

that the MLC engage in good-faith efforts to publicize notice relating to pending distributions at least ninety days in advance),<sup>109</sup> commenters should be aware that the Office is tentatively inclined to wait until after the policy study is underway to finalize rules with respect to this important duty of the MLC. The Office anticipates that those seeking to comment on this issue will have ample opportunity to do so through the study and other future activities.

#### K. Other Subjects

The Copyright Office invites public comment on any other issues relevant to the blanket compulsory license regime that commenters believe are within and appropriate for the Office's regulatory authority.

Dated: September 16, 2019.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9, 12, 13, 43, and 52

[FAR Case 2018-021; Docket FAR-2019-0031; Sequence 1]

RIN 9000-AN79

#### **Federal Acquisition Regulation: Reserve Officer Training Corps and Military Recruiting on Campus**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the United States Code section that prohibits the award of certain Federal contracts to institutions of higher education that prohibit Reserve Officer Training Corps units or military recruiting on campus.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before November 25,

2019 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2018-021 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "FAR Case 2018-021" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2018-021". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2018-021" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405-0001.

*Instructions:* Please submit comments only and cite "FAR Case 2018-021" in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202 or at [cecelia.davis@gsa.gov](mailto:cecelia.davis@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2018-021.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD, GSA, and NASA are proposing to amend the FAR to implement 10 U.S.C. 983, which prohibits the award of certain Federal contracts to institutions of higher education that prohibit Reserve Officer Training Corps (ROTC) units or military recruiting on campus.

Both DoD and Department of Homeland Security (DHS) have previously implemented agency-specific clauses that prohibit the award of certain Federal contracts to institutions of higher education that prohibit ROTC units or military recruiting on campus.

DoD published an interim rule in the Defense Federal Acquisition Regulation Supplement (DFARS) on Institutions of Higher Education, 65 FR 2056, on January 13, 2000, to implement section 549 of the National Defense Authorization Act (NDAA) for Fiscal Year 2000. Section 549 amends 10 U.S.C. 983 to prohibit DoD from providing funds by contract or grant to an institution of higher education

(including any subelement of that institution) if the Secretary of Defense determines that the institution (or any subelement of the institution) has a policy or practice that prohibits, or in effect prevents, Senior ROTC units or military recruiting on campus.

DoD then published a final rule on Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education, 73 FR 16525, on March 28, 2008, at 32 CFR part 216. The rule implemented 10 U.S.C. 983, as amended by the Ronald W. Reagan NDAA for Fiscal Year 2005 (Pub. L. 108-375, October 28, 2004). The DoD rule clarified access to campuses, access to students and access to directory information on students for the purposes of military recruiting, and that access to campuses and students on campuses shall be provided in a manner that is at least equal in quality and scope to that provided to any other employer. DoD later published a DFARS final rule in the **Federal Register**, 77 FR 19128, on March 30, 2012, to separate provisions and clauses that were previously combined in order to comply with DFARS drafting conventions. This final rule removed the representation from 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus, and added a new provision at 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus—Representation.

Similar to DoD, DHS published a rule on December 4, 2003, 68 FR 67868 at 67891 to add a new clause in its supplement at Homeland Security Acquisition Regulation (HSAR) 3052.209-71, Reserve Officer Training Corps and Military Recruiting on Campus, to implement these requirements.

This proposed rule would implement 10 U.S.C. 983, which prohibits the award of certain Federal contracts with covered funds to institutions of higher education that prohibit ROTC units or military recruiting on campus. "Covered funds" is defined in 10 U.S.C. 983 to be any funds made available for DoD, Department of Transportation, DHS, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or for any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. None of these covered funds may be provided by contract or grant to an institution of higher education (including any subelement of such institution) that has a policy or practice (regardless of when implemented) that

<sup>109</sup> 17 U.S.C. 115(d)(3)(J).

either prohibits, or in effect prevents, the Secretary of Defense from establishing or operating a Senior ROTC at that institution (or any subelement of that institution); or that either prohibits, or in effect prevents, a student at that institution (or any subelement of that institution) from enrolling in a ROTC unit at another institution of higher education.

