defined in 2634.404). For a qualified blind trust, a public financial disclosure report shall disclose the category of the aggregate amount of the trust's income attributable to the beneficial interest of the filer, his spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report shall disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, his spouse, or dependent child, or applied for the benefit of any of them.

(2) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust's holdings or income from holdings. The category of the aggregate amount of income from an excepted trust which is received by or accrued to the benefit of the filer, his spouse, or dependent child shall be reported on public financial disclosure reports. For purposes of this part, the term "excepted trust" means a trust:

- (i) Which was not created directly by the filer, spouse, or dependent child; and
- (ii) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

(c) Excepted investment funds.

(1) No information is required under paragraph (a) of this section about the underlying holdings of or income from underlying holdings of an excepted investment fund as defined in paragraph (c)(2) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income. Public financial disclosure reports must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by or accrued to the benefit of the filer, his spouse, or dependent child; and value of any transactions involving shares or units of the fund.

(2) For purposes of financial disclosure reports filed under the provisions of this part, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

- (i) (A) The fund is publicly traded or available; or
(B) The assets of the fund are widely diversified; and

(ii) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(3) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

Sec. 2634.311 Special rules.

(a) Political campaign funds. Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(b) Certificates of Divestiture. Each public financial disclosure report required by the provisions of this part shall identify those sales which have occurred pursuant to a Certificate of Divestiture during the period covered by such report. See subpart J of this part for the rules relating to the issuance of such Certificates.

(c) Reporting standards.

(1) In lieu of entering data on a schedule of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the schedule.

(2) In lieu of reporting the category of amount or value of any item listed in any public financial disclosure report filed pursuant to this part, a filer may report the actual dollar amount of such item.

SUBPART D: QUALIFIED TRUSTS

Sec. 2634.401 General considerations.

(a) Statutory standards governing qualified trusts-

(1) Types of qualified trusts and their relationship to conflict of interest laws. The Ethics in Government Act of 1978 created, and provided special public financial disclosure requirements for, two types of qualified trusts. It was envisioned that the use of those trusts by Government employees would reduce the real and apparent conflicts of interest which might arise between the financial interests held by those employees (or attributable to them) and their official responsibilities.

(i) Interested party means a Government employee, his spouse, any minor or dependent child, and their representatives in any case in which the employee, spouse, or child has a beneficial interest in the principal or income of a trust proposed for certification or certified.

(ii) Qualified blind trust. The most universally adaptable qualified trust is the qualified blind trust, defined in 2634.403 of this subpart. A trust is considered to be "blind" only with regard to those trust assets about which no interested party has knowledge. When an interested party originally places assets in trust, that party still possesses knowledge about those assets. Those original assets remain financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations, until the trustee notifies the official either that a particular original asset has been disposed of or that the asset's value is less than \$1000. If the trustee sells or disposes of original trust assets and then uses the proceeds to acquire new trust holdings, or if the trustee reinvests trust income to acquire new trust holdings, a "blind" trust exists for those new holdings because the interested parties possess no information

about the newly acquired assets. The holdings of a "blind" trust are not classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(iii) **Qualified diversified trust.** The second type of qualified trust established by the Act is the qualified diversified trust, defined in 2634.404 of this subpart. Among other requirements, a trust is considered to be "diversified" if it can be demonstrated, to the satisfaction of the Director of the Office of Government Ethics, pursuant to 2634.404(b), that the trust assets comprise a widely diversified portfolio of readily marketable securities, and do not initially include the securities of any entities having substantial activities in the same area as the Government official's primary area of responsibility. The trust holdings are never classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(2) **Independence of trustees and other fiduciaries.** Under the Act and 2634.406 of this subpart, those entities that are authorized by the Act or by the trust instrument to manage the assets of, and to control and administer, either a qualified blind or a qualified diversified trust must be independent, in fact and in appearance, from those parties who hold beneficial interests in the trust.

(i) The independence of trustees is facilitated by limiting the entities which may serve in this capacity to certain financial institutions.

(ii) In addition to the trustee, the Act extends the independence requirement to other entities which manage trust assets or administer the trust, including officers and employees of the trustee, any other entity designated in the trust instrument to perform fiduciary duties on behalf of the trust, and the officers and employees of any other entity that is involved in the management or control of the trust, such as investment counsel, investment advisers, accountants, or tax preparers and their assistants.

(iii) Those entities governed by the Act will be considered "independent" for purposes of this subpart if, among other requirements, the entities are not affiliated with, associated with, related to, or subject to the control or influence of, any of the parties that hold a beneficial interest in the trust.

(3) **Communications between trust administrators and interested parties.** For purposes of Federal ethics laws, the most important feature of those qualified trusts that are recognized under the Act is the separation which those trusts foster between parties with beneficial interests in the trust and entities which manage trust assets and administer the trust instrument. Once a qualified trust has been certified, the beneficiaries and their representatives are expressly prohibited from commenting directly to the trustee about matters relating to asset management and trust holdings, or to trust administration and activities. Likewise, the trustee must make investment decisions for the trust without consulting, or being controlled by, interested parties, and the trustee is prohibited from informing interested parties directly about trust activities, except to the limited extent required under the Act. The Act requires the trustee to provide trust beneficiaries with certain standard periodic reports. Beyond receipt of these standard reports, trust beneficiaries are prohibited from actively attempting to obtain and from passively but knowingly obtaining, directly or indirectly, any additional information which the Act prohibits beneficiaries from obtaining, including information about trust holdings and activities. Finally, instruments creating qualified trusts must require interested parties and trustees to make all permissible communications relating to the trust and to its assets in writing, with the prior written approval of the Director of the Office of Government Ethics. Sections 2634.403-2634.405 and 2634.407 of this subpart contain standards implementing these restrictions.

(4) **Trust and beneficiary taxes.** For tax purposes, because a trust is a separate entity distinct from its beneficiaries, a trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). In addition, the trust beneficiaries must report income received from the trust on their individual tax returns. The Act establishes special filing procedures to be used by the trustee and trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administration. For beneficiaries of qualified blind trusts, the trustee sends a Schedule K-1 form summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. For beneficiaries of qualified diversified trusts, the statute requires the trustee to file the individual tax returns on behalf of the trust beneficiaries. The beneficiaries must transmit to the trustee materials concerning taxable transactions and occurrences outside of the trust, pursuant to the requirements in each trust instrument which detail this procedure.

(b) **Policy considerations and objectives underlying the qualified trust program.**

(1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind or diversified trust. However, there was general agreement that the use of blind or diversified trusts often reduced the potential for conflicts of interest. If Government employees do not know the exact identity, nature, and extent of their financial interests, then the employees cannot be influenced in the performance of their official duties by those interests. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest. Therefore, the most significant objective to be achieved through the use of a blind trust is the lack of knowledge, or actual "blindness," by a Government official with respect to the holdings in his trust. The same goal may be achieved through the use of a diversified trust, if that trust holds securities from different issuers in different economic sectors, and if the trust's interest in any one issuer is limited. Under these conditions, it is unlikely that official actions taken by the Government employee who holds a beneficial interest in the trust would affect individual securities to such a degree that the overall value of the trust's portfolio would be materially enhanced. Thus, wide diversification is tantamount to actual "blindness."

(2) Because, for the trusts certified under the provisions of this subpart D, the Government official is or will become blind to the identity and nature of his actual trust holdings, the reporting requirements of section 102(f)(1) of the Act and subparts C or I of this part, which generally require Government filers to disclose the contents of a trust's portfolio, do not apply. See 2634.310 of this part. Further, as discussed in paragraphs (a)(1) (ii) and (iii) of this section, 18 U.S.C. 208 and other Federal conflict of interest laws do not generally apply to the holdings of qualified trusts, except in the case of the original assets transferred to a qualified blind trust until notice that a particular original asset has been disposed of or that the asset's value is below \$1,000.

(c) Qualified trust provisions of the regulation. This subpart D prescribes standards which implement the statutory requirements and policy objectives underlying the Act's qualified blind and diversified trust provisions. The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) Classification as a qualified trust. In order to be classified as a qualified trust for purposes of the Act, blind and diversified trusts must satisfy the following three requirements:

(i) The trust document must conform to announced standards. As provided under 2634.403(b) for blind trusts and 2634.404(c) for diversified trusts, the trust document must conform to the model trust instruments which are drafted and distributed by the Office of Government Ethics for use by interested parties when drafting their trust arrangements. Prior to certifying a trust under 2634.405 of this subpart, as discussed in paragraph (c)(1)(iii) of this section, the Office of Government Ethics must approve every proposed trust document. In addition to other required provisions, the trust instrument must contain language which implements the communications restrictions discussed in paragraph (a)(3) of this section. By requiring interested parties, trustees, and other signatories to the trust instrument to include communications provisions, these regulations compel the signatories diligently to safeguard against inadvertent disclosures of precluded information to the interested parties.

(ii) Truly independent fiduciaries. As discussed in paragraph (a)(2) of this section, the fiduciaries in charge of administering and managing the assets of a qualified trust must be actually and apparently independent of the parties who hold beneficial interests in the trust, and of their representatives. To ensure such independence, 2634.406 of this subpart limits the range of permissible fiduciaries. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must conclude, in his judgment, that the trust fiduciaries named in the trust instrument satisfy the standards for independence contained in 2634.406 of this subpart.

(iii) Certification by the Office of Government Ethics. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must certify, in accordance with the standards and procedures established in 2634.405 of this subpart, that the trust meets the requirements of section 102(f) of the Act and of this subpart, that certification is in the public interest, and that certification is consistent with the policies established by these provisions and by other applicable laws and regulations. This certification is essential so that the Office can ensure, in advance that the proposed trust arrangement satisfies the established standards.

(2) Certification of pre-existing trusts. Normally, those trusts certified as qualified trusts by the Director of the Office of Government Ethics under 2634.405 of this subpart are newly created trust arrangements, formulated in accordance with established standards by representatives of the interested parties in consultation with the Office of Government Ethics. However, the Director may certify a pre-existing trust as a qualified blind or qualified diversified trust under 2634.403 (blind) or 2634.404 (diversified) if he determines that such action is appropriate and is sufficient to ensure compliance with applicable laws and regulations. The pre-existing trust proposed for certification must meet both the generally applicable trust requirements, and several special requirements contained in 2634.405(c) of this subpart, including that all of the parties to the original trust agree to administer the trust in accordance with the requirements of this subpart. The pre-existing trust may be certified only if all of the conditions of this subpart are fulfilled, and if the requisite confidentiality can be assured with respect to the trust.

(3) Reporting requirements. Once a trust is classified as a qualified blind or qualified diversified trust in the manner discussed under paragraph (c)(1) of this section, 2634.310(b) applies less inclusive financial disclosure requirements to the trust assets.

(4) Sanctions and enforcement. Section 2634.702 provides civil sanctions which apply to any Government official or trust fiduciary who violates his obligations under the Act, its implementing regulations, or the trust instrument. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

(d) Drafting and implementation of the qualified trust instrument.

(1) The overview of the qualified trust program contained in this section cannot anticipate every concern or question or discuss every scenario which might arise in the course of formulating and implementing a qualified trust instrument. The Office of Government Ethics should be contacted by an interested party or by his professional representatives if the Act, the implementing regulations, and the trust instrument itself do not provide guidance in a particular instance.

(2) No trust will be considered "qualified" for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution. The Office of Government Ethics makes available to attorneys model trust agreements for use in drafting proposed trust agreements which are to be submitted to the Office for certification. Attorneys are cautioned to consider each model provision in light of the circumstances presented by the particular case, and to modify provisions to the extent that such modifications are necessary or appropriate. Attorneys should not rely uncritically upon the language of the model agreements. However, many of the model provisions implement the minimum requirements which must be contained in any trust instrument certified by the Office. Certificates of Independence for fiduciaries must be executed in the form indicated in appendix A of this part.

(3) The Office of Government Ethics does not draft trust instruments for use in individual cases. However, its staff is always willing to cooperate with attorneys and to make its experience available to them in developing appropriate trust instruments which satisfy applicable Federal laws, Executive orders and regulations. If the use of a qualified trust is contemplated in a particular case, it is strongly recommended that the interested parties or their representatives contact the Office of Government Ethics as early as possible.

(4) Prior to trust certification, prospective trustees or their representatives should schedule with the staff of the Office of Government Ethics an appointment for an orientation to the specialized requirements and procedures which have been established by the Act and the regulations with respect to qualified trust administration.

Sec. 2634.402 Special notice for advice-and-consent nominees.

(a) In general. In any case in which the establishment of a qualified diversified trust is contemplated with respect to a reporting individual whose nomination is being considered by a Senate committee, that individual shall inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee.

(b) Applicability. The rule of this section is not applicable to members of the uniformed services or Foreign Service officers. The special notice requirement of this section shall not preclude an individual from seeking the certification of a qualified blind trust or qualified diversified trust after the Senate has given its advice and consent to a nomination.

Sec. 2634.403 Qualified blind trusts.

(a) Definition. A qualified blind trust is a trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to 2634.405 of this subpart by the Director of the Office of Government Ethics, and which includes in the trust instrument in the provisions required by paragraph (b) of this section, and has an independent trustee as defined in g 2634.406 of this subpart. See section 102(f)(3) of the Act.

(b) Required provisions. The instrument which establishes a blind trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the blind trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party

(3) None of the assets initially placed in the trust's portfolio shall include assets the holding of which by any interested party would be prohibited by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation;

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held by the trust;

(6) The trustee shall promptly notify the filer and the Director of the Office of Government Ethics when any particular asset transferred to the trust by an interested party has been completely disposed of or when the value of that asset is reduced to less than \$1,000;

(7) The trustee or his designee shall prepare the trust's income tax return. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly, or to any interested party, the trust's tax return, any information relating to that return except for a summary of trust income in categories necessary for an interested party to complete his individual tax return, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section;

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

(8) An interested party shall not receive any report on trust holdings and sources of trust income, except that the trustee shall, without identifying specifically any asset or holding:

- (i) Report quarterly the aggregate market value of the assets representing the interested party's interest in the trust
- (ii) Report the net income or loss of the trust, and any other information necessary to enable the interested party to complete his individual income tax return; and
- (iii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount of the trust's income attributable to the interested party's beneficial interest in the trust, categorized in accordance with 5 2634.302(b);

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) Such communication is in writing with the prior written approval of the Director of the Office of Government Ethics and is filed with the Director in accordance with 5 2634.408(c) of this subpart; and

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation

(C) To notification of the trustee by the interested party that the interested party is prohibited by subsequently applicable statute, Executive order, or regulation from holding an asset, and to directions to the trustee that the trust shall not hold that asset; or

(D) To instructions to the trustee to sell all of an asset which was initially placed in the trust by an interested party, and which, in the determination of the filer creates a real or apparent conflict due to duties subsequently assumed by the filer (but the filer is not required to give such directions);

NOTE: By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(10) The interested parties shall not take any action to obtain, and shall take reasonable action to avoid receiving, information with respect to the holdings and the sources of income of the trust, including a copy of any trust tax return filed by the trustee, or any information relating to that return except for the reports and information specified in paragraphs (b)(6) and (b)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and such fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust;

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust, if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part.

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless the following four conditions are met:

(i) When any interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section; and

(iv) The person is instructed by the trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (b)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or any other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

Sec. 2634.404 Qualified diversified trusts.

(a) Definition. A qualified diversified trust is any trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to 2634.405 of this subpart by the Director of the Office of Government Ethics, which has a portfolio as specified in paragraph (b) of this section, and which includes in the trust instrument the provisions required by paragraph (c) of this section and has an independent trustee as defined in 2634.406 of this subpart. See section 102(f)(4)(B) of the Act.

(b) Required portfolio

(1) Standards for initial assets. It must be established, to the satisfaction of the Director of the Office of Government Ethics, that the initial assets of the trust proposed for certification comprise a widely diversified portfolio of readily marketable securities. The reporting individual or other interested party shall provide the Director with a detailed list of the securities proposed for inclusion in the portfolio, specifying their fair market values and demonstrating that these securities meet the requirements of this paragraph. The initial trust portfolio may not contain securities of issuers having substantial activities in the reporting individual's primary area of responsibility. If requested by the Director, the designated agency ethics official for the reporting individual's employing agency shall certify whether the proposed portfolio meets this standard.

(2) Diversification standards. For purposes of paragraph (b)(1) of this section, a portfolio will be widely diversified if:

(i) The value of the securities concentrated in any particular or limited industrial, economic or geographic sector is no more than twenty percent of the total; and

(ii) The value of the securities of any single issuer (other than the United States Government) is no more than five percent of the total.

(3) Marketability standard. For purposes of paragraph (b)(1) of this section, a security will be readily marketable if:

and (i) Daily price quotations for the security appear regularly in newspapers of general circulation;

(ii) The trust holds the security in a quantity that does not unduly impair liquidity.

(c) Required provisions. The instrument which establishes a diversified trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the diversified trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to arrange and control the assets of the trust shall not consult or notify any interested party;

(3) The trust's initial assets shall comprise a widely diversified portfolio of readily marketable securities, in accordance with the principles of paragraph (b) of this section, and the trustee shall not acquire additional securities in excess of the diversification standards;

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics;

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held under the trust;

(6) None of the assets initially placed in the trust's portfolio shall consist of securities of issuers having substantial activities in the reporting individual's primary area of Federal responsibility;

(7) The trustee or designee shall prepare the trust's income tax return and, on behalf of any interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly or to any interested party, any of the returns prepared by the trustee or his designee, any information relating to those returns, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings;

(8) An interested party shall not receive any report on trust holding and sources of trust income, except that the trustee shall, without identifying specifically any asset or holding:

(i) Report quarterly the aggregate market value of the assets representing the interested party's interest in the trust; and

(ii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount actually distributed from the trust to such interested party, or applied for the party's benefit;

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary unless:

(i) Such communication is in writing, with the prior written approval of the Director of the Office of Government Ethics and is filed with the Director in accordance with 2634.406(c) of this subpart; and,

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind;

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation; or

(C) To information, documents, and funds concerning income tax obligations arising from sources other than the property held in trust, which are required by the trustee to enable him to file, on behalf of an interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust;

NOTE: By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory

mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) Or section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(10) The interested parties shall not seek to obtain, and shall take reasonable action to avoid receiving, information with respect to trust holdings and sources of trust income, including a copy of any tax return filed by the trustee, or any information relating to that return, except for the reports and information specified in paragraph (c)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file, with the Director of the Office of Government Ethics, by May 15 following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and any other designated fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part;

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless, the following four conditions are met;

(i) When an interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under 2634.408 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets or those assets which have been sold or disposed of from trust holdings; and

(iv) The person is instructed by an independent trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (c)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, any securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

(d) Personal income tax returns. In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose.

