

PART 3600 [RESERVED]

PART 3601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE

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AUTHORITY: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.204(k), 2635.803.

SOURCE: 58 FR 47622, Sept. 10, 1993, unless otherwise noted.

§ 3601.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part 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 CFR part 2635. DoD employees are required to comply with part 2635, this part, and implementing guidance and procedures.

§ 3601.102 Designation of separate agency components.

(a) Pursuant to 5 CFR 2635.203(a), each of the following components of DoD is designated as a separate agency for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking and writing:

(1) Armed Services Board of Contract Appeals;

(2) Department of the Army;

(3) Department of the Navy;

(4) Department of the Air Force;

(5) Defense Commissary Agency;

(6) Defense Contract Audit Agency;

(7) Defense Finance and Accounting Service;

(8) Defense Information Systems Agency;

(9) Defense Intelligence Agency;

(10) Defense Logistics Agency;

(11) Defense Security Service;

(12) Defense Threat Reduction Agency;

(13) National Imagery and Mapping Agency;

(14) National Security Agency;

(15) Office of the Inspector General; and

(16) Uniformed Services University of the Health Sciences.

(b) Employees of DoD components not designated as separate agencies, including employees of the Office of the Secretary of Defense, 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 CFR 2635.203(d) and for identifying the DoD employee's agency under 5 CFR 2635.807 governing teaching, speaking and writing.

[58 FR 47622, Sept. 10, 1993, as amended at 68 FR 64980, Nov. 18, 2003]

§ 3601.103 Additional exceptions for gifts from outside sources.

In addition to the gifts which come within the exceptions set forth in 5 CFR 2635.204, and subject to all provisions of 5 CFR 2635.201 through 2635.205, a DoD employee may accept gifts from outside sources otherwise prohibited by 5 CFR 2635.202(a) 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) 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 CFR 2635.204(g)(5); and

(3) The gift of free attendance meets the definition in 5 CFR 2635.204(g)(4).

(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 designated agency ethics official 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.

§ 3601.104 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 CFR 2635.304(c)(1):

(a) *Gifts from a group that includes a subordinate.* Regardless of the number of DoD employees contributing to a gift on a special, infrequent occasion as permitted by 5 CFR 2635.304(c)(1), 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 CFR 2635.203(b) 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 CFR 2635.304(c)(1), 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.

§ 3601.105 Standards for accomplishing disqualification.

(a) *Disqualifying financial interests.* A DoD employee who is required, in accordance with 5 CFR 2635.402(c), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.4029(c) (1) and (2), 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 CFR 2635.502(e), to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.502(e) (1) and (2), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(c) *Disqualification from matter affecting prospective employees.* A DoD employee who is required, in accordance with 5 CFR 2635.604(a), to disqualify

himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), 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 paragraphs (a), (b) or (c) of this section upon deciding that disqualification from participation in the matter is no longer required.

§ 3601.106 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 noncommercial 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 building management policies does not constitute solicitation for purposes of this section.

§ 3601.107 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) 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 paragraph (b) of this section. 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. For purposes of this section, the following definitions apply:

(1) *Business activity.* 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.* 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; and

(3) *Prohibited source.* See 5 CFR 2635.203(d) (modified by the separate DoD component agency designations in § 3601.102 of this part).

(b) The DoD component designated agency ethics official or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (a) of this section, 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.

§ 3601.108 Disclaimer for speeches and writings devoted to agency matters.

A DoD employee who uses or permits the use of his military rank 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 CFR 2635.807(b), 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 § 3601.102, 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 will be printed in a reasonably prominent position in the writing itself.

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(c) Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally pro-

vided it is given at the beginning of the oral presentation.

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