The statute has similar sanctions against these covered funds being provided to an institution of higher education (or any subelement of an institution) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting, where such policy or practice denies the military recruiter access that is at least equal in quality and scope to the access to campuses and students provided to any other employer; or access to information pertaining to the students' names, addresses, telephone listings, dates and places of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

The meaning and effect of the term "equal in quality and scope" was explained in the U.S. Supreme Court decision in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 126 S. Ct. 1297 (2006). The term means the same access to campus and students provided by the school to any other nonmilitary recruiters or employers receiving the most favorable access. The focus is not on the content of a school's recruiting policy, but instead on the result achieved by the policy and compares the access provided military recruiters to that provided other recruiters. Therefore, compliance with 10 U.S.C. 983 would be considered insufficient if the policy results in a greater level of access for other recruiters than for the military.

The statute provides an exception whereby any Federal funding provided to an institution of higher education or to an individual that is available solely for student financial assistance, related administrative costs, or costs associated with attendance may be used for the purpose for which the funding is provided.

This proposed rulemaking was initiated at the request of DoD's Regulatory Reform Task Force (RRTF). The RRTF was established under Executive Order 13777, titled "Enforcing the Regulatory Reform

Agenda," which requires agencies to evaluate existing regulations on whether they should be repealed, replaced, modified, or retained to reduce regulatory burden on the public. The RRTF recommended opening this rulemaking as the statute applies to multiple agencies identified in this rule as a "covered agency." Elevating this policy in the FAR eliminates the need for the agency unique supplemental regulations mentioned above and ensures unified guidance among the affected agencies consistent with the purpose of the FAR system.

## II. Discussion and Analysis

This rule proposes to add a new section FAR 9.110, Reserve Officer Training Corps and military recruiting on campus, that provides the policy and procedures for this prohibition and a new clause entitled the same. Revisions are made to FAR 9.405, 9.405-1, and 43.105 to address this prohibition. The clause explains what is expected of the institution of higher education and how an agency is to handle the situation when the institution of higher education is identified by the Secretary of Defense as having policies or practices in place that prevent the ROTC and military recruiting on campus. The covered agency is prohibited from providing funds through contract award to the institution of higher education. Administrative revisions are made to FAR 12.503 and FAR 13.005 to the order of the statutes for consistency.

## III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

DoD, GSA, and NASA do not intend to apply the requirements of 10 U.S.C. 983 at or below the simplified acquisition threshold or to contracts for the acquisitions of commercial items.

### A. Applicability to Contracts At or Below the Simplified Acquisition Threshold

Section 1905 of Title 41 of the United States Code governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. Section 1905 provides that if a provision of law contains criminal or civil penalties, specifically refers to section 1905 and provides that the law shall nevertheless be applicable to contracts or subcontracts below the simplified acquisition threshold, or if the FAR Council makes a written determination

that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them. Section 1983 of Title 10 does not contain criminal or civil penalties, nor expressly refer to section 1905 of Title 41, and the FAR Council does not intend to make the requisite determination. Therefore, this proposed rule does not apply at or below the simplified acquisition threshold.

### B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

Section 1906 of Title 41 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if a provision of law contains criminal or civil penalties, specifically refers to section 1906 and provides that it shall nevertheless be applicable to contracts for the procurement of commercial items, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, and provides the same criteria for determining whether a provision of law applies to COTS items, except that the Administrator for Federal Procurement Policy is charged with making the decision whether it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. As noted above with respect to section 1905, section 983 of Title 10 does not impose civil or criminal penalties. Nor does it refer to sections 1906 or 1907 of Title 41. The FAR Council and the Administrator for Federal Procurement Policy do not intend to make the requisite determinations. Therefore, this proposed rule does not apply to the acquisition of commercial items, including COTS items. This rule proposes to add 10 U.S.C. 983 to the list at FAR 12.503 of laws inapplicable to contracts for the acquisition of commercial items. The law is not added to the lists at FAR 12.504 (subcontracts) and 12.505 (COTS items), because the clause does not flow down to subcontracts and is already inapplicable to the acquisition of COTS items, because the Federal Government does not buy COTS items from institutions of higher education.

#### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### V. Expected Impact of the Proposed Rule and Proposed Cost Savings

DoD, GSA, and NASA do not expect a cost impact on the public or on the institutions of higher learning or on the Government because covered agencies already have regulations in place to address their statutory responsibilities. These agencies will be required to comply with the same requirement, but the requirement will now be located in the FAR.

#### VI. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule has a *de minimis* impact on the public (see section V of this preamble).

This rule affects institutions of higher education that receive DoD monies but are planning to not allow DoD's ROTC and military recruiting on campus. However, the FAR Council is not aware of any institution that currently has such a prohibition in place.

#### VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule impacts only institutions of higher education with policies or practices in place that prohibit ROTC units or military recruiting on campus and currently no institutions have such practices. Nevertheless, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and summarized as follows:

In Fiscal Year 2017, the Federal Procurement Data System (FPDS) shows that there were 345 awards to small organizations, which are institutions of higher education, by the following covered agencies: DoD,

Department of Labor, Department of Health and Human Services, Department of Education, Department of Transportation, and DHS. The National Nuclear Security Administration is not included in this number because the Department of Energy does not break out the information. The Central Intelligence Agency is not included because it does not report in FPDS. These small organizations are small entities under the Regulatory Flexibility Act but are not small business concerns. There will not be an impact on an institution of higher education as long as that institution has no policies or practices in place that prohibit ROTC units or military recruiting on campuses. No institution of higher education has been determined by the Secretary of Defense to be ineligible based on this policy (see 9.110).

There are no reporting or recordkeeping requirements. There is a compliance requirement; institutions of higher education that have contracts with covered agencies (defined in the FAR text) must not prohibit ROTC units or military recruiting on campus. This is not a new requirement. No increase in burden is intended.

The statute has previously been implemented at the FAR supplement level for DoD and DHS. This FAR case moves the implementation up into the FAR level.

There were no significant alternatives identified that would meet the objectives of the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained for the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2018–021), in correspondence.

#### VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

#### List of Subjects in 48 CFR Parts 9, 12, 13, 43, and 52

Government procurement.

#### William F. Clark

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 9, 12, 13, 43, and 52 as set forth below.

■ 1. The authority citation for 48 CFR parts 9, 12, 13, 43, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

#### PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Add sections 9.110 and 9.110–1 thru 9.110–5 to read as follows:

#### 9.110 Reserve Officer Training Corps and military recruiting on campus.

##### 9.110–1 Definitions.

As used in this section—  
“Covered agency” means—

- (1) The Department of Defense;
- (2) Any department or agency for which regular appropriations are made in a Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act;
- (3) The Department of Homeland Security;
- (4) The National Nuclear Security Administration of the Department of Energy;
- (5) The Department of Transportation;

or

- (6) The Central Intelligence Agency.

“Institution of higher education” means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

##### 9.110–2 Authority.

This section implements 10 U.S.C. 983.

##### 9.110–3 Policy.

(a) Except as provided in paragraph (b) of this section, 10 U.S.C. 983 prohibits the covered agency from providing funds by contract to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

- (1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;
- (2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(4) Military recruiters from accessing certain information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name, address, and telephone listings.

(ii) Date and place of birth, educational level, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(b) The prohibition in paragraph (a) of this section does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (a) of this section; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

#### 9.110-4 Procedures.

If the Secretary of Defense determines, pursuant to the procedures at 32 CFR part 216, that an institution of higher education is ineligible to receive funds from a covered agency because of a policy or practice described in 9.110-3—

(a) The Secretary of Defense will create an active exclusion record for the institution in the System for Award Management; and

(b) A covered agency shall not solicit offers from, award contracts to, or consent to subcontracts with the institution.

#### 9.110-5 Contract clause.

The contracting officer shall insert the clause at 52.209-XX, Reserve Officer Training Corps and Military Recruiting on Campus, in solicitations and contracts that are expected to exceed the simplified acquisition threshold, with institutions of higher education, when using funds from a covered agency. The clause is not prescribed for solicitations and contracts using FAR part 12 for the acquisition of commercial items.

#### 9.405 [Amended]

■ 3. Amend 9.405(a) by removing from the first sentence “see 9.405-1(b)” and adding “see 9.405-1(a)(2)” in its place.

■ 4. Amend section 9.405-1 by—

■ a. Redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (2);

■ b. Adding a heading for paragraph (a);

■ c. Redesignating paragraphs (a)(2)(1) through (3) as paragraphs (a)(2)(i) through (iii); and

■ d. Adding new paragraph (b).

The additions read as follows:

#### 9.405-1 Continuation of current contracts.

(a) *Contractors debarred, suspended, or proposed for debarment.* \* \* \*

(b) *Ineligible contractors.* A covered agency, as defined in 9.110-1, shall terminate existing contracts and shall not place new orders or award new contracts with contractors that have been declared ineligible pursuant to 10 U.S.C. 983 (see 9.110, Reserve Officer Training Corps and military recruiting on campus), except for contracts at or below the simplified acquisition threshold or contracts for the acquisition of commercial items