Sec. 2634.405 Certification of trusts.

(a) Standards. Before a trust may be classified as a qualified blind or a qualified diversified trust, under the provisions of 2634.403 or 2634.404 of this subpart, respectively, the trust must be certified by the Director of the Office of Government Ethics.

(1) A trust will be certified for purposes of this subpart only if:

(i) It is established to the Director's satisfaction that the requirements of section 102(f) of the Act and this subpart have been met;

(ii) Certification is in the public interest; and

(iii) Certification is consistent with the policies established by the Act, this subpart and other applicable laws and regulations.

(2) Certification will not be granted in any case in which, in the Director's sole judgment, such action would not be appropriate because of the ready availability of other remedies, the lack of any substantive ethical concern which would warrant the establishment of a qualified trust, or the nature or negligible value of the assets proposed for a trust's initial portfolio.

(b) Certification procedures. The interested parties or their representatives should first consult the staff of the Office of Government Ethics concerning the appropriateness of, and requirements for, certification in the particular case. In order to assure timely trust certification, the interested parties shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information, including a statement that any interested party who will be a party to a certified trust instrument has read and understands the overview of executive branch qualified trusts in 2634.401(a) of this subpart. Certification shall be indicated by a letter from the Director to the interested parties or their representatives.

(c) Certification of pre-existing trusts. In addition to the normally applicable rules of this subpart D, other considerations apply to pre-existing trusts. Generally, in the case of a pre-existing trust whose terms do not permit amendments satisfying the rules of this subpart, all of the relevant parties (including the reporting individual, any other interested parties, the trustee of the pre-existing trust, and all of its other parties and beneficiaries) will be required pursuant to section 102(f)(7) of the Act to enter into an umbrella agreement specifying that the pre-existing (underlying) trust will be administered in accordance with the provisions of this subpart. A parent or guardian may execute the umbrella agreement on behalf of a required participant who is a dependent child. The umbrella agreement will be certified as a qualified trust if all requirements of this subpart are fulfilled under conditions where required confidentiality with respect to the trust can be assured. A copy of the underlying trust instrument, and a list of its assets at the time the umbrella agreement is certified as a qualified trust (categorized as to value in accordance with 2634.301(d)), shall be filed with the executed umbrella trust instrument as specified by g 2634.408(a)(1)(i) of this subpart.

(d) Review of certification. The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any trust certification which has been granted.

(e) Revocation of certification and modification of trust investment. Certification of a trust may be revoked pursuant to the rules of subpart E of this part. The terms of a qualified trust may not be revoked or amended, except with the prior written approval of the Director, and upon a showing of necessity and appropriateness.

Sec. 2634.406 Independent trustees.

(a) Standards.

(1) The term independent trustee means any entity referred to in paragraph (a)(2) of this section which, under all the facts and circumstances, is determined by the Director of the Office of Government Ethics and in the Director's sole discretion, to be independent of any interested party with respect to a trust proposed for certification under this subpart. The term includes, unless the context indicates otherwise, in addition to the party to a trust instrument who is designated to serve as trustee, those parties who are designated to perform fiduciary duties. Approval of a proposed trustee or other designated fiduciary shall be granted only if it is established to the Director's satisfaction that the requirements of section 102 of the Act and this subpart have been met, and that approval in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations.

(2) Eligible entities. Eligibility to serve as a trustee or other fiduciary under this section is limited to a financial institution (not a person), not more than 10 percent of which is owned or controlled by a single individual, which is:

(i) A bank, as defined in 12 U.S.C. 1841(c), or

(ii) An investment adviser, as defined in 15 U.S.C. 80b-2(a)(11).

Note: By the terms of paragraph (3)(A)(t) of section 102(f) of the Act, an individual who is an attorney, a certified public accountant, a broker, or an investment advisor is also eligible to serve as an independent trustee. However, experience of the Office of Government Ethics over the years dictates the necessity of limiting service as a trustee or other fiduciary to the financial institutions referred to in this paragraph, to maintain effective administration of trust arrangements and preserve confidence in the Federal qualified trust program. accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trustees or other fiduciaries who are not financial institutions, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(3) Requirements. No eligible entity shall be determined to be an independent trustee under this section unless:

(i) That entity is independent of and unassociated with any interested party so that it cannot be controlled or influenced in the administration of the trust by any interested party; and

(ii) That entity is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(iii) Any director, officer, or employee of such entity:

(A) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not and has not been employed by any interested party, not served as a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment with, any interested party; and

(C) Is not a relative of any interested party.

(b) Approval procedures.

(1) Appropriate documentation to establish, pursuant to the requirements of paragraph (a)(3) of this section, the independence of a proposed trustee or any other person to be designated in a trust instrument to perform fiduciary duties shall be submitted to the Office of Government Ethics in writing, including the Certificate of Independence in the form prescribed in appendix A of this part. The existence of any other banking or client relationship between an interested party and a proposed trustee or other designated fiduciary must be disclosed in such documentation, and may be subject to discontinuance as a condition of approval.

(2) The Director shall indicate approval of a proposed trustee, and of any other person designated in the trust instrument to perform fiduciary duties, including those of an investment adviser, by reporting such approval in writing to the interested parties or to their representatives.

(c) Review of approval. The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any approval which has been granted under this section.

(d) Revocation of approval. Approval of a trustee or any other designated fiduciary may be revoked pursuant to the rules of subpart E of this part.

Sec. 2634.407 Restrictions on fiduciaries and interested parties.

(a) Restrictions applicable to trustees and other fiduciaries. Any trustee or any other designated fiduciary of a qualified trust shall not knowingly or negligently:

(1) Disclose any information to an interested party with respect to the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument;

(2) Acquire any holding:

(i) Directly from an interested party without the prior written approval of the Director; or

(ii) The ownership of which is prohibited by, or not in accordance with, title I of the Act, the implementing regulations, the trust instrument, or with other applicable statutes and regulations;

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(4) Fail to file any document required by the implementing regulations or the trust instrument.

(b) Restrictions applicable to interested parties. An interested party to a qualified trust shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument; or

(2) Fail to file any document required by this subpart or the trust instrument.

Sec. 2634.408 Special filing requirement for qualified trusts.

(a) The interested party. In the case of any qualified trust, the Government employee or other interested party shall:

(1) Execution of the trust. Within thirty days after the trust is certified under 2634.405 of this subpart by the Director of the Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust (other than those provisions which relate to the testamentary disposition of the trust assets); and

(ii) A list of the assets which were transferred to the trust, categorized as to value of each asset in accordance with 2634.301(d).

(2) Transfer of assets. Within thirty days of transferring an asset, other than cash, to a qualified trust, file a report with the Director of the Office of Government Ethics, which identifies and briefly describes each asset, categorized as to value in accordance with 2634.301(d).

(3) Dissolution of the trust. Within thirty days of the dissolution of a qualified trust:

(i) File a report of the dissolution with the Director of the Office of Government Ethics; and

(ii) File with the Director a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with 2634.301(d).

(b) Trustees and other designated fiduciaries. An independent trustee of a qualified trust, and any other person designated in the trust instrument to perform fiduciary duties, shall file with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed by appendix B of this part. In addition, an independent trustee and other fiduciaries shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust.

(c) Written communications. All communications between an interested party and the trustee of a qualified trust must, under this subpart, have the prior written approval of the Director of the Office of Government Ethics. After such an approved written communication (including those communications described in 2634.403(b)(9) or 2634.404(c)(9) of this subpart) has been transmitted, the person initiating the communication shall file a copy of the communication within five days of its date, with the Director of the Office of Government Ethics.

(d) Public access. Any document filed under the requirements of paragraph (a) of this section by a public filer, nominee, or candidate shall be subject to the public disclosure requirements of 2634.603. Any document (and the information contained therein) inspected under the requirements of paragraph (b) of this section (other than a Certificate of Compliance), or filed under the requirements of paragraph (c) of this section, shall be exempt from the public disclosure requirements of 2634.603, and shall not be disclosed to any interested party.

**SUBPART E: REVOCATION OF TRUST
CERTIFICATES AND TRUSTEE APPROVALS**

Sec. 2634.601 Purpose and scope.

(a) Purpose. This subpart establishes the procedures of the Office of Government Ethics for enforcement of the qualified blind trust, qualified diversified trust, and independent trustee provisions of title I of the Ethics in Government Act of 1978, as amended, and the regulation issued thereunder (subpart D of this part).

(b) Scope. This subpart applies to all trust certifications and trustee approvals pursuant to §2634.405(a) and 2634.406(a), respectively.

Sec. 2634.602 Definitions.

For purposes of this subpart (unless otherwise indicated):

(a) Senior Attorney means the Office of Government Ethics employee designated as the manager of the qualified trust program

... restrictions means the applicable provisions of title I of the Ethics in Government Act of 1978, subpart D of this part, and the trust instrument.

Sec. 2634.503 Determinations.

(a) Where the Senior Attorney concludes that violations or apparent violations of the trust restrictions exist and may warrant revocation of trust certification or trustee approval previously granted under 2634.405 or 2634.406 of this subpart, the Senior Attorney may, pursuant to the procedure specified in paragraph (b) of this section, conduct a review of the matter, and may submit findings and a recommendation concerning final action to the Director of the Office of Government Ethics.

(b) Review procedure.

(1) In his review of the matter, the Senior Attorney shall perform such examination and analysis of violations or apparent violations as he deems reasonable.

(2) The Senior Attorney shall provide an independent trustee and, if appropriate, the interested parties, with:

(i) Notice that revocation of trust certification or trustee approval is under consideration pursuant to the procedures in this subpart;

(ii) A summary of the violation or apparent violations which shall state the preliminary facts and circumstances of the transactions or occurrences involved with sufficient Particularity to permit the recipients to determine the nature of the allegations; and

(iii) Notice that the recipients may present evidence and submit statements on any matter in issue within ten business days of the recipient's actual receipt of the notice and summary.

(c) Determination.

(1) In making determinations with respect to the violations or apparent violations under this section, the Director of the Office of Government Ethics shall consider the findings and recommendations of final action submitted by the Senior Attorney under paragraph (a) of this section, as well as the written record of review compiled under paragraph (b) of this section.

(2) If the Director finds a violation or violations of the trust restrictions he may, as he deems appropriate:

(i) Issue an order revoking trust certification or trust approval;

(ii) Resolve the matter through any other remedial action within the Director's authority;

(iii) Order further examination and analysis of the violation or apparent violation; or

(iv) Decline to take further action.

(3) If an order of revocation is issued, the parties to the trust instrument shall be expeditiously notified in writing. The notice shall state the basis for the revocation, and shall inform the parties - either that the trust is no longer a qualified blind or qualified diversified trust for any purpose under Federal law; or that the independent trustee may no longer serve the trust in any capacity, and must be replaced by a successor, who is subject to the prior written approval of the Director; or both where appropriate.

SUBPART F: PROCEDURE

Sec. 2634.601 Report forms.

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration, two standard forms for financial disclosure reporting: the SF 278 (Public Financial Disclosure Report) for reporting the information described in subpart B of this part on executive branch public disclosure; and the SF 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure.

(b) Subject to the prior written approval of the Director of the Office of Government Ethics, an agency may require employees to file additional confidential financial disclosure forms which supplement either or both of the standard forms referred to in paragraph (a) of this section, if necessary because of special or unique agency circumstances. The Director may approve such agency forms when, in his opinion, the supplementation is shown to be necessary for a comprehensive and effective agency ethics program to identify and resolve conflicts of interest. See §2634.103 and 2634.901.

(c) Reports concerning payments made to charitable organizations in lieu of honoraria shall also be filed on the separate standard form provided in conjunction with part 2636 of this chapter, and in accordance with the procedures specified therein.

Sec. 2634.602 Filing of reports.

(a) Except as otherwise provided in this section, the reporting individual shall file financial disclosure reports required under this part with the designated agency ethics official or his delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which he will serve. Detailees shall file with their primary agency. Reports are due at the times indicated in 2634.201 of subpart B (public disclosure) or 2634.903 of subpart I (confidential disclosure) of this part, unless an extension is granted pursuant to the provisions of subparts B or I of this part.

(b) The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 4C, shall file the public financial disclosure reports required under this part with the Director of the Office of Government Ethics.

(c) (1) Each agency receiving the public financial disclosure reports required to be filed under this part by the following individuals shall transmit copies to the Director of the Office of Government Ethics:

(i) The Postmaster General;

(ii) The Deputy Postmaster General;

(iii) The Governors of the Board of Governors of the United States Postal Service;

(iv) The designated agency ethics official;

(v) Employees of the Executive Office of the President who are appointed under 3 U.S.C. 105(a)(2)(A) or (B) or 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i), and employees of the Office of Vice President who are appointed under 3 U.S.C. 106(a)(1)(A) or (B); and

(vi) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate, other than members of the uniformed services.

(2) Prior to transmitting a copy of a report to the Director of the Office of Government Ethics, the designated agency ethics official or his delegate shall review that report in accordance with 2634.605 of this subpart except for his own report, which shall be reviewed by the agency head or by a delegate of the agency head.

(3) For nominee reports, the Director of the Office of Government Ethics shall forward a copy to the Senate committee that is considering the nomination. (See 2634.605(c) of this subpart for special procedures regarding the review of such reports.)

(d) The Director of the Office of Government Ethics shall file his financial disclosure report with his Office, which shall make it immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in 2634.201(d), other than an incumbent President or Vice President, shall file their financial disclosure reports with the Federal Election Commission, which shall review and send copies of such reports to the Director of the Office of Government Ethics.

(f) Members of the uniformed services identified in 2634.202(c) shall file their financial disclosure reports with the Secretary concerned, or his delegate.

Sec. 2634.603 Custody of and access to public reports.

(a) Each agency shall make available to the public in accordance with the provisions of this section those public reports filed with the agency by reporting individuals described under subpart B of this part.

(b) This section does not require public availability of those reports filed by:

(1) Any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by that individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. Individuals referred to in this paragraph who are exempt from the public availability requirement may also be authorized, notwithstanding 2634.701, to file any additional reports necessary to protect their identity from public disclosure, if the President finds or has found that such filings are necessary in the national interest; or

(2) An independent counsel whose identity has not been disclosed by the Court under 28 U.S.C chapter 40, or any person appointed by that independent counsel under such chapter.

(c) Each agency shall, within thirty days after any public report is received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes written application as provided by agency procedure. Agency reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit an application. The agency may utilize Office of Government Ethics Form 201 for such applications. An application shall state:

(1) The requesting person's name, occupation, and address;

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) That the requesting person is aware of the prohibitions on obtaining or using the report set forth in paragraph (f) of this section.

(d) Applications for the inspection of or copies of public reports shall also be made available to the public throughout the period during which the report itself is made available, utilizing the procedures in paragraph (c) of this section.

(e) The agency may require a reasonable fee, established by agency regulation, to recover the direct cost of reproduction or mailing of a public report, excluding the salary of any employee involved. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by regulation. Agency regulations contemplated by paragraph (e) of this section do not require approval pursuant to 2634.103.

(f) It is unlawful for any person to obtain or use a public report:

(1) For any unlawful purpose;

(2) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(3) For determining or establishing the credit rating of any individual; or

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example 1. The deputy general counsel of Agency x is responsible for reviewing the public financial disclosure reports filed by persons within that agency. The agency personnel director, who does not exercise functions within the ethics program, wishes to review the disclosure report of an individual within the agency. The personnel director must file an application to review the report. However, the supervisor of an official with whom the deputy general counsel consults concerning matters arising in the review process need not file such an application.

Example 2. A state law enforcement agent is conducting an investigation which involves the private financial dealings of X individual who has filed a public financial disclosure report. The agent must complete a written application in order to inspect or obtain a copy.

Example 3. A financial institution has received an application for a loan from an official which indicates her present financial status. The official has filed a public financial disclosure statement with her agency. The financial institution cannot be given access to the disclosure form for purposes of verifying the information contained on the application.

(g) (1) Any public report filed with an agency or transmitted to the Director of the Office of Government Ethics under this section shall be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report shall be made available to the public for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to 2634.201(c) as a nominee and was not subsequently confirmed by the Senate, or who filed the report pursuant to 2634.201(d) as a candidate and was not subsequently elected, the report, unless needed in an ongoing investigation, shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President. See also the OGF/GOVT-1 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(2) For purposes of paragraph (g)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained and made available to the public until the periods for retention of all other reports of the individual have lapsed under paragraph (g)(1) of this section.

Sec. 2634.604 Custody of and denial of public access to confidential reports.

(a) Any report filed with an agency under subpart I of this part shall be retained by the agency for a period of six years after receipt. After the six year period, the report shall be destroyed unless needed in an ongoing investigation. See also the OGE/GOVT-2 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(b) The reports filed pursuant to subpart I of this part are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the OGE/GOVT-2 Privacy Act system of records (and any applicable agency system); 5 U.S.C. app (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and 2634.901(d).

Sec. 2634.605 Review of reports.

(a) In general. The designated agency ethics official shall normally serve as the reviewing official for reports submitted to his agency. That responsibility may be delegated, except in the case of certification of nominee reports required by paragraph (c) of this section. See also 2634.105(q). He shall note on any report or supplemental report the date on which it is received. Except as indicated in paragraph (c) of this section all reports shall be reviewed within 60 days after the date of filing. Reports reviewed by the Director of the Office of Government Ethics shall be reviewed within 60 days from the date on which they are received by that Office. Final certification in accordance with paragraph (b)(2) of this section may, of necessity, occur later where additional information is being sought or remedial action is being taken under this section.

(b) Responsibilities of reviewing officials-

(1) Initial review. The reviewing official may request an intermediate review by the filer's supervisor. In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official shall obtain an intermediate review by the agency where the filer served as a detailee. After obtaining any intermediate review or determining that such review is not required, the reviewing official shall examine the report to determine, to his satisfaction that:

- (i) Each required item is completed; and
- (ii) No interest or position disclosed on the form violates or appears to violate:

- (A) Any applicable provision of chapter 11 of title 18, United States Code;
- (B) The Act, as amended, and the implementing regulations;
- (C) Executive Order 12674 as modified by Executive Order 12731, and the implementing regulations; or
- (D) Any other agency-specific statute or regulation which governs the filer.

(2) Signature by reviewing official. If the reviewing official determines that the report meets the requirements of paragraph (b)(1) of this section, he shall certify it by signature and date. The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures shall be taken at "face value" as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, a report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with applicable laws and regulations noted in paragraph (b)(1)(ii) of this section.

(3) Requests for, and reviews based on, additional information. If the reviewing official believes that additional information is required, he shall request that it be submitted by a specified date. This additional information shall be made a part of the report. If the reviewing official concludes, on the basis of the information disclosed in the report and any additional information submitted, that the report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report.

(4) Compliance with applicable laws and regulations. If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations as specified in paragraph (b)(1)(ii) of this section, the official shall:

- (i) Notify the filer of that conclusion;
- (ii) Afford the filer a reasonable opportunity for an oral or written response; and
- (iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations specified in paragraph (b)(1)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, he shall sign and date the report. If he determines that it does not, he shall:

- (A) Notify the filer of the conclusion;

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

(B) Afford the filer an opportunity for personal consultation if practicable;

(C) Determine what remedial action under paragraph (b)(5) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(1)(ii) of this section; and

(D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken.

(5) Remedial action.

(i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed not later than three months from the date on which the filer received notice that the action is required.

(ii) Remedial action may include, as appropriate:

(A) Divestiture of a conflicting interest (see subpart J of this part);

(B) Resignation from a position with a non-Federal business or other entity;

(C) Restitution;

(D) Establishment of a qualified blind or diversified trust under the A and subpart D of this part;

(E) Procurement of a waiver under 18 U.S.C. 208(b)(1) or (b)(3);

(F) Preparation of a written instrument of recusal (disqualification); or

(G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

(6) Compliance or referral.

(i) If the filer complies with a written request for remedial action under paragraph (b)(4) of this section, the reviewing official shall indicate, in the comment section of the report, what remedial action has been taken. The official shall also sign and date the report.

(ii) If the filer does not comply by the designated date with the written request for remedial action transmitted under paragraph (b)(4) of this section, the reviewing official shall, in the case of a public filer under subpart I of this part, notify the head of the agency and the Office of Government Ethics, for appropriate action. Where the filer is in a position in the executive branch (other than in the uniformed services or the Foreign Service), appointment to which require the advice and consent of the Senate the Director of the Office of Government Ethics shall refer the matter to the President. In the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. For confidential filers, the reviewing official will follow agency procedures.

(c) Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate. In the case of a report filed by an individual described in 2634.201(c) who is nominated by the President for appointment to a position that requires the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the applicable financial disclosure report form to the nominee. It shall forward the completed report to the designated agency ethics official at the agency where the nominee is serving or will serve, or it may direct the nominee to file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall complete an accelerated review of the report, in accordance with the standards and procedures in paragraph (b) of this section. If that official concludes that the report reveals no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report by signature, and date the certification;

(iii) Write an opinion letter to the Director of the Office of Government Ethics, personally certifying that there is no unresolved conflict of interest under applicable laws and regulations, and discussing:

(A) Any actual or apparent conflicts of interest that were detected during the review process; and

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . , 5 CFR 2634

(B) The resolution of those real or apparent conflicts, including any specific commitment, ethics agreement entered under the provisions of subpart H of this part, or other undertaking by the nominee to resolve any such conflicts. A copy of any commitment, agreement, or other undertaking which is reduced to writing shall be sent to the Director, in accordance with subpart H of this part; and

(iv) Deliver the letter and the report to the Director of the Office of Government Ethics, within three working days after the designated agency ethics official receives the report.

Note: The designated agency ethics official's certification responsibilities in 2634.605(e) are nondelegable and must be accomplished by him personally, or by the agency's alternate designated agency ethics official, in his absence. See 2638.203 of this chapter.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency ethics official. If the Director is satisfied that no unresolved conflicts of interest exist, then the Director shall sign and date the report form. The Director shall then submit the report with a letter to the appropriate Senate committee, expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations.

(4) If, in the case of any nominee or class of nominees, the expedited procedure specified in this paragraph cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency ethics official shall inform the Director. When necessary and appropriate, the Director may modify the rule of that paragraph for a nominee or a class of nominees with respect to a particular department or agency.

Sec. 2634.606 Updated disclosure of advice-and-consent nominees.

(a) General rule. Each individual described in 2634.201(c) who is nominated by the President for appointment to a position that requires advice and consent of the Senate, shall at or before the commencement of the first Senate committee hearing to consider the nomination, submit to the committee an amendment to the report previously filed under 2634.201(c) and transmit copies of the amendment to the designated agency ethics official referred to in 2634.605(c)(1) of this subpart and to the Office of Government Ethics, which shall update, through the period ending no more than five days prior to the commencement of the hearing, the disclosure of information required with respect to receipt of:

- (1) Outside earned income; and
- (2) Honoraria, as defined in 2634.105(i).

(b) Additional certification. In each case to which this section applies, the Director of the Office of Government Ethics shall, at the request of the committee considering the nomination, submit to the committee an opinion letter of the nature described in 2634.605(c)(3) of this subpart concerning the updated disclosure. If the committee requests such a letter, the expedited procedure provided by 2634.605(c) of this subpart shall govern review of the updated disclosure, which shall be deemed a report filed for purposes of that paragraph.

Sec. 2634.607 Advice and opinions.

To assist employees in avoiding situations in which they might violate applicable financial disclosure laws and regulations:

(a) The Director of the Office of Government Ethics shall render formal advisory opinions and informal advisory letters on generally applicable matters, or on important matters of first impression. See also subpart C of part 2638 of this chapter. The Director shall insure that these advisory opinions and letters are compiled, published, and made available to agency ethics officials and the public. Good faith reliance on such opinions shall provide a defense to any penalty or sanction provided by this part for fact situations indistinguishable in all material aspects from those in the opinion.

(b) Designated agency ethics officials will offer advice and guidance to employees as needed, to assist them in complying with the requirements of the Act and this part on financial disclosure.

SUBPART G: PENALTIES

Sec. 2634.701 Failure to file or falsifying reports.

(a) Referral of cases. The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as appropriate, shall refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report or information required on such report, or has willfully falsified any information (public or confidential) required to be reported under this part.

(b) Civil action. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil penalty in any amount not to exceed \$10,000, as provided by section 104 of the Act.

(c) Criminal action. An individual may also be prosecuted under Criminal statutes for supplying false information on any financial disclosure report.

(d) Administrative remedies. The President, the Vice President, the Director of the Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management may take appropriate personnel or other action in accordance with applicable law or regulation against any individual for failing to file public or confidential reports required by this part, for filing such reports late, or for falsifying or failing to report required information. This may include adverse action under 5 C-F-R part 752, if applicable.

Sec. 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of 2634.407 of this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$10,000, as provided by section 102(f)(6)(C)(i) of the Act.

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of 2634.407. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$5,000, as provided by section 102(f)(6)(C)(ii) of the Act.

Sec. 2634.703 Misuse of public reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in 2634.603(f). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed \$10,000, as provided by section 105 of the Act. This remedy shall be in addition to any other remedy available under statutory or common law.

Sec. 2634.704 Late filing fee.

(a) In general. In accordance with section 104(d) of the Act, any reporting individual who is required to file a public financial disclosure report by the provisions of this part shall remit a late filing fee of \$200 to the appropriate agency, payable to the U.S. Treasury, if such report is filed more than thirty days after the later of:

- (1) The date such report is required to be filed pursuant to the provisions of this part; or
- (2) The last day of any filing extension period granted pursuant to 2634.201(f).

(b) Exceptions.

(1) The Director of the Office of Government Ethics may waive the late filing fee if he determines that the delay in filing was caused by extraordinary circumstances which made the delay reasonably necessary.

(2) Any request for a waiver of this filing fee provision must be made in writing and submitted with supporting documentation to the designated agency ethics official. That official shall review the request, and then forward it, with an opinion on the merits, to the Office of Government Ethics.

(c) Procedure.

(1) The designated agency ethics official shall maintain a record of the due dates for all public reports which the employees of that agency must file, along with the new filing dates under extensions which have been granted. Each report received by the agency shall be marked with the date of receipt. For any report which has not been received by the end of the period specified in paragraph (a) of this section, the agency shall advise the delinquent filer, in writing, that:

(i) Because his financial disclosure report is more than thirty days overdue, a \$200 late filing fee will become due at the time of filing, by reason of section 104(d) of the Act and 2634.704;

(ii) The filer is directed to remit to the agency, with the completed report, the \$200 fee, payable to the United States Treasury;

(iii) If the filer fails to remit the \$200 fee when filing his late report, it shall be subject to agency debt collection procedures; and

(iv) If extraordinary circumstances exist that would justify a request for a fee waiver, pursuant to paragraph (b) of this section, such request and supporting documentation must be submitted immediately.

(2) Upon receipt from the reporting individual of the \$200 late filing fee, the collecting agency shall note the payment in its records, and shall then forward the money to the U.S. Treasury for deposit as miscellaneous receipts, in accordance with 31 U.S.C. 3302 and section 8030.30 of Volume 1 of the Treasury Financial Manual. If payment is not

forthcoming, agency debt collection procedures shall be utilized, which may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

(d) Late filing fee not exclusive remedy. The late filing fee is in addition to other sanctions which may be imposed for late filing. See 2634.701 of this subpart.

(e) Confidential filers. The late filing fee does not apply to confidential filers. Late filing of confidential reports will be handled administratively under 2634.701(d) of this subpart.

SUBPART H: ETHICS AGREEMENTS

Sec. 2634.801 Scope.

This subpart applies to ethics agreements made by any reporting individual under either subpart B or I of this part, to resolve potential or actual conflicts of interest.

Sec. 2634.802 Requirements.

(a) Ethics agreement defined. The term ethics agreement shall include, for the purposes of this subpart, any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

- (1) Preparation of a written instrument for recusing (disqualifying) the individual from one or more particular matters or categories of official action;
- (2) Divestiture of a financial interest;
- (3) Resignation from a position with a non-Federal business or other entity;
- (4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or
- (5) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part.

(b) Time limit. The ethics agreement shall specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see 2634.803 (a), (b), or (c) of this subpart), or by the designated agency ethics official for all other ethics agreements.

Example. An official of the ABC Aircraft Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position, the individual has agreed to divest himself of his ABC Aircraft stock which he recently acquired while he was an officer with the company. However, the Securities and Exchange Commission prohibits officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within six months of acquiring the stock, and directs that any such profit must be returned to the issuing corporation or its stock holders. Since meeting the usual three-month time limit specified in this subpart for satisfying an ethics agreement might entail losing any profit that could be realized on the sale of this stock, the nominee requests that the limit be extended beyond the six-month period imposed by the Commission. Written approval would have to be obtained from the Office of Government Ethics to extend the customary three-month period.

Sec. 2634.803 Notification of ethics agreements.

(a) Nominees to positions require the advice and consent of the Senate.

(1) In the case of a nominee referred to in 2634.201(c), the designated agency ethics official shall include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official shall immediately notify the Office of Government Ethics of any ethics agreement of a nominee which is made or becomes known to the designated agency ethics official after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made between a nominee and the Senate confirmation committee. The nominee shall immediately report to the designated agency ethics official any ethics agreement made with the committee.

(3) The Office of Government Ethics shall immediately apprise the designated agency ethics official and the Senate confirmation committee of any ethics agreements made directly between the nominee and the Office of Government Ethics.

(b) Incumbents in positions requiring the advice and consent of the Senate. In the case of a position which required the advice and consent of the Senate, the designated agency ethics official shall keep the Office of Government Ethics

apprised of any ethics agreements which the incumbent makes, or which become known to the designated agency ethics official during the incumbent's term in his position.

(c) Designated agency ethics official not holding advice-and-consent positions, and employees of the Offices referred to in 2634.602(c)(1)(v). A designated agency ethics official who has entered into an ethics agreement, and who is neither a nominee to, nor an incumbent in, a position which requires the advice and consent of the Senate as well as each employee of the Executive Office of the President or the Office of the Vice President who is referred to in 2634.602(c)(1)(v), shall include with his initial financial disclosure report submitted to the Office of Government Ethics any ethics agreement undertaken by such official or employee. He shall also apprise the Office of Government Ethics promptly of any subsequent ethics agreement.

(d) Other reporting individuals. Other reporting individuals desiring to enter into ethics agreement may do so with the designated agency ethics official for the employee's agency. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved shall promptly apprise the designated agency ethics official of the agreement.

Sec. 2634.804 Evidence of compliance.

(a) Requisite evidence of action taken.

(1) For ethics agreements Of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted by the designated agency ethics official, upon receipt of the evidence, to the Office of Government Ethics and to the Senate confirmation committee.

(2) For ethics agreements of incumbents in positions Which required the advice and consent of the Senate, evidence of any action taken to comply With the terms of such ethics agreements shall be submitted promptly by the designated agency ethics official to the Office Of Government Ethics. A designated agency ethics official or an employee referred to in 2634.803(c) of this subpart who is neither a nominee to, nor an incumbent in, an advice-and-consent position, must also promptly send evidence of any action taken to comply With the terms of an ethics agreement to the Office Of Government Ethics.

(3) In the Case of all other reporting individuals, evidence of any action taken to comply With the terms of an ethics agreement must be sent promptly to the designated agency ethics official.

(b) The following materials and any other appropriate information constitute evidence of the action taken:

(1) Recusal. A copy of any recusal instrument listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors).

Example. A new employee of a Federal safety board owns stock in Nation wide Airlines. She has entered into an ethics agreement to recuse herself from participating in any accident investigations involving that company's aircraft until such time as she can complete a divestiture of the asset. She must give a copy of the recusal instrument to her immediate subordinates and supervisors, and to the designated agency ethics official. The employee has also agreed to recuse herself from any particular matter (as that term is used in 18 U.S.C. 208) that might arise with respect to any of her present or future holdings. There is no requirement to execute a recusal instrument for this type of general recusal, because it is simply a promise to abide by the terms of the statute.

(2) Divestiture or resignation. Written notification that the divestiture or resignation has occurred.

(3) Waivers. A copy Of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.

(4) Blind or diversified trusts. Information required by subpart D Of this part to be submitted to the Office Of Government Ethics for its certification of any qualified trust instrument. If the Office Of Government Ethics does not certify the trust, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.

Sec. 2634.805 Retention.

Records of ethics agreements and actions described in this subpart shall be maintained with the individual's financial disclosure report at the agency and additionally, in the case Of filers described in paragraphs (a), (b), and (c) of 2634.803 of this subpart, at the Office of Government Ethics.

SUBPART I: CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS**Sec. 2634.901 Policies of confidential financial disclosure reporting.**

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by 2634.907 of this subpart reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from employees who file public reports, it may proceed on a confidential, nonpublic basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as "confidential," and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act's system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3 (A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel shall not publicly release the reports or the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT-2 Governmentwide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see 2634.104 and 2634.105.

Sec. 2634.902 Transition to the new confidential financial disclosure reporting system.

(a) The new confidential financial disclosure reporting system for executive branch departments and agencies established by this subpart will become effective on October 5, 1992. Until this subpart becomes effective, each executive agency shall continue to comply with its current regulations governing confidential statements regarding employment and financial interests, as promulgated under prior Executive Order 11222, and 5 CFR part 735, s 735.106 and subpart D, and as preserved by the savings clause of section 502(a) of Executive Order 12674 as modified by Executive Order 12731.

(b) To the extent feasible, agencies should strive to eliminate overlaps between, or gaps in, reporting periods as the transition to the new confidential reporting system takes place. However, the reporting periods prescribed under the new system, once effective, must be followed.

(c) Once effective, this new subpart and any other portions of this part applicable to confidential reports will supersede 5 CFR 735.106, all of subpart D of part 735 of 5 CFR, and any implementing agency regulations thereunder. See also 2634.103 and 2634.601 and 2634.901 of this subpart concerning requests for new special supplemental agency regulations and forms, where necessary.

(d) As required by applicable law and Executive order, the confidential statements regarding employment and financial interests which were collected and retained under existing confidential financial disclosure reporting systems shall continue to be held in confidence. See section 107(a)(2) of the Act, as effective January 1, 1991 (as well as former section 207(a)(2) thereof, which was effective through December 31, 1990), section 502(b) of Executive Order 12674 as modified by Executive Order 12731 (and the prior ethics Executive Orders 11222 and 12565), and 2634.901(d) of this subpart.

Sec. 2634.903 General requirements, filing dates, and extensions.

(a) Incumbents. A confidential filer who holds a position or office described in 2634.904 of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the twelve-month period ending September 30 (including more than 60 days in an acting capacity) shall file a confidential report containing the information prescribed in 2634.907 and 2634.908 of this subpart on or before October 31 immediately following that period. For confidential filers under 2634.904(c) of this subpart, consult agency supplemental regulations.

(b) New entrants.

(1) No later than 30 days after assuming a new position or office described in 2634.904 of this subpart (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer shall file a confidential report containing the information prescribed in 2634.907 and 2634.908 of this subpart. For confidential filers under 2634.904(c) of this subpart, consult agency supplemental regulations.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming his position, left another position or office referred to in 2634.904 of this subpart or in 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed.

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of this section, agencies may at their discretion, require that prospective entrants into positions described in 2634.904 of this subpart file their new entrant confidential financial disclosure reports prior to serving in such positions, to insure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee shall file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) Advisory committee definition. For purposes of this subpart, the term advisory committee shall have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) Extensions. The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

Sec. 2634.904 Confidential filer defined.

The term confidential filer includes:

(a) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; #

(1) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially through decision or the exercise of significant judgment, in taking a Government action regarding:

- (i) Contracting or procurement;
- (ii) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;
- (iii) Regulating or auditing any non-Federal entity; or
- (iv) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by that employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1. A contracting officer drafts the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action. The contracting officer should be required to file a confidential financial disclosure report.

Example 2. An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with a permit to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

(b) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees as defined in 18 U.S.C 202(a) and 2634.105(s), including those who serve on advisory committees. The term special Government employees does not include an advisory committee member who serves only as a representative of an industry of other outside entity or who is already a Federal employee.

Example 1. A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2. An advisory committee member (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report, since she is a special Government employee.

(c) Each public filer referred to in 2634.202 on public disclosure who is required by agency regulations issued in accordance with 2634.907(b) of this subpart to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(d) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under 2634.203, is covered by the criteria of paragraph (a) of this section.

Sec. 2634.905 Exclusions from filing requirements.

Any individual or class of individuals, including special Government employees, described in 2634.904 of this subpart, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

(a) The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;

(b) The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:

- (1) The substantial degree of supervision and review over the position; or
- (2) The inconsequential effect of any potential conflict on the integrity of the Government; or

(c) The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest.

Example 1. An agency special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that his actions will create a conflict of interest is remote. The draftsman need not be required by the agency to file a confidential financial disclosure report.

Example 2. An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. The agency may decide not to require the investigator to file a confidential disclosure report.

Example 3. A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternate procedure, if approved by the Office of Government Ethics in writing, will suffice for a conflict of interest review. Therefore, the agency may exclude the auditor from filing a confidential disclosure report under this subpart.

Sec. 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final.

Sec. 2634.907 Report contents.

(a) Other than the reports of confidential filers described in 2634.904(c), each confidential financial disclosure report filed pursuant to 2634.903 of this subpart shall include on the standard form prescribed by the Office of Government Ethics (see 2634.601 of subpart F of this part) and in accordance with instructions issued by the Office, a full and complete statement of information required to be reported according to the provisions of subpart C of this part, (except for those provisions in subpart C requiring the reporting of the amounts or values of any item), with respect to the following:

- (1) Interests in property. All the interests in property specified by 2634.301;
- (2) Income. All the income items specified by 2634.302;
- (3) Gifts and reimbursements. All gifts and reimbursements specified by 2634.304 (except that new entrants, as described in 2634.903(b) of this subpart, need not report any information on gifts and reimbursements);
- (4) Liabilities. All liabilities specified by 2634.305;
- (5) Agreements and arrangements. All agreements and arrangements specified by 2634.306; and
- (6) Outside positions. All outside positions specified by 2634.307.

(b) For reports of confidential filers described in 2634.904(c) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

- (1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and
- (2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under 2634.103 and 2634.601(b) (see 2634.901 (b) and (c) of this subpart).

Sec. 2634.908 Reporting periods.

(a) Incumbents. Each confidential financial disclosure report filed under 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . , 5 CFR 2634

preceding twelve months ending September 30, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) New entrants. Each confidential financial disclosure report filed under 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

Sec. 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

SUBPART J: CERTIFICATES OF DIVESTITURE

Sec. 2634.1001 Nonrecognition for sales to comply with conflict of interest requirements; general considerations.

(a) Purpose. This subpart establishes the procedures and policies of the Office of Government Ethics with respect to the issuance of Certificates of Divestiture pursuant to section 1043 of the Internal Revenue Code of 1986 (hereinafter in this subpart referred to as "section 1043").

(b) Scope. Section 1043 and the rules of this subpart provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of this subpart relate to the issuance of Certificates of Divestiture and the permitted property into which a rollover (as such reinvestment are called) must be made in order for nonrecognition to be permitted. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service. Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 must be followed by eligible persons wishing to make such an election.

(c) Policy. The Federal purpose reflected in section 1043 of the Internal Revenue Code and these rules is to minimize the burden of Government service resulting from gain on the sale of assets for which divestiture is reasonably necessary because of the conflict of interest laws, in order to attract and retain highly qualified personnel in the executive branch and to ensure the confidence of the public in the integrity of Government officials and decision-making processes.

Sec. 2634.1002 Issuance of Certificates of Divestiture.

(a) General rule. Pursuant to section 1043, a Certificate of Divestiture with respect to specific property shall be issued by the Director of the Office of Government Ethics pursuant to the procedures of paragraph (b) of this section upon a determination that such divestiture by an eligible person as defined in paragraph (c) of this section is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order, or pursuant to the request of a congressional committee as a condition of confirmation.

(b) Procedural requirements

(1) Required submissions. A determination to issue a Certificate of Divestiture may be made by the Director of the Office of Government Ethics only upon the submission by the designated agency ethics official of the agency of employment or proposed employment of the individual referred to in paragraph (c)(1) of this section of full and complete case materials to the Office of Government Ethics. Such case materials shall include:

(i) A copy of the written request from such individual to the designated agency ethics official to pursue certification in the case of the property to be divested;

(ii) In the case of an individual referred to in paragraph (c)(1) of this section who is required by the rules of this part, or part 735 (subpart D) or part 2633 or this title, to file a financial disclosure report, a copy of the latest report which has been filed;

(iii) A detailed description of the specific property as to which divestiture is contemplated;

(iv) Complete statements of:

(A) The facts and circumstances relevant to whether there is a reasonable necessity for divestiture (including a description of the position or applicable statutory citation setting forth the duties of the subject position); and

(B) Analysis and opinion from such designated agency ethics official concerning the application of the rules of this subpart in the case of the proposed certification; and

(v) In lieu of the materials described in paragraph (b)(1)(iv) of this section, in the case of the contemplated divestiture of specific property pursuant to the request of a congressional committee as a condition of confirmation, such materials shall include the written acknowledgement of the Chairman of such committee of such request.

(2) Standards for issuance. Certification pursuant to the rules of this subpart relates to the reasonable necessity for the divestiture of specific property pursuant to section 1043. Divestiture is one of the standard remedial actions available to comply with conflict of interest statutes, regulations, rules, and executive orders (see 2634.604(b)(5)), and certification ameliorates the impact of a divestiture. In cases in which the contemplated divestiture is not pursuant to the request of a congressional committee as a condition of confirmation, a Certificate of Divestiture will be issued by the Director of the Office of Government Ethics only if he concurs with the opinion of the designated agency ethics official referred to in paragraph (b)(1)(iv)(B) of this section that such divestiture is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order. Issues relating to whether the terms of a contemplated divestiture constitute a sale or other disposition of the property under Internal Revenue Service Rules and other tax matters are under the jurisdiction of the Internal Revenue Service. See 2634.1001(b).

(3) Documentation of the certification. Certification shall be indicated by a letter from the Director to the eligible party or his representative.

(c) Eligible person. For purposes of section 1043 and this subpart, the term "eligible person" includes:

(1) Any officer or employee of the Executive branch of the Federal government, except a person who is a special Government employee as defined in 18 U.S.C. 202; and

(2) The spouse and any minor or dependent child of an individual referred to in paragraph (c)(1) of this section whose ownership of property required to be divested is attributable to such person by 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order.

Sec. 2634.1003 Permitted property.

(a) In general. The categories of permitted property into which rollovers are permitted to be made have been drawn through the rules of this section so as to be neutral in respect of the vast majority of Federal programs and responsibilities. The Internal Revenue Service has jurisdiction with respect to determinations concerning the application of the rules of this section in specific cases (see 2634.1001(b)). However, the ethics program rules applicable to specific agencies and positions may further limit an eligible person's choices. The advice of the designated agency ethics official should be sought in this regard. For example, there are restrictions on the purchases of shares in regulated investment companies by some Securities and Exchange Commission personnel and on purchases of obligations of the United States by some officials of the Department of the Treasury. Additionally, it may not be appropriate for some officials of agencies having international responsibilities to invest in mutual funds which exclusively invest in securities outside of the United States.

(b) Definition of "permitted property". For purposes of section 1043 and this subpart, the term "permitted property" means:

(1) Any obligation of the United States; and

(2) Any "diversified investment fund", as defined in paragraph (c) of this section.

(c) Diversified investment fund

(1) Definition. The term "diversified investment fund" means any open-end mutual fund (which is a "regulated investment company", as defined by section 851 of the Internal Revenue Code of 1986), which by its prospectus, or any common trust fund maintained by a bank (which is a "common trust fund", as defined by section 584(a) of the Internal Revenue Code of 1986), which by the literature it distributes to prospective and current investors describing its objectives and practices, does not indicate the objective or practice of devoting its investments to particular or limited industrial, economic, or geographic sectors.

(2) Ownership limitation. Notwithstanding any other rule of this paragraph (c), a fund may not be considered to be a diversified investment fund in any case in which the ownership of more than one percent of the market value of the fund would be attributable to an individual referred to in 2634.1002(c)(1) immediately after a rollover.

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

Example 1: The Alpha Group is a family of funds which markets numerous open-end mutual funds which are typical of those generally available to the general public:

(i) The following funds of the Alpha Group would be presumed to be diversified investment funds for purposes of paragraph (c)(1) of this section, unless their prospectuses indicated an objective or practice of devoting their investments to particular or limited industrial, economic, or geographic sectors: the Common Stock Fund, the Growth Stock Fund, the S&P Index Fund, the Global Fund (investing in common stocks world-wide), the Blue Chip Fund, the Corporate Bond Fund, the Municipal Bond Fund, and the Government Bond Fund (which invests exclusively in obligations of the United States).

(ii) The following funds of the Alpha Group would not be presumed to qualify as diversified investment funds, unless their prospectuses indicated that they do not have an objective or practice of devoting their investments to particular or limited industrial, economic, or geographic sectors for purposes of paragraph (c)(1) of this section: The Pacific fund, the Mexico Fund, the New England Fund, the Gold Fund, the Commodity Futures Fund, the Venture Capital Fund, and the Drug Industry Sector Fund.

Example 2: The Omega Fund is a closed-end mutual fund which is listed on the New York Stock Exchange. The Omega Fund is not a diversified investment fund, as only open-end mutual funds are within the definition of that term pursuant to paragraph (c)(1) of this section.

Sec. 2634.1004 Special rule.

Public access to Certificates of Divestiture. The Certificates of Divestiture issued pursuant to the provisions of this part shall be available to the public in accordance with the rules of 2634.603 of this part.

SECTION 2. PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278)

7-200. Individuals Required to File

a. Covered Positions. For purposes of this section, the following individuals are in "covered positions" and are required by the Ethics in Government Act of 1978, Pub. L. 95-521 (reference (b)) to file an SF 278, Appendix C of this Regulation, with their DoD Component DAEO or designee as set out in subsection 7-205 of this Regulation, below:

(1) Civilian Presidential appointees;

(2) Regular and Reserve military officers whose pay grade is O-7 or above;

(3) Members of the Senior Executive Service;

* (4) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM-15 prescribed by 5 U.S.C. 5332 (reference (c)) or civilian DoD employees under other pay systems whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM-15; *

(5) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See subsection 7-200.d. of this Regulation, below;

(6) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c));

(7) Civilian individuals who are detailed to positions described in subsection 7-200.a.(3) through 7-200.a.(5) of this Regulation, above;

(8) DoD Component DAEOs.

b. Waiver. An individual otherwise required to file an SF 278, Appendix C of this Regulation, but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above.

c. Exception. An individual who is nominated to or assumes a covered position is not required to file an SF 278, Appendix C of this Regulation, if the Secretary concerned or the DoD Component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the duties of the position for more than 60 days in a calendar year, an SF 278, Appendix C of this Regulation, shall be filed within 15 days after the 61st day of duty.

d. Exclusion. The Director, OGE, may exclude an individual who is in a covered position under subsection 7-200.a.(5) of this Regulation, above, from the requirement to file an SF 278, Appendix C of this Regulation, in accordance with 5 C.F.R. 2634.203 (reference (a)) in subsection 7-100 of this Regulation, above.

7-201. Information on Covered Positions. The directors of DoD Component personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees:

a. The name, position, grade, organization and entrance-on-duty or termination date of each individual assigned to the DoD Component who is required to file a new entrant or termination SF 278, Appendix C of this Regulation, immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, "Request for Personnel Action," August 1988, Appendix C of this Regulation, requesting approval of the retirement, resignation, or removal of the individual from such a position;

b. By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD Component who is required to file an annual SF 278, Appendix C of this Regulation.

7-202. Notification of Requirement to File. Each DoD Component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing.

7-203. Time of Filing

a. Nomination Reports

(1) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD Component DAEO shall ensure the nominee's SF 278, Appendix C of this Regulation, is filed with appropriate authorities.

(2) The report shall contain the information prescribed in the "Instructions for Completing SF 278" attached to the SF 278,

(3) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(a) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an excepted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report, such as "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(b) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for evaluation in accordance with the standards set forth in subsection 7-206.b.(1) of this Regulation, above, with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(4) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then:

(a) The Ethics Counselor shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist, and forward it to the appropriate DoD Component DAEO or designee; and

(b) If there are financial interests in non-Federal entities doing or seeking business with DoD reported on the SF 278, the Ethics Counselor may issue a memorandum of caution to the reporting individual and forward a copy of the memorandum with the SF 278 to the appropriate DoD Component DAEO or designee.

(5) If the Ethics Counselor disagrees with the supervisor's evaluation, and concludes that the report does not comply with applicable laws and regulations, he shall do the following:

(a) Notify the reporting individual in writing of the preliminary determination;

(b) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(c) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or

regulations exist and dispose of the report in accordance with subsection 7-206.b.(4) of this Regulation, above. If the Ethics Counselor determines that it does not, he shall:

- 1 Notify the reporting individual of the conclusion;
- 2 Afford the reporting individual an opportunity for personal consultation, if practicable;
- 3 Determine what remedial action should be taken to bring the reporting individual into compliance;
- 4 Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken; and
- 5 Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(6) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within three months from the date the reporting individual was notified that the action is required.

(7) Remedial steps, in accordance with 5 C.F.R. 2634.605 et seq. (reference (a)) in subsection 7-100 of this Regulation, above, may include the following measures:

(a) Divestiture:

1 Any reporting individual or the spouse, minor or dependent child of a reporting individual, may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208 (reference (d)), or any other Federal Government conflict of interest statute, regulation, rule, or Executive Order, or pursuant to the request of the Senate as a condition of confirmation;

2 If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 C.F.R. 2634.1001 (reference (a)) in subsection 7-100 of this Regulation, above;

3 The following items must be submitted to the Director, OGE, by the DoD Component DAEO:

(a) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect hire personnel regularly attached but excluding personnel attached for temporary duty); and

(b) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(2) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(a) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(b) Veterinarians providing only veterinary services;

(c) Lecturers participating only in educational activities;

(d) Chaplains performing only religious services;

(e) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(f) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(g) Members of selection panels for ROTC candidates.

(3) DoD employees classified at GS/GM-15 or below under 5 U.S.C. 5332 (reference (c)) or a comparable pay level under other authority, and members of the military below the grade of O-7 as follows:

(a) When the official responsibilities of such DoD employees require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(b) Any DoD employees serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(4) Individuals who are detailed to positions described in subsection 7-300.a.(3) of this Regulation, above.

(5) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c)).

b. Exclusion

* (1) Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD Component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE. *

* (2) DoD employees who are not employed in contracting or procurement and who have decisionmaking responsibilities regarding expenditures of less than \$2,500 per purchase and less than \$25,000 cumulatively per year are excluded from the requirement to file the SF 450, Appendix C of this Regulation. However, Agency Designees may require such DoD employees, in individual cases, to file the SF 450, Appendix C of this Regulation. Such DoD employees remain subject to conflict of interest statutes and regulations. *

7-301. Information on Covered Positions

a. The directors of personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees they service:

(1) Immediately upon the appointment of covered DoD employees, the name, position, organization and entrance-on-duty date of DoD employees required by their supervisor to file a new entrant SF 450, Appendix C of this Regulation;

(2) By October 3 of each year, a list of the names, positions and organizations, when applicable, of DoD employees who are required to file an annual SF 450, Appendix C of this Regulation.

b. Coordination is required as follows:

(1) Administrative Officers (or equivalent) of each organization shall coordinate with the supervisors within their organization, in consultation with the DoD Component DAEO or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In addition, it is the Administrative Officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(2) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in subsection 7-300 of this Regulation, above, contain a statement that an SF 450, Appendix C of this Regulation must be filed. All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

7-302. Notification of Requirement to File. DoD Component DAEOs or designees shall provide appropriate notices and instructions to ensure the timely preparation of the reports and submission to their supervisors and their Ethics Counselors for review and filing.

7-303. Time of Filing

a. New Entrant Reports

(1) Except for a special Government employee, a reporting individual shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(2) A special Government employee shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

b. Annual Reports. A reporting individual (except a special Government employee) who was employed at least 61 days during the preceding reporting period must submit an SF 450, Appendix C of this Regulation, to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for

61 days.

c. Extension of Filing Deadline

(1) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual, the DoD Component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(2) Requests for extensions shall be submitted in writing.

(3) Each annual reporting individual is automatically granted a 30 day extension by this Regulation to make the reporting deadline November 30 as stated in subsection 7-303.b. of this Regulation, above. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

7-304. Content of Report

a. Instructions for completing the SF 450, Appendix C of this Regulation, are included on the report. See instructions at 5 C.F.R. 2634.907 and 908 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

b. A complete report is required even though no changes have occurred since the last submission.

c. A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

7-305. Chain of Submission. A reporting individual shall submit his SF 450, Appendix C of this Regulation, through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

7-306. Review

a. Upon receipt of an SF 450, Appendix C of this Regulation, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in subsection 7-306.b. of this Regulation, below, and forward it with any comments to the local Ethics Counselor for further review.

7-309. Status Reports

a. Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450, Appendix C of this Regulation. The status report shall be sent through the head of the DoD Component command or organization to the respective DoD Component DAEO or designee and shall contain the following information:

- (1) The number of individuals required to file an annual SF 450, Appendix C of this Regulation; and
- (2) The number of individuals who have not filed an SF 450 as of November 30.

b. Subsequent to December 15, monthly reports may be required by the DoD Component DAEO to be filed for those organizations which have not received an SF 450, Appendix C of this Regulation, from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in subsection 7-309.a., above.

7-310. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

b. Criminal Liability. Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

SECTION 4. REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT (DD FORM 1787)

7-400. Individuals Required to File. Each civilian DoD employee of a DoD Component who meets the statutory criteria is required by 10 U.S.C. 2397 (reference (f)) to file a DD Form 1787, "Report of DoD and Defense Related Employment," Appendix C of this Regulation, with his Ethics Counselors. A DoD employee meets the criteria if he:

- a. Is employed at a pay rate equal to or greater than the minimum rate for a GS/GM-13;

b. Within the two-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

c. Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more at any time during employment.

(1) Compensation is received by an individual if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that individual.

(2) A rate of \$25,000 per year equates to \$12 per hour.

7-401. **Time of Filing.** DoD employees shall file a DD Form 1787, Appendix C of this Regulation, with their local Ethics Counselors within 30 days of entering on duty with the DoD Component.

7-402. **Review**

a. When a report is filed, the Ethics Counselor shall review the DD Form 1787 to determine whether:

(1) Each item is completed and sufficient information is provided; and

(2) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, or related laws and regulations.

b. The Ethics Counselor need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the Ethics Counselor will resolve any apparent violations to ensure there are no actual violations.

c. If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

d. When the Ethics Counselor has completed the review and accomplished any necessary remedial action, the Ethics Counselor shall sign and date the report and dispose of it in accordance with subsection 7-403 of this Regulation below.

e. If the Ethics Counselor concludes that the reporting individual is not in compliance with applicable laws or regulations, the Ethics Counselor shall:

(1) Notify the reporting individual, in writing, of the preliminary determination;

(2) Afford the reporting individual an opportunity for personal consultation, if practicable;

(3) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(4) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

f. When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. The Ethics Counselor shall sign and date the report as the reviewing official and dispose of it in accordance with subsection 7-403 of this Regulation, below.

7-403. Disposition

a. After the Ethics Counselor signs and dates the report, the Ethics Counselor shall send the original to the entire DoD Component DAEO or designee, who shall forward it, together with all other such reports that were received during the previous calendar year, to SOCO not later than March 15.

b. The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787, Appendix C of this Regulation, is extracted and sent, together with all other such data from other such reports that were received during the previous calendar year for the entire DoD Component, by March 15 to the Defense Manpower Data Center (DMDC) where a consolidated report to Congress is compiled. DMDC will accept data only on computer disk using any common wordprocessing software or ASCII.

c. If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD Component DAEO and take whatever other action might be required in accordance with Chapter 10 of this Regulation.

d. DD Forms 1787, Appendix C of this Regulation, shall be retained by SOCO for six years from the date of filing with SOCO.

7-404. Public Availability of Reports. DD Forms 1787, Appendix C of this Regulation, must be made available for public examination upon request after the report is filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

7-405. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397 (reference (f)).

b. Criminal Liability. Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

SECTION 5. REFERENCES

7-500. References

- (a) Title 5, Code of Federal Regulations, Part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition
- (b) Public Law 95-521, "Ethics in Government Act of 1979," October 26, 1978, as amended
- (c) Title 5, United States Code, Sections 552, 552a, 3371-3376, and 5332
- (d) Title 18, United States Code, Chapter 11, Sections 208 and 1001
- (e) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989, as amended
- (f) Title 10, United States Code, Section 2397

(1) The request must provide the DoD Component DAEO or designee with sufficient information to make a determination.

(2) The DoD Component DAEO shall make his determination, in writing, within 30 days, or as soon thereafter as practicable.

(3) A copy of the request and the ethics advisory opinion shall be retained for six years, in accordance with DoD Component procedures.

8-301. Penalties. Violation of the provisions of 41 U.S.C. 423 (reference (c)) is punishable by the full range of sanctions, including the following:

a. Civil Penalties. Individual violators may be subject to a civil fine not to exceed \$100,000. Violators, other than individuals, may be subject to a civil fine not to exceed \$1 million.

b. Administrative Sanctions. See subsection 10-300 through 10-304 of this Regulation.

SECTION 4. REPORTING EMPLOYMENT CONTACTS (10 U.S.C. 2397a)
(reference (e))

8-400. Individuals Required to File. The following DoD employees are required by this Regulation and by 10 U.S.C. 2397a (reference (e)) to report, in writing, their employment contacts to their supervisor and DoD Component DAEO or designee:

a. Any military officer in grade 0-4 or above, or any civilian DoD employee serving in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS/GM-11 who;

b. At any time during his DoD service, performed a "procurement function" involving a defense contractor which received at least \$25,000 a year in DoD business; and

c. Who contacts or is contacted by that defense contractor regarding future employment.

8-401. Content of Report. Reports of employment contacts shall include:

- a. The name, title, agency address, and telephone number of the reporting individual;
- b. The name of the defense contractor concerned;
- c. The date of each contact covered by the report; and
- d. A brief description of the substance of each contact.

8-402. Disqualification Statement

a. Individuals Required to File Disqualification

(1) Any DoD employee required to submit a report of an employment contact shall submit to his supervisor a written statement disqualifying himself from participating in any "procurement function" involving the defense contractor until such time as the possibility of future employment with that defense contractor has been rejected by either party.

(2) Procurement officials may be required to request recusal through formal procedures requiring written approval by the head of the contracting agency. See subsection 8-300 of this Regulation, above.

b. Distribution of Disqualification. The disqualification statement shall be given to the DoD employee's supervisor and the Ethics Counselor. It also should be provided to others who might contact the DoD employee regarding the defense contractor which is the subject of the disqualification.

c. Contents of Disqualification. The disqualification statement shall contain:

(1) The name, title, agency address, and telephone number of the DoD employee submitting the report;

(2) The extent of disqualification (i.e., a description of duties affecting the defense contractor the DoD employee may not perform as a result of the disqualification);

(3) Identification of the DoD employee or office that will handle duties during the disqualification period; and

(4) An explanation of any other steps required to avoid potential conflicts of interests;

OFFICE OF GOVERNMENT ETHICS MEMORANDUM

November 5, 1992

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS
 GENERAL COUNSELS
 INSPECTORS GENERAL

FROM: STEPHEN D. POTTS
 DIRECTOR

SUBJECT: Revised Materials Relating to 18 U.S.C. § 207¹

Anticipating an increased demand for post-employment counseling during the Presidential transition, we are providing some revised written materials that should facilitate advice and training concerning 18 U.S.C. § 207.

Statute. We have in the past distributed copies of the statutory language of 18 U.S.C. § 207, most recently in January 1991. The revised handout incorporates all amendments made to the statute since its revision by the Ethics Reform Act of 1989, including the addition of new section 207(k) and the amendment of section 207(f) as applied to the United States Trade Representative.

Revised Summary. Shortly before the effective date of the Ethics Reform Act amendments, we distributed a 14-page summary of 18 U.S.C. § 207 as amended by that Act. We have revised that summary's introductory material to reflect the passage of time and the publication of 5 CFR Part 2641. We have also incorporated post-Ethics Reform Act amendments by including the Executive Level V threshold relating to the definition of "senior employee," by adding a brief description of the Presidential waiver authority in new section 207(k), and by revising the discussion of section 207(f) in relation to the United States Trade Representative. Also, in order to ensure consistency with Part 2641, we have changed certain language in the summary concerning the application of section 207(c) to special Government employees and the designation of components for purposes of that section. (As before, the summary does not discuss 18 U.S.C. § 208 or other provisions applicable when an employee seeks or negotiates for employment in the private sector.)

We hope these materials prove useful.

Attachments

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

November 4, 1992

SUMMARY OF POST-EMPLOYMENT RESTRICTIONS OF 18 U.S.C. § 207

I. INTRODUCTION

* Since its enactment in 1962, 18 U.S.C. 207 has remained the primary source of post-employment restrictions applicable to officers and employees of the executive branch. Unlike certain other post-employment laws, the provisions of section 207 apply to individuals regardless of the executive department or agency in which they served while employed by the Government and regardless of the particular duties they performed. *

Section 207 has been amended several times over the years. Recently, for example, section 207 was substantially revised by the Ethics Reform Act of 1989. As a consequence of these amendments, former employees are subject to varying post-employment restrictions depending upon the date of their termination from Government service or from certain high-level positions.

Individuals who terminated service prior to January 1, 1991, should continue to consult the regulations published at Part 2637 of title 5, Code of Federal Regulations, for guidance concerning applicable provisions of section 207. Individuals terminating service on or after January 1, 1991, should consult this summary pending completion of revised regulatory guidance at 5 C.F.R. Part 2641. As of this date, Part 2641 contains guidance concerning 18 U.S.C. 207(c) only. (Except where the underlying statutory provision has changed, Part 2637 remains persuasive concerning the interpretation of the newer version of 18 U.S.C. 207.) *

This summary was prepared by the U.S. Office of Government Ethics. While it has been coordinated with the Department of Justice, employees are cautioned that it reflects only a preliminary interpretation of the amendments to 18 U.S.C. 207 enacted by the Ethics Reform Act of 1989 and thereafter. *

II. SUMMARY OF RESTRICTIONS

Effective January 1, 1991, section 207 of title 18 sets forth six substantive prohibitions restricting the activities of individuals who leave Government service or who leave certain high-level positions in the executive branch. Each of these restrictions is discussed separately below, followed by a discussion of several statutory exceptions.

None of the provisions bar any individual, regardless of rank or position, from accepting employment with any private or public employer after Government service. Section 207 only prohibits individuals from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation. None of the restrictions bar self representation.

A. APPLICABILITY

The first three restrictions [207(a)(1), (a)(2), and (b)] are applicable to former officers or employees of the executive branch. They also apply to former senior or very senior employees as those terms are described below, and to former special Government employees. According to 18 U.S.C. 202, a "special Government employee" includes an individual who is "retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis" (Enlisted personnel of the uniformed services are not "officers" or "employees" for purposes of section 207.)

The fourth restriction [207(c)] is applicable only to former senior personnel, (hereinafter referred to as "senior employees"). A senior employee is any employee (other than an individual covered by the fifth restriction) who was employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, in a position for which the rate of basic pay is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule, or in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is O-7 or above. The term includes those individuals appointed by the President to a position under 3 U.S.C. 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(B). An individual is subject to section 207(c) as a result of service as a special Government employee only if the individual served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

The fifth restriction [207(d)] applies only to former very senior personnel (hereinafter referred to as "very senior employees"). A very senior employee is any employee who was employed in a position at the rate of pay payable for level I of the Executive Schedule, or in a position in the Executive office of the President at a rate of pay equal to or greater than the rate of pay payable for level II of the Executive Schedule. The term includes the Vice President and those individuals appointed by the President to a position under 3 U.S.C. 105(a)(2)(A) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(A).

The sixth restriction [207(f)] applies to individuals who formerly served in either a senior or very senior position.

B. SUBSTANTIVE RESTRICTIONS

* 1. Basic Prohibition of 18 U.S.C. 207(a)(1). No former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest. *

Discussion. This is a lifetime restriction that commences upon an employee's termination from Government service. The target of this provision is the former employee who participates in a matter while employed by the Government and who later "switches sides"

by representing another person on the same matter before the United States. The restriction is measured by the duration of the matter in which the former employee participated.

The restriction does not apply unless a former employee communicates to or makes an appearance before the United States on behalf of some other person. For these purposes, the "United States" refers to any employee of any department, agency, court, or court-martial of the United States (but not of the District of Columbia). The term does not include the Congress, and therefore communications to or appearances before Members of Congress and legislative staff are not prohibited by this provision.

A former employee is not prohibited by this restriction from providing "behind-the-scenes" assistance in connection with the representation of another person. Moreover, the restriction prohibits only those communications and appearances that are made with the intent to influence. A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An "intent to influence" the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

A communication to or appearance before the United States is not prohibited unless it concerns the same particular matter involving a specific party or parties in which the former employee participated personally and substantially while employed by the Government. An employee can participate "personally" in a matter even though he merely directs a subordinate's participation. He participates "substantially" if his involvement is of significance to the matter. Thus, while a series of peripheral involvements may be insubstantial, participation in a single critical step may be substantial. The term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. In determining whether two situations are part of the same particular matter, one should consider all relevant factors, including the amount of time elapsed and the extent to which the matters involve the same basic facts or issues and the same or related parties. Even if a post-employment communication or appearance would concern the same particular matter, however, the representational bar will not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

The provision requires that an employee's official participation in a particular matter have taken place at a time when the matter involved a specific party (or parties). It also requires that the matter involve some specific party or parties at the time of the post-employment communication or appearance (although these can be different parties than were involved with the matter at the time of the employee's participation). General rulemakings do not usually involve specific parties. Consequently, it is quite possible that an employee who participated in a rulemaking while employed by the Government will, after leaving Government service, be able to appear before his former agency concerning the application of that rule to his new private sector employer without violating the lifetime restriction. Contracts, on the other hand, are always particular matters involving specific parties. A Government procurement has specific parties identified to it when a bid or proposal is received in response to a solicitation, if not before.

The provision does not prohibit a former employee from representing himself before the United States (as distinguished from a corporation or consulting firm). Moreover, a former employee is not prohibited from acting on behalf of the United States (or the Congress). Thus, even though an individual may once have worked on a matter while employed by the Government, he will not, while subsequently reemployed by the Government, be barred from communicating with any employee of the United States concerning that matter if he does so as part of his official duties. A former employee does not act on behalf of the United States, however, merely because the United States may share the same objective as the person whom the former employee is representing.

* 2. Basic Prohibition of 18 U.S.C. 207(a)(2). For two years after his Government service terminates, no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one year period prior to the termination of his employment with the United States. *

Discussion. This is a two-year restriction that commences upon an employee's termination from Government service.

This provision is identical to the lifetime restriction discussed above except that it is of shorter duration and requires only that an individual have had official responsibility for a matter while employed by the Government, not that he have participated personally and substantially in that matter. Like the lifetime restriction, it prohibits certain communications and appearances made on behalf of any other person or entity except the United States (or the Congress). The communications and appearances prohibited are those made, with the intent to influence, to or before any employee of a department, agency, court, or court-martial of the United States. The representational bar applies with respect to any particular matter involving a specific party or parties that was actually pending under the former employee's official responsibility at some time during his last year of Government service.

"Official responsibility" is defined in 18 U.S.C. 202 as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." The scope of an employee's official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description. All particular matters under consideration in an agency are under the official responsibility of the agency head, and each is under that of any intermediate supervisor having responsibility for the activities of a subordinate employee who actually participates in the matter. An employee's recusal from or other non-participation in a matter does not remove it from his official responsibility.

A matter was "actually pending" under a former employee's official responsibility if the matter was in fact referred to or under consideration by persons within the employee's area of responsibility. A former employee is not subject to the restriction, however, unless

at the time of the proposed representation of another he knows or reasonably should know that the matter had been under his responsibility during his last year of Government service.

- * 3. Basic Prohibition of 18 U.S.C. 207(b). For one year after his Government service terminates, no former employee may knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee. *

Discussion. This is a one-year restriction that commences upon an employee's termination from Government service. Extending to certain "behind-the-scenes" assistance, this provision can serve to augment the representational bar provided for in the lifetime restriction discussed above.

The restriction set forth in section 207(b) does not apply unless, during the one-year period before he left Government, an employee participated personally and substantially in an "ongoing" trade or treaty negotiation that is covered by the statute. It is not necessary that a former employee have had actual contact with foreign parties in order to have participated personally and substantially in a trade or treaty negotiation. An employee is covered by this restriction even though his participation in an ongoing negotiation may have occurred prior to January 1, 1991, the effective date of section 207(b).

Trade negotiations covered by the statute are those that the President determines to undertake pursuant to section 1102 of the omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902). Unless there is an earlier public announcement of a determination by the President, a trade negotiation commences to be "ongoing" when, at least 90 days before entering into a trade agreement, the President notifies both the House of Representatives and the Senate of his intention to enter into an agreement. 19 U.S.C. 2903(a)(1)(A). Whether an employee participated personally and substantially in an "ongoing" trade negotiation is determined by reviewing an employee's participation after trade negotiations commenced. A treaty is an international agreement made by the President that requires the advice and consent of the Senate. A negotiation on a treaty commences to be "ongoing" at the point when both (1) the determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text. Trade and treaty negotiations both cease to be ongoing when an agreement or treaty enters into force or when all parties to the negotiation cease discussion based on a mutual understanding that the agreement or treaty will not be consummated.

Once he has participated in an ongoing negotiation, section 207(b) prohibits a former employee from representing, aiding, or advising any other person concerning a trade or treaty negotiation (that is still ongoing) on the basis of certain "covered" information. "Covered" information refers to agency records which were accessible to the employee, which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (e.g., documents that were marked as subject to a national security classification or those otherwise designated in a manner that made it clear they were exempt from release under FOIA), and which concern a negotiation in which the employee participated personally and substantially during his last year of Government service. A former employee is not prohibited from utilizing information from an agency record which, at the time of his post-employment activity, is no longer exempt from disclosure under the Freedom of Information Act.

Only activities that are undertaken on behalf of "any other person" are prohibited by this restriction. Action taken on behalf of the United States (or the Congress) or on behalf of the former employee himself are not prohibited. A former employee "represents" another person when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that person to or before any third party. For this purpose, a third party includes any employee of the executive, legislative, or judicial branch of the Federal Government, including a Member of Congress. A former employee "aids or advises" another person when he assists that person other than by communicating to or appearing before a third party. A former employee represents, aids, or advises another person "on the basis of" covered information if the former employee's representation, aid, or advice either involves a disclosure of covered information to any person, or could not have been made or rendered had the former employee not had actual knowledge of covered information.

It is important to note that although a post-employment activity may not be prohibited by section 207(b), a former employee must still be careful to comply with other statutory restrictions. For example, even though a trade or treaty negotiation may not yet have become "ongoing" at the time of an employee's official participation, the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1).

- * 4. Basic Prohibition of 18 U.S.C. 207(c). For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee. *

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. The purpose of this one-year "cooling off" period is to allow for a period of adjustment to new roles for the former senior employee and the agency he served, and to diminish any appearance that Government decisions might be affected by the improper use by an individual of his former senior position. As already noted, this provision is applicable to "senior" employees, but not to "very senior" employees.

Like the lifetime restriction discussed above, this provision prohibits communications to and appearances before the Government and does not prohibit "behind-the-scenes" assistance. Unlike the lifetime restriction, however, this one-year restriction applies only to a "senior" employee, does not require that the former employee have ever been in any way involved in the matter that is the subject of the communication or appearance, and only prohibits communications to or appearances before employees of any department or agency in which he formerly served in any capacity during the one-year period prior to his termination from senior service. The representational bar applies with respect to any matter, whether or not involving a specific party, concerning which the former senior employee is seeking official action by a current employee of such department or agency on behalf of any other person except the United States (or the Congress).

As described below, section 207 provides for two methods by which the restrictions of section 207(c) can be narrowed or eliminated. The first is through the designation of separate departmental or agency components and the second is through the exemption of a position or category of positions from coverage. Not all senior employees are eligible to benefit from either or both of these procedures. A former senior employee is ineligible to benefit from these procedures if he is subject to section 207(c) by virtue of having served in a position for which the rate of pay is specified in or fixed according to the Executive Schedule or by virtue of having been appointed by the President to a position under 3 U.S.C. 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

As has been noted, the representational bar usually extends to any department or agency in which the former senior employee served in any capacity during the year prior to his termination from senior service. However, certain senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. For example, although it may not by statute be a separate component, OGE could designate the Defense Logistics Agency as an agency that exercises functions which are separate and distinct from its "parent" department, the Department of Defense. An individual formerly serving in a parent department or agency would be barred by section 207(c) from making communications to or appearances before any employee of that parent, but would not be barred as to employees of any designated component of that parent. An individual formerly serving in a designated component of a parent department or agency would be barred from communicating to or making an appearance before any employee of that component, but would not be barred as to any employee of the parent or of any other component. The statute now provides that no agency within the Executive Office of the President may be designated as a separate component.

The restrictions of section 207(c) can be waived altogether as to certain senior employee positions or categories of positions. As a consequence of such exemption, the one-year restriction of section 207(c) will not begin to run upon an employee's termination from such a position. In order to grant an exemption, OGE must receive a request to do so from a department or agency. After review of the request, OGE can grant an exemption or exemptions based upon its determination that as to a particular position or category of positions, the imposition of section 207(c) would create an undue hardship on the department or agency in obtaining qualified personnel and that the granting of the exemption would not create the potential for use of undue influence or advantage.

* 5. Basic Prohibition of 18 U.S.C. 207(d). For one year after service in a "very senior" position terminates, no former "very senior" employee may knowingly make, with the intent to influence, any communication to or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a "very senior" employee during the one-year period prior to termination from Government service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that individual or employee. *

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

This provision, applicable only to "very" senior employees, is very similar to the one-year restriction of section 207(c) discussed above. It too prohibits communications to or appearances before employees of certain governmental departments and agencies, unless on behalf of the United States (or the Congress). A former very senior employee is prohibited by section 207(d) from representing another before any current employee of any department or agency in which he served as a very senior employee during the one-year period prior to his termination from Government service. (Compare section 207(c) which prohibits communications and appearances to current employees of any department or agency in which a former "senior" employee served in any capacity during the one-year period prior to termination from senior service.) A former very senior employee is also prohibited by section 207(d), however, from representing another person before any individual currently appointed to an Executive Schedule position listed in 5 U.S.C. 5312-5216, whether or not that individual is serving in the very senior employee's former department or agency. The representational bar applies to any matter, whether or not involving a specific party, concerning which the former very senior employee is seeking official action by any current officer or employee of the executive branch.

Section 207 does not authorize OGE to designate separate and distinct components within a department or agency as a means of narrowing the scope of section 207(d). Moreover, no very senior employee's position is eligible for exemption from the application of section 207(d).

* 6. Basic Prohibition of 18 U.S.C. 207(f). For one year after his service in a "senior" or "very senior" position terminates, no former "senior" employee or former "very senior" employee may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States in carrying out his official duties, represent a foreign entity before any department or agency of the United States or aid or advise a foreign entity. *

Discussion. This is a one-year restriction, except that it lasts for three years as applied to any individual who becomes the United States Trade Representative after October 6, 1992. The restriction is measured from the date when an employee ceases to be a senior employee or a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

The restriction prohibits a former senior or very senior employee from representing, aiding, or advising a foreign entity with the intent to influence certain governmental officials. A "foreign entity," means the "government of a foreign country" as defined in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611), as amended, or a "foreign political party" as defined in section 1(f) of that Act. The government of a foreign country includes --

any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or any part of such country, and includes, any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

A foreign political party includes --

REVISED MATERIALS RELATING TO 18 U.S.C. 207

any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, - having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof.

A foreign commercial corporation will not generally be considered a "foreign entity" for purposes of section 207(f) unless it exercises the functions of a sovereign.

A former senior or very senior employee "represents" a foreign entity when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that entity to or before any employee of a department or agency. He "aids or advises" a foreign entity when he assists the entity other than by making such a communication or appearance. Such "behind the scenes" assistance to a foreign entity could, for example, include drafting a proposed communication to an agency, advising on an appearance before a department, or consulting on other strategies designed to persuade departmental or agency decision makers to take certain action. A former senior or very senior employee's representation, aid, or advice is only prohibited if made or rendered with the intent to influence an official discretionary decision of a current departmental or agency employee.

C. EXCEPTIONS

Sections 207(j) and (k) set forth several exceptions to the statute's substantive prohibitions. As noted below, some exceptions do not avoid application of all of the six substantive restrictions of 18 U.S.C. 207.

Performing official Government Duties. A former employee is not restricted by any of the substantive provisions of section 207 from engaging in post-employment activities performed in carrying out official duties on behalf of the United States. This exception also extends to activities undertaken in carrying out official duties as an elected official of a state or local Government.

Representing Certain entities. A former senior or very senior employee will not violate section 207(c) or (d) if his communication or appearance is made in carrying out official duties as an employee of and is made on behalf of (1) an agency or instrumentality of a State or local Government, (2) an accredited degree-granting institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141 (a)), or (3) a hospital or medical research organization exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

Representing or Assisting International organizations. A former employee is not restricted by any of the substantive provisions of section 207 from representing, aiding, or advising an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States.

Imparting Special Knowledge. A former senior or very senior employee will not violate section 207(c) or (d) if he makes a statement that is based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

Scientific or Technological Information or Expertise. A former employee will not violate section 207(a)(1), (a)(2), (c), or (d) if he makes a communication solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved. Alternatively, a former employee may make a communication if the head of the agency concerned publishes a certification in the Federal Register stating that the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, that he is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation.

Testimony. A former employee is not restricted by any of the substantive restrictions of section 207 from giving testimony under oath or from making statements required to be made under penalty of perjury, subject to a special rule with respect to expert opinion testimony. Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the United States (or the Congress) if he is subject to the lifetime prohibition contained in section 207(a)(1) relating to that matter.

Employment with certain Prior Employers. A former employee is not restricted by any of the substantive restrictions of section 207 if granted one of 25 Presidential waivers in connection with his reemployment at a Government-owned, contractor operated entity.

9-601. 41 U.S.C. 423 (reference (f))

a. Restrictions. This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(1) Participating in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a defense contract for such procurement; or

(2) Participating personally and substantially on behalf of the competing contractor in the performance of such defense contract.

b. Period of Restrictions. Both restrictions apply for a period of two years from the date of the former DoD employee's last personal and substantial participation in the procurement on behalf of the Federal Government. Neither applies unless the individual was a DoD employee of the Federal Government at the time he served as a procurement official.

c. Written Opinion

(1) A DoD employee or former DoD employee who is or was a procurement official is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such an opinion shall be submitted in writing to the Ethics Counselor serving the DoD Component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request. See FAR 3.104-8(e) (reference (g)) in Appendix B of this Regulation.

(2) Ethics Counselors who have not been delegated specific authority in writing to issue 41 U.S.C. 423 (reference (f)) written opinions shall promptly forward the request to the DoD Component DAEO or designee who has such authority.

(3) Written opinions shall be issued within 30 days of receiving the request, together with all necessary information.

(4) Where the DoD employee or former DoD employee relies in good faith on a written opinion that this statute is not applicable to a specific situation, the DoD employee or former DoD employee shall not be found to have knowingly violated the restrictions of the statute.

(5) A copy of each 41 U.S.C. 423 (reference (f)) opinion shall be retained by the DoD Component DAEO or designee for three years.

SECTION 7. RESTRICTIONS ON RETIRED MILITARY MEMBERS

* 9-700. 18 U.S.C. 281(a) (reference (c)). This statute restricts the selling *
* activities of retired military officers. The provisions of this statute were suspended by the *
* Federal Acquisition Streamlining Act of 1994 (reference (h)) through December 31, 1996. *

* a. Restrictions. A criminal statute, 18 U.S.C. 281(a) *
(reference (c)), provides that for a period of two years after retiring, no retired military officer *
may receive compensation for representing any other individual in the sale of anything to the *
Federal Government through the department in which he holds a retired status.

* (1) The term "department" refers to individual DoD *
Components, not DoD as a whole, insofar as it concerns retired military officers. For example, *
this statute does not prohibit retired Navy and Marine Corps officers from selling to the *
Departments of the Army or Air Force.

* (2) The term "anything" in the phrase "sale of anything" *
has been construed by DoJ to encompass both goods and services.

(3) DoJ has determined that this statute does not
prohibit the sale of personal services when the retiree is only representing himself. However,
sale of personal services may not include the work product of a closely held corporation where
individuals other than the retiree contribute to the services provided.

b. Definition of "Selling"

* (1) For the purpose of this statute, "selling" means: *

(a) Signing a bid, proposal, or contract;

(b) Negotiating a contract;

(c) Contacting a DoD employee to obtain or
negotiate defense contracts, negotiate or discuss changes in specifications, price, cost allowances,
or other terms of a defense contract, or settle disputes concerning performance of a defense
contract; or

(d) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual defense contract is negotiated subsequently by another person.

(2) Activities which are not considered "selling" include:

(a) Purely social contacts, as long as there is an independent basis for the social relationship and no promotion of a product or attempt to influence a procurement;

(b) Technical contacts for the purpose of conferring with non-contracting technical specialists to acquire information that is available to all prospective defense contractors, provided that these contacts do not otherwise involve "selling" as discussed in subsection 9-700.b.(1) of this Regulation, above. See 42 Comp. Gen. 236, 241 (reference (i));

(c) Contacts subsequent to the execution of a defense contract relating to performance or progress, if they do not include modification of the defense contract or "selling" as discussed in subsection 9-700.b.(1) of this Regulation, above.

9-701. 18 U.S.C. 281(b) (reference (c)). For a period of two years after terminating service with the Federal Government, a retired military officer may not act as an agent or attorney for the prosecution or assist in the prosecution of any claim against the United States involving the department in which he holds a retired status or which concerns a subject with which the military officer was directly connected while on active duty. A violation of this statute is punishable by a \$10,000 fine and one year imprisonment.

9-702. Restrictions on Federal Government Employment

a. Dual Compensation Laws. A retired member of any uniformed service who holds a civilian position with the Federal Government is subject to reduction of retired pay while receiving pay from a Federal Government civilian position. The term "retired member" means anyone, officer or enlisted, entitled to receive retired pay. The term "retired pay" includes both retired and retainer pay. The current law generally applies to retired Regular officers, retired at any time, and to all former members of the uniformed services who left active duty after January 11, 1979. See 5 U.S.C. 5532 (reference (j)) for exceptions to

this general rule.

(1) The Dual Compensation Reduction Formulas.

There are two provisions in the current dual compensation law which may operate to reduce the retired pay of retired members of the uniformed services who hold Federal Government civilian positions.

(a) The First Reduction Provision. The first reduction provision applies only to retired Regular officers who retired at any time. This provision operates to reduce the retired pay of a retired Regular military officer receiving pay from a Federal Government civilian position regardless of the amount of salary from that civilian position. It provides that such retired military officer is entitled to receive the full pay of the civilian position, but retired pay will be reduced to an annual rate equal to a base amount plus one-half of the remainder of the retired pay, if any. The base amount is increased periodically to reflect changes in the Consumer Price Index. See 5 U.S.C. 5532(b) (reference (j)).

(b) The Second Reduction Provision. The second reduction provision applies, in general, to all retired military members who first received retired pay after January 11, 1979. The reduction depends upon the amount of pay received from the Federal Government civilian position. This provision operates to reduce the retired pay of a retired member when the annual rate of pay for the civilian position combined with the annual rate of retired pay (reduced in the case of retired Regular officers as discussed in subsection 9-702.a.(1)(a) of this Regulation, above) exceeds the annual rate of basic pay for level V of the Executive Schedule. Reductions are computed as follows:

1 If the combination of pay from the civilian position and retired pay exceeds the amount currently paid for level V of the Executive Schedule, the retired pay will be reduced to keep the total at the level V limit.

2 Reductions to retired pay are made per pay period whenever the combination of the two salaries for the pay period exceeds the pay for a level V position for that pay period. Reductions made in such pay periods are not refundable even when the combined pay amounts for the total year is less than the annual rate for level V of the Executive Schedule:

3 The amount of retired pay may not be reduced to an amount less than the amount deducted from the retired pay as a result of participation in any survivor's benefits in connection with retired pay or veterans insurance programs and no reductions shall be made to retired pay based, in whole or in part, upon disability incurred in the line of duty as a direct result of armed conflict or during a period of war.

(2) Waivers

(a) A retired member may, in certain limited circumstances, obtain a waiver so that his retired pay would not be reduced while holding a Federal Government civilian position. See 5 U.S.C. 5532(g) (reference (j)). The circumstances under which a waiver may be granted are:

1 On a case-by-case basis for a retired member holding a Federal Government civilian position for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

2 For temporary employment that is necessary due to an emergency involving a direct threat to life or property, or under other unusual circumstances.

(b) The Director, OPM, may grant a waiver at the request of the Head of an Executive Agency. Additionally, the Director, OPM, may delegate to an agency the authority to grant waivers for the temporary employment of retired members during emergencies or other unusual circumstances, but not for employment necessitated by exceptional difficulties in recruiting or retaining qualified individuals. The Director, OPM, has delegated to DoD authority to approve dual compensation restriction waivers in certain circumstances at installations scheduled for closure.

(c) Waivers are to be the exception, not the rule. If appropriate, however, a waiver may be obtained for either or both of the dual compensation reductions. See 5 C.F.R. 553 (reference (k)) for procedures for obtaining a waiver.

b. Post-Military Service Employment in DoD under 5 U.S.C. 3326 (reference (j)). As of November 6, 1992, the suspension of this provision ended. See DoD Directive 1402.1 (reference (l)). To avoid appearances of favoritism or preferential treatment, retired military members may not be selected to fill civil service positions in DoD (including non-appropriated fund instrumentalities) within 180 days following retirement unless:

(1) The appointment is authorized by the Secretary of a Military Department or designee, or by OPM if the position is in the competitive service;

(2) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305 (reference (j)); or

(3) A state of national emergency exists.

9-703. Foreign Employment Restrictions

* a. Article I, Section 9, Clause 8, of the Constitution of the
United States (reference (m)), prohibits any person holding any office of profit or trust under the
Federal Government from accepting any present, emolument, office, or title of any kind whatever *
from any king, prince, or foreign state without the consent of Congress.

* (1) This provision prohibits employment of all retired
military members, both officer and enlisted and both Regular and Reserve, by a foreign
government unless Congressional consent is first granted. See 44 Comp. Gen. 130
(reference (n)). *

(2) Employment by educational or commercial
institutions owned, operated, or controlled by a foreign government is included within the scope
of this restriction.

* (3) The penalty for violation is withholding the retired
military member's retired pay in an amount equal to the foreign salary illegally received. See 61
Comp. Gen. 306 (reference (o)). *

b. Congress has consented to the acceptance of civil
employment with a foreign government by, among others, retired Regular military members and
Reserve military members, if both the Secretary of the Military Department and the Secretary of
State approve the employment. See 37 U.S.C. 908 (reference (p)). Because approval is *
prospective only, foreign civil employment should not be accepted until approval has been
obtained. Retired military members who wish to accept such employment should submit a
written request for approval to the Secretary of their Military Department through appropriate
channels. The request must fully describe the contemplated employment and the nature and
extent of the involvement with the foreign government.

c. A former military member desiring employment with a
foreign government or any foreign business interest may be required to register as an agent of a
foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 et. seq.
(reference (q)). Any person who acts as an agent of a foreign principal must file a registration *
statement with the U.S. Attorney General.

SECTION 8. RESTRICTIONS ON FORMER SENIOR APPOINTEES

9-800. Executive Order 12834. E.O. 12834 (reference (r)), in subsection 12-200 of this Regulation, requires contractual ethics commitments regarding post-Government service employment from full-time, non-career Presidential, Vice-Presidential or Agency Head appointees in an Executive Agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule, except for those appointed as members of the senior foreign service or solely as uniformed service commissioned officers. See E.O. 12834 (reference (r)) in subsection 12-200 of this Regulation and OGE Form 203, "Senior Appointee Pledge," January 1993, and OGE Form 204, "Trade Negotiation Pledge," January 1993, Appendix C of this Regulation.

SECTION 9. RESTRICTIONS ON DEALING WITH CURRENT OR FORMER DoD EMPLOYEES

9-900. General Rule. Current DoD employees shall not knowingly deal, on behalf of the Federal Government, with current or former DoD employees whose participation in the transaction violates any statute or DoD directive, regulation or policy.

9-901. Terminal Leave

a. Military members on terminal leave may accept civilian employment with the Federal Government and are entitled to the pay of that civilian position in addition to the pay and allowances to which entitled while on terminal leave. See 5 U.S.C. 5534a (reference (j)).

b. A military officer on active duty may not accept a civil office with a State or local government, nor may he perform the duties of such an office. See 10 U.S.C. 973(b)(3) (reference (e)). This applies while the military officer is on terminal leave. See 56 Comp. Gen. 855 (reference (s)).

SECTION 10. REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT (DD FORM 1787)

9-1000. Individuals Required to File. The following former DoD employees are required by 10 U.S.C. 2397 (reference (e)) to file DD Form 1787, Appendix C of this Regulation, with their former DoD Component:

a. Each former DoD employee of a DoD Component who:

(1) Served at a pay rate equal to or greater than the minimum rate for a GS/GM-13, or served on active duty at least ten years and held the grade of 0-4 or above at any time during his service;

(2) Within the two-year period immediately following termination of service or employment with the DoD Component, is employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

(3) Is employed by or performs services for the defense contractor and receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor.

b. Compensation is received by a reporting individual if it is paid to a business entity with which the reporting individual is affiliated in exchange for services rendered by that reporting individual;

c. A rate of \$25,000 per year equates to \$12 per hour.

9-1001. Time of Filing. A former DoD employee shall file a report with his former DoD Component DAEO or designee within 90 days of entering on duty with the defense contractor.

9-1002. Review

a. When the report is filed, the DoD Component DAEO or designee shall review the report to determine whether:

(1) Each item is completed and sufficient information is provided; and

(2) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, and related laws and regulations.

b. The DoD Component DAEO or designee need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the DoD Component DAEO or designee will resolve any apparent violations to ensure there are no actual violations.

c. If the DoD Component DAEO or designee believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the DoD Component DAEO or designee.

d. When the DoD Component DAEO or designee has completed the review and accomplished any necessary remedial action, he shall sign and date the report and dispose of it in accordance with subsection 9-1003.b. of this Regulation, below.

e. If the DoD Component DAEO or designee concludes that the reporting individual is not in compliance with applicable laws or regulations, the DoD Component DAEO or designee shall:

- (1) Notify the reporting individual of the preliminary determination;
- (2) Afford the reporting individual an opportunity for personal consultation, if practicable;
- (3) Determine what remedial action should be taken to bring the reporting individual into compliance; and
- (4) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

f. When the DoD Component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. Then the DoD Component DAEO or designee shall sign and date the report as the reviewing official and dispose of it in accordance with subsection 9-1003.b. of this Regulation, below.

9-1003. Disposition

* a. After the Ethics Counselor signs and dates the report, the
* Ethics Counselor shall send the original to the entire DoD Component DAEO or designee, who
* shall forward it, together with all other such reports that were received during the previous
* calendar year, to SOCO not later than March 15. *

* b. The DoD Component DAEO or designee shall ensure that *

* appropriate data from each DD Form 1787, Appendix C of this Regulation, is extracted and sent,
* together with all other such data from other such reports that were received during the previous
* calendar year for the entire DoD Component, by March 15 to the Defense Manpower Data
* Center (DMDC) where a consolidated report to Congress is compiled. DMDC will accept data
* only on computer disk using any common wordprocessing software or ASCII.

* c. If steps ensuring compliance with applicable laws and
* regulations are not taken by the date established, the Ethics Counselor shall report the matter to
* the DoD Component DAEO and take whatever other action might be required in accordance with
* Chapter 10 of this Regulation.

d. DD Forms 1787, Appendix C of this Regulation, shall be retained by SOCO for six years from the date of filing with SOCO.

9-1004. Public Availability of Reports. DD Forms 1787, Appendix C of this Regulation, must be made available for public examination upon request after the reports are filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

9-1005. Penalties

a. Administrative Penalties. Anyone failing to file a report or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397 (reference (e)).

b. Criminal Liability. Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (c)).

SECTION 11. REFERENCES

9-1100. References

- (a) Title 5, Code of Federal Regulations, Part 2637, "Regulations Concerning Post-Employment Conflict of Interest," current edition
- (b) Title 5, Code of Federal Regulations, Part 2641, "Post-Employment Conflict of Interest Restrictions," current edition

- (c) Title 18, United States Code, Sections 207, 281, and 1001
- (d) Office of Government Ethics Memorandum, "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992
- (e) Title 10, United States Code, Sections 973, 2397, and 2397b
- (f) Title 41, United States Code, Section 423
- * (g) Federal Acquisition Regulation, Part 3.104, current edition *
- * (h) Public Law 103-335, "Federal Acquisition Streamlining *
- * Act of 1994," October 13, 1994 *
- * (i) Decision of the Comptroller General, Volume 42, page 236 *
- * (1962) *
- * (j) Title 5, United States Code, Sections 3326, 5305, 5532, and *
- * 5534 *
- * (k) Title 5, Code of Federal Regulations, Part 553, *
- "Reemployment of Military and Civilian Retirees to Meet *
- Exceptional Employment Needs," current edition
- (l) DoD Directive 1402.1, "Employment of Retired Members *
- of the Armed Forces (NOTAL)," January 21, 1982 *
- (m) United States Constitution, Article I, Section 9, Clause 8 *
- (n) Decision of the Comptroller General, Volume 44, page 130 *
- (1964) *
- (o) Decision of the Comptroller General, Volume 61, page 306 *
- (1982) *
- (p) Title 37, United States Code, Section 908 *
- (q) Title 22, United States Code, Section 611 et seq *
- (r) Executive Order 12834, "Ethics Commitments by *
- Executive Branch Appointees," January 20, 1993
- (s) Decision of the Comptroller General, Volume 56, page 855
- (1977)

DoD Component DAEO for
forwarding to OGE.

(2) If a violation of 18 U.S.C. 201 or 281 (reference (c)) is suspected, it shall be handled in the same manner as subsection 10-201.c.(1)(a) of this Regulation, above, except that OGE Form 202, Appendix C of this Regulation, is not used for referrals;

(3) If a violation of 10 U.S.C. 2397 (reference (a)) is suspected, the Ethics Counselor shall inquire into the matter and, if substantiated, attempt to obtain compliance. If these efforts fail, the Ethics Counselor shall forward a written report to the GC, DoD through the DoD Component DAEO with a recommendation for action by the Secretary of Defense pursuant to 10 U.S.C. 2397(f) (reference (a));

(a) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(b) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(4) If a violation of 10 U.S.C. 2397a (reference (a)) is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above. If the Ethics Counselor believes that the Secretary of Defense should take action pursuant to 10 U.S.C. 2397a(d) (reference (a)), the Ethics Counselor shall forward a written report to the GC, DoD through the DoD Component DAEO with a recommendation for action;

(a) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(b) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(5) If a violation of 10 U.S.C. 2397b (reference (a)) is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above;

(6) If it is suspected that an individual is receiving retired pay contrary to 37 U.S.C. 801 (reference (e)), a report of the matter shall be made to the Defense Finance and Accounting Service. A copy of that report shall be sent to the DoD Component DAEO;

(7) If a violation of 5 C.F.R. 2635 (reference (f)) in subsection 2-100 of this Regulation involving a loss to the Federal Government of \$5,000 or more is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above.

d. In addition, if any of the above violations fall within a DoD Component's procurement fraud program, the Ethics Counselor shall ensure that referrals, coordinations, and reports required by that program are accomplished. If the matter includes a suspected violation of the Gratuities Clause in a defense contract, the Ethics Counselor shall report the matter in accordance with DoD Component procedures issued pursuant to FAR 3.203 (reference (g)) in Appendix B of this Regulation. See subsection 10-202 of this Regulation, below.

e. For matters not handled within the DoD Component's procurement fraud program, any civil or criminal referrals to DoJ or the local U.S. Attorney of violations of this Regulation shall be coordinated with the DoD Component DAEO. The DoD Component DAEO shall be informed of referrals of violations of this Regulation handled within the DoD Component's procurement fraud program.

10-202. Violations of 41 U.S.C. 423 (reference (b))

a. Administrative Sanctions. Suspected violations of 41 U.S.C. 423 (reference (b)) shall be processed in accordance with FAR 3.104-11 (reference (g)) in Appendix B of this Regulation. See 41 U.S.C. 423(h)(2) (reference (b)).

b. Civil Sanctions. Suspected civil violations may be referred through the DoD Component DAEO to DoJ. See 41 U.S.C. 423(i) (reference (b)).

c. Criminal Sanctions. Suspected violations that involve the improper release of source selection information should be referred to the appropriate criminal investigative organization. See 41 U.S.C. 423(j) (reference (b)).

d. Reporting. Any suspected violation of the provisions of 41 U.S.C. 423 (reference (b)) shall be reported as soon as practicable to the appropriate contracting officer. See 41 U.S.C. 423(h)(1) (reference (b)). Any actions taken as the result of the above referrals shall be reported to the DoD

(iv) Potential or actual violations of other laws governing the conduct or financial holdings of officers or employees of that agency, and that a follow-up is made to ensure that actions ordered, including divestiture and disqualification, have been taken;

(10) The agency's standards of conduct regulations, financial disclosure systems, and post employment enforcement systems are evaluated periodically to determine their adequacy and effectiveness in relation to current agency responsibilities;

(11) Information developed by internal audit and review staff, the Office of the Inspector General, if any, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations;

(12) The services of the agency's Office of Inspector General, if any, are utilized when appropriate, including referral of matters to and acceptance of matters from that Office;

(13) A list of those persons to whom delegations of authority are made pursuant to 2638.204(a) is maintained and made available to the Office of Government Ethics, upon request; and

(14) Information required by the Act or requested by the Office of Government Ethics in the performance of its responsibilities is provided in a complete and timely manner.

Sec. 2638.204 Deputy ethics official.

(a) Functions. A designated agency ethics official may, if necessary, delegate to one or more deputy ethics officials any of the duties referred to in 2638.203, except for those functions set forth in 2634.604(c)(2) of Part 2634 and referred to in 2638.203(b)(3)(certification of nominee statements). A deputy ethics official shall work under the supervision of the designated agency ethics official in carrying out such delegated functions.

(b) Dual status. A deputy ethics official may also be designated pursuant to 2638.202 to serve as the alternate agency ethics official. During the absence of the designated agency ethics official a deputy ethics official who has been designated as the alternate ethics official shall perform the functions set forth in 2634.604(c)(2) of Part 2634 and referred to in 2638.203(b)(3).

SUBPART G: EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS

Sec. 2638.701 Executive agency ethics training programs; generally

Each executive branch agency shall maintain a program of ethics training designed to ensure that all of its employees are aware of the Federal conflict of interest statutes and principles of ethical conduct. As a minimum, each agency program shall consist of initial ethics orientation required by Sec. 2638.703 of this subpart and annual ethics training required by Sec. 2638.704 of this subpart. For purposes of this subpart, the term "employee" shall include special Government employees (as defined in 18 U.S.C. 202(a)) and officers of the uniformed services.

Sec. 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics

(a) It shall be the responsibility of the designated agency ethics official of each executive agency or his or her designee to make any written determinations provided for in this subpart and to:

(1) Direct the agency ethics training program to ensure that it meets the requirements of E.O. 12674 (as modified by E.O. 12731) and of this subpart and that the course content is legally correct;

(2) Ensure the availability of qualified individuals to provide the annual training required by Sec. 2638.704 of this subpart. For the purposes of this subpart, the following shall be considered qualified individuals:

(i) The designated agency ethics official described in Sec. 2638.201;

(ii) The alternate agency ethics official described in Sec. 2638.202(b);

(iii) A deputy ethics official described in Sec. 2638.204;

(iv) Any employee of the Office of Government Ethics whose services are made available by the Office of Government Ethics; and

(v) An individual determined by the designated agency ethics official or his or her designee to possess sufficient familiarity with the conflict of interest statutes and standards of ethical conduct regulations applicable to agency employees to respond to routine questions raised during training; and

(3) Furnish to the Office of Government Ethics by August 31 of each year a written plan for annual ethics training by the agency for the following calendar year. The first written plan for annual ethics training for calendar year 1993 shall be submitted by August 31, 1992. Each training plan shall include:

- (i) An estimate of the total number of agency employees described in Sec. 2638.704(b) of this subpart who must be provided annual ethics training;
- (ii) An estimate of the number of agency employees to whom the annual ethics training course will be presented without the presence of a qualified individual under the exception provided at Sec. 2638.704(d)(2)(i) of this subpart, together with a written description of the basis for allowing an exception;
- (iii) Estimates of the number of special Government employees and the number of officers in the uniformed services to whom the annual ethics training course will be presented without the presence of a qualified individual under the exceptions provided at Sec. 2638.704 (d)(2) (ii) and (iii) of this subpart;
- (iv) An estimate of the number of training classes to be provided during the calendar year;
- (v) An estimate of the average class size; and
- (vi) Any other information that the designated agency ethics official believes will facilitate OGE's review of the agency's planned program of ethics training.

(b) Each agency's annual ethics training plan will be reviewed by the Office of Government Ethics and any deficiencies shall be communicated in writing to the designated agency ethics official concerned by November 15 of each year, or 75 days after receipt of the agency plan, whichever occurs later.

Sec. 2638.703 Initial agency ethics orientation

(a) Each agency employee shall, on or before January 2, 1993, be provided:

(1) A copy of part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989, as amended by E.O. 12731, 3 CFR, 1990 Comp., p. 306;

(2) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(3) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. Where, within the period specified, the agency provides an ethics training course during official duty time, including annual ethics training provided in accordance with Sec. 2638.704 of this subpart, or a new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in such training.

(b) Each new agency employee who enters on duty after May 7, 1992, shall, within 90 days of the date of his or her entrance on duty, or on or before January 2, 1993, whichever is later, be provided with the materials and time specified in paragraph (a) of this section.

(c) When copies of the material described in paragraph (a)(1) of this section are retained and readily accessible in the employee's immediate office for use by several employees, the requirement of paragraph (a)(1) of this section may be met by furnishing each employee a copy for the purpose of review.

Sec. 2638.704 Annual agency ethics training

* (a) Annual ethics training. Executive branch agencies must provide each employee identified in paragraph (b) of this section with ethics training every calendar year. This training must meet the content requirements contained in paragraph (c) of this section and the presentation requirements contained in paragraph (d) of this section. Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, employees must be provided a minimum of one hour of official duty time for this training. *

(b) Employees covered. Executive branch agency employees to whom this section applies include all of the following:

- (1) Employees appointed by the President;
- (2) Employees employed within the Executive Office of the President;
- (3) Employees required to file public financial disclosure reports under part 2634 of this chapter;

* (4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart I of part 2634 *
* of this chapter or any supplemental regulation or addendum of the concerned agency (agency employees who are excluded from *
* the confidential financial disclosure requirements through the use of an alternative procedure approved by the Office of *
* Government Ethics pursuant to Sec. 2634.905(c) of this chapter must also receive annual ethics training from their agency *
* pursuant to the paragraph);

(5) Contracting officers within the meaning of 41 U.S.C. 423(p)(4);

(6) Procurement officials within the meaning of 41 U.S.C. 423(p)(3); and (7) Other agency employees designated by the head of the agency or his or her designee based on a determination that such training is desirable in view of their particular official duties.

* (c) Course content. Agencies are encouraged to vary the emphasis and course content of annual agency ethics training *
* courses from year to year as necessary within the context of their ethics programs. However, each training course must include, *
* as a minimum:

(1) A reminder of the employees' responsibilities under part I of Executive Order 12674, as modified, the Standards of Ethical Conduct for Employees of the Executive Branch, part 2635 of this chapter, and any supplemental regulation thereto by the concerned agency;

(2) A reminder of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11; and

(3) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employees' ethical responsibilities.

(d) Course presentation. The training course shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by telecommunications, computer-based methods, or recorded means. A qualified individual, as defined in Sec. 2638.702(a)(2) of this subpart, shall:

(i) Present the training, if the training is presented in person; or

(ii) Prepare the recorded materials or presentation, if the training is presented by telecommunication, computer-based methods or recorded means.

(2) An agency may provide annual ethics training by means other than those specified in paragraph (d)(1) of this section under the following circumstances:

(i) Where the designated agency ethics official, or his or her designee, has made a written determination that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section. In such cases, annual ethics training may be presented by means of written materials, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review written materials;

(ii) In the case of special Government employees covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For special Government employees who are expected to work fewer than 60 days in a calendar year, the requirement that the employee be provided with one hour of official duty time for annual ethics training is waived; and

(iii) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days and who are covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For these officers, the requirement that the officers be provided with one hour of official duty time for annual ethics training is waived.

(3) If the DoD Component DAEO makes, with the approval of OGE, a written determination that it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's.

d. CIAET shall be a minimum of one hour.

e. Those DoD employees who are required to receive AET will satisfy their 1993 annual ethics training obligation if they attended CIAET in 1992 or 1993.

* 11-301. Initial Ethics Training (IET) for New DoD Employees *

a. Within 90 days of entering on duty, all DoD employees who did not receive CIAET, including those required to receive AET and enlisted members, shall receive IET for new DoD employees.

b. IET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, and such IET shall qualify as AET for the year the new DoD employees entered on duty, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish IET in the presence of a Qualified Individual, DoD employees who are not required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above;

(2) If the DoD Component DAEO determines that it is impractical to accomplish IET in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, provided that such DoD employees receive additional annual ethics training, either CIAET, IET or AET, if more than three months remain of the calendar year in which those DoD

employees entered on duty.

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's office.

d. IET shall be a minimum of one hour.

11-302. Annual Ethics Training (AET)

a. Beginning in calendar year 1994, all DoD employees who file an SF 278 or SF 450, Appendix C of this Regulation, contracting officers and procurement officials, shall receive ethics training annually.

b. AET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish AET in the presence of a Qualified Individual, then special Government employees and military officers serving fewer than 30 consecutive days annually, may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above;

(2) If the DoD Component DAEO makes a written determination that it is impractical to accomplish AET in the presence of a Qualified Individual, then DoD employees other than special Government employees and military members serving fewer than 30 days annually may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

c. AET shall be a minimum of one hour.

11-303. Annual Ethics Training Plans. DoD Agency (see definition of "Agency") ethics training plans for 1994 and subsequent ethics training plans in accordance with subsections 11-301 and 11-302 of this Regulation, above, shall be submitted by DoD Component DAEOs or designees directly to OGE. DoD Components that are not Agencies shall submit annual ethics training plans to SOCO for approval and inclusion in the ethics training plan SOCO submits to OGE.

EXECUTIVE ORDER 12674¹

April, 12, 1989

As amended by

EXECUTIVE ORDER 12731
55 Federal Register 42547
October 19, 1990

Principles of Ethical Conduct for Government Officers and Employees

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered that Executive Order 12674 of April 12, 1989, is henceforth modified to read as follows:

Part I-Principles of Ethical Conduct

Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

- (a) Public service is a public trust requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (e) Employees shall put forth honest effort in the performance of their duties.
- (f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.
- (m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this Order.

Sec. 102. Limitations on Outside Earned Income.

(a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

performed during that Presidential appointment.

(b) The prohibition set forth in subsection (a) shall not apply to any fulltime noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS-9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

Part II-Office of Government Ethics Authority

Sec- 201. The Office of Government Ethics. The Office of Government Ethics shall be responsible for administering this order by:

(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive branch standards of conduct that shall be objective, reasonable, and enforceable.

(b) Developing, disseminating, and periodically updating an ethics manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18, United States Code; the general conflict-of-interest statute, section 208 of title 18, United States Code; and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

(e) Ensuring that any implementing regulation issued by agencies under this order are consistent with and promulgated in accordance with this order.

Sec. 202. Executive office of the President. In that the agencies within the executive Office of the President (EOP) currently exercise functions that are not distinct and separate, from each other within the meaning and for the purposes of section 207(e) of title 18, United States Code, those agencies shall be treated as one agency under section 207(c) of title 18, United States Code.

Part III-Agency Responsibilities

Sec. 301. Agency Responsibilities. Each agency head is directed to:

(a) Supplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.

(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program.

EXECUTIVE ORDER 12834¹

58 Federal Register 5911
January 22, 1993

Ethics Commitments by Executive Branch Appointees

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledges.

(a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge ("senior appointee pledge") upon becoming a senior appointee:

"As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

"2. In the event that I serve as a senior appointee in the Executive Office of the President ("EOP"), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

"3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

"4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties. "5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge ("trade negotiator pledge"):

"As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

"2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. As used herein and in the pledges:

(a) "Senior appointee" means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) "Trade negotiator" means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) "Lobby" means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term "lobby" does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) "Administrative proceeding" means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, et. seq.).

(f) "Executive agency" and "agency" mean "Executive agency" as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, "executive agency" means the entire agency in which the senior appointee is appointed to serve, except that:

* SECTION 2. OTHER LAWS RELATED TO STANDARDS OF ETHICAL CONDUCT *

A-200. OGE Digest. Other ethics statutes are summarized in 5 C.F.R. 2635.801(d) and 902 in subsection 2-100 of this Regulation.

A-201. Related Statutes. Engaging in the following activities may subject current and former DoD employees to criminal and/or other penalties:

- a. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 2);
- b. Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if the individual knew of the actual commission of the crime (18 U.S.C. 4);
- c. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to further the object of the conspiracy (18 U.S.C. 371);
- d. Misuse of a Federal Government vehicle (31 U.S.C. 1344 and 1349(b));
- e. Interference in an examination or personnel action in connection with Federal Government employment (18 U.S.C. 1917);
- f. Conversion of Federal Government property (18 U.S.C. 641);
- g. Private use of public money (18 U.S.C. 653), embezzlement of the money or property of another individual in the possession of a DoD employee by reason of his Federal Government employment (18 U.S.C. 654);
- h. Certain political activities (5 U.S.C. 7321-7327, 18 U.S.C. 600-603 and 606-607 apply to civilian DoD employees, and DoD Directive 1344.10 applies to military members);
- i. Failing to register under the Foreign Agents Registration Act of 1983 and acting as an agent of a foreign principal when required to register (18 U.S.C. 219);
- j. Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351) applies to civilians; regulations

set out in 5 C.F.R. 2635.301 through 304 in subsection 2-100 of this Regulation, and subsection 2-203 of this Regulation, apply to both military and civilian DoD employees;

k. Accepting, without statutory authority, any present, emolument, office or title, or employment of any kind, from any king, prince, or foreign state without the consent of the Congress; this restriction applies to any person holding any office or profit in or trust of the Federal Government, including all retired military members and Regular enlisted members (Article I, Section 9, Clause 8, of the Constitution of the United States; exceptions to this restriction are at 37 U.S.C. 908);

l. Union activities of military members (10 U.S.C. 976);

m. Violating merit system principles (5 U.S.C. 2301).

**REPORT OF DOD AND DEFENSE RELATED EMPLOYMENT
AS REQUIRED BY 10 U.S.C. §2397**

REPORT CONTROL SYMBOL

Form Approved
OMB No. 0704-0047
Expires Dec 31, 1996

(If additional space is required, use blank sheets of paper referencing item numbers below.)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0047), Washington, DC 20503.

Privacy Act Statement

AUTHORITY: 10 U.S.C. §2397; 10 U.S.C. §2397b; Executive Order 9397, November 1943 (SSN).
PRINCIPAL PURPOSES: Each report will be reviewed by Department of Defense officials to determine compliance with the intent of the Act. The purpose of requesting the SSN is for positive identification and retrieving the record.
ROUTINE USE: Information derived from the reports, including names of reporting individuals and their current and former employers, shall be provided annually to the Congress. The reports themselves shall be available for review by members of the public and may otherwise be made available as authorized by law.
DISCLOSURE: Mandatory. Knowing or willful failure to file or report information required to be reported by this law, or falsification of information, may subject you to administrative penalty of up to \$10,000 pursuant to regulations promulgated by the Secretary of Defense. Knowing or willful falsification of information required to be filed may also subject you to criminal prosecution under 18 U.S.C. §1001, leading to a fine of not more than \$10,000 or imprisonment for not more than five years or both.

(Please read instructions before completing this form.)

1. NAME (Last, First, Middle Initial)	2. SOCIAL SECURITY NO.	3. HOME TELEPHONE NO.

4. HOME ADDRESS			
a. STREET	b. CITY	c. STATE	d. ZIP CODE

5. IS THIS AN INITIAL REPORT? (X a. or b.)	6.a. STATUS (A as many as applicable)	6.b. Rank/ Grade	6.c. Most Recently Acquired Status (X one)
a. YES (If "Yes," go to Item 6.)	(1) RETIRED MILITARY - O4 OR ABOVE		
b. NO (If "No," go to Item 5.c.)	(2) FORMER MILITARY - O4 OR ABOVE		
c. If this is NOT an initial report, reason for subsequent report is: (X one)	(3) RETIRED CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE		
	(4) FORMER CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE		
	(5) PRESENT DOD EMPLOYEE		

SECTION I

To be completed only by former officers or employees of DoD who are now employed by contractor. (Category I)

7.a. DATE OF TERMINATION OF MOST RECENT DOD SERVICE OR EMPLOYMENT (YYMMDD)	7.b. NAME OF MOST RECENT MILITARY DEPARTMENT OR DOD AGENCY

8. DATE OF EMPLOYMENT WITH DEFENSE CONTRACTOR (YYMMDD)	9. IS YOUR ANNUAL COMPENSATION FROM OR SALARY RATE WITH THE DEFENSE CONTRACTOR \$25,000 OR MORE?	a. YES
		b. NO

10. NAME OF DEFENSE CONTRACTOR EMPLOYER	11. WORK TELEPHONE NO.

12. WORK ADDRESS			
a. STREET	b. CITY	c. STATE	d. ZIP CODE

13. YOUR POSITION WITH CONTRACTOR	
a. (X one that best describes position.)	b. SPECIFIC TITLE(S)
(1) Administrator	(4) Manager
(2) Researcher	(5) Consultant
(3) Contract Officer	(6) Other

c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL former DoD positions that are reported in Item 14 below. See Instructions.

14. YOUR FORMER DOD POSITION	
a. (X one that best describes position.)	b. SPECIFIC TITLE
(1) Administrator	(4) Manager
(2) Researcher	(5) Consultant
(3) Contract Officer	(6) Other
c. SPECIFIC DOD ORGANIZATION	

d. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 14.a., b., c., and d. for each former DoD position held within 2 years prior to contractor position. See Instructions.

15. DOD DISQUALIFICATION ACTIONS (IF ANY) (Within two years prior to contractor employment.)	c. DESCRIBE DISQUALIFICATION ACTIONS
a. YES (If "Yes," go to Item 15.c.)	
b. NO (If "No," go to Item 16.)	

SECTION II

To be completed only by former employees of contractors who are now DoD officers or employees. (Category II)

16.a. DATE OF TERMINATION WITH DEFENSE CONTRACTOR (YYMMDD)		16.b. NAME OF FORMER DEFENSE CONTRACTOR EMPLOYER (Most recent)			
17. DATE OF EMPLOYMENT OR SERVICE WITH DOD (YYMMDD)		18. IS YOUR ANNUAL SALARY WITH DOD AT A RATE EQUAL TO OR ABOVE GS-13?		a. YES b. NO	c. SPECIFY AMOUNT \$
19. NAME OF SPECIFIC DOD ORGANIZATION(S) BY WHICH EMPLOYED (Within the last 2 years)				20. WORK TELEPHONE NO.	
21. WORK ADDRESS					
a. STREET		b. CITY		c. STATE	d. ZIP CODE
22. CURRENT DOD POSITION					
a. (X one that best describes position.)			b. SPECIFIC TITLE(S)		
(1) Administrator		(4) Manager			
(2) Researcher		(5) Consultant			
(3) Contract Officer		(6) Other			
c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL contractor positions that are reported in Item 23 below. See Instructions.					

23. CONTRACTOR POSITION					
a. (X one that best describes position.)			b. SPECIFIC TITLE		
(1) Administrator		(4) Manager			
(2) Researcher		(5) Consultant			
(3) Contract Officer		(6) Other			
c. SPECIFIC DEFENSE CONTRACTOR NAME AND BRANCH					
d. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 23.a., b., c., and d. for each contractor position held within two years prior to current position. See Instructions.					

CERTIFICATION

To be completed by all filers.

24. I certify that the above information is true, complete, and correct to the best of my knowledge. I understand that I must file a new report of DoD and defense related employment within 30 days if, within the two years immediately following the termination of my most recent DoD service or employment, the information in this report ceases to be accurate. I understand subsequent reports are not required after such two year period.

a. SIGNATURE		b. DATE SIGNED (YYMMDD)
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REVIEW

To be completed by reviewing official.

25. I certify that I have reviewed this Report of DoD and Defense Related Employment (DD Form 1787) in accordance with the guidance set out in DoD Directive 5500.7, enclosure 8.

a. SIGNATURE	b. OFFICE	c. DATE SIGNED (YYMMDD)
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26. COMMENTS

DD FORM 1787
REPORT OF DOD AND DEFENSE-RELATED EMPLOYMENT
AS REQUIRED BY 10 U.S.C. §2397

WHO MUST FILE

CATEGORY I (Complete Section I)

a. Each person who has left service or employment with a DoD Component, who:

(1) is a retired military officer or former military officer who served on active duty at least 10 years and who held, for any period during that service, the grade of O-4 or above, or is a former civilian officer or employee whose pay at any time during the three year period prior to the end of DoD service or employment was equal to or greater than the minimum rate for a GS-13 at that time;

(2) within the two-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year preceding employment, was awarded \$10,000,000 or more in DoD contracts; and

(3) is employed by the defense contractor and at any time during a year receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor. "Employed" includes the rendering of services as a consultant, lawyer, agent or other kind of assistant.

b. For a two year period following the termination of your last position with a DoD Component, you are required to file a new DD Form 1787 each time your duties with the defense contractor change significantly and each time you become employed with a new defense contractor.

CATEGORY II (Complete Section II)

Each civilian officer and employee (whether or not full-time) of a DoD Component, who:

(1) is employed at a pay rate equal to or greater than the minimum rate for GS-13;

(2) within the two-year period prior to the beginning of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded \$10,000,000 or more in DoD contracts; and

(3) was employed by the defense contractor and at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more from the defense contractor. "Employed" includes the rendering of services as a consultant, lawyer, agent or other kind of assistant.

WHEN AND WHERE TO FILE

a. Civilians shall submit their reports to the Designated Agency Ethics Official of the individual's present or former DoD Component in accordance with DoD Component procedures. Retired or former military officers shall submit their reports to the Designated Agency Ethics Official of the DoD Component to which they were last assigned.

b. Current DoD officers and employees shall file a report within 30 days after entering employment or service with any DoD Component.

c. Former DoD officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor.

d. Former DoD officers and employees shall file subsequent reports each time, during the two-year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly change or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

INSTRUCTIONS FOR COMPLETION

Items 1 through 6 apply to all individuals completing this form.

Items 1 through 4. Provide the appropriate information.

Item 5. Mark "Yes" if this is the first DD Form 1787 you have ever filed and go to Item 6. Mark "No" if you have filed a DD Form 1787 in the past and answer 5.c.

Item 6. Mark the box(es) which indicates your status and include the highest grade or rank that you held prior to leaving that DoD position. If you hold more than one status, mark one box to show which status was most recently acquired. Keep in mind that the requirement to file DD Form 1787 is imposed on former and retired civilian employees who have been paid at a rate equal to or greater than the minimum rate at the time for a GS-13 at any time during the three year period prior to termination from the last DoD position.

SECTION I

This part only applies to individuals in Category I.

Item 7. Provide the requested date and name your most recent Military Department or DoD agency.

Item 8. Provide the date your employment with the defense contractor began. If you are no longer employed by the defense contractor, provide the date of termination on a separate sheet referencing this item number. Provide the information requested in the following items for your most recent defense contractor employer even if no longer employed.

INSTRUCTIONS FOR COMPLETION OF DD FORM 1787 (Continued)

SECTION I (Continued)

Item 9. Indicate whether your annual compensation from or salary rate with the defense contractor is above \$25,000 by marking "Yes" or "No."

Items 10 through 12. Provide the appropriate information for your present or most recent defense contractor employer.

Item 13. Indicate your position with the defense contractor by marking the box(es) next to the title that best describes your position. Also provide your specific title(s). You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names of all contracts and details of all duties you have performed on behalf of the defense contractor that relate in any way to your duties in all former DoD positions held within the two years prior to the beginning of your employment with the defense contractor. You must also identify each major defense system on which you have performed work on behalf of the defense contractor, regardless of whether that work relates to your former DoD position. All these former DoD positions must be reported in Item 14.

"Major Defense System" means: A combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (a) DoD is responsible for the system and the total expenditures, and research, development, test, and evaluation for the system are estimated to be more than \$75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than \$300,000,000 (based on fiscal year 1980 constant dollars); (b) a civilian agency is responsible for the system and total expenditures of the system are estimated to exceed \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to OMB circular A-106, entitled "Major Systems Acquisitions," whichever is greater; or (c) the system is designated a "major system" by the head of the agency responsible for the system.

Item 14. Indicate your former DoD position by marking the box(es) next to the title that best describes your position. Also provide your specific title(s) and include your organization code letters. You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names of all contracts and details of all duties you performed while in your former DoD position that relate in any way to your position with the defense contractor reported in Item 13. You must also identify each major defense system you performed any work on while in your former DoD position, regardless of whether that work relates to your position with the defense contractor reported in Item 13. If you held more than one DoD position during the two years prior to the beginning of your employment with the defense contractor, provide all the information requested in Item 14.a., b., and c. for each DoD position on a separate sheet of paper referencing this item number.

Item 15. Indicate whether there were any DoD disqualification actions related to you during the two years prior to your defense contractor employment. If there were, describe the actions in detail. A "disqualification action" is a formal exclusion of a person from taking part in a particular matter, usually to prevent a conflict of interest.

SECTION II

This part only applies to individuals in Category II.

Item 16. Provide the requested date and name your most recent former defense contractor employer.

Item 17. Provide the requested date.

Item 18. Indicate whether your annual salary with the DoD Component is equal to or above the minimum rate for a GS-13 by marking "Yes" or "No." Various pay schedules, levels and steps can be confusing. Provision of your annual salary will ensure your compliance with applicable law and is required to process your report.

Items 19 through 21. Provide the appropriate information for your DoD Component organization.

Item 22. Indicate your DoD position by marking the box(es) next to the title that best describes your position. Also provide your specific title(s) and include your organization code letters. You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names and details for all contracts and actions that relate in any way to your duties in all former defense contractor positions held within the two years prior to the beginning of your service or employment with the DoD Component. All these former defense contractor positions must be reported in Item 23.

Item 23. Indicate your former position with the defense contractor by marking the box(es) next to the title that best describes your position. Also provide your specific title(s). You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must include names and details for all contracts and actions that relate in any way to your position with your DoD Component reported in Item 22. If you have been employed by more than one defense contractor during the two years prior to the beginning of your service or employment with the DoD Component, provide all information requested in Item 23.a., b., and c. for each defense contractor position on a separate sheet of paper referencing this item number.

CERTIFICATION

All filers must certify this report by signing and dating.

Item 24. You must sign and date this report.

REVIEW

Item 25. Reviewing official must sign and date after reviewing the report in accordance with DoD Directive 5500.7, enclosure 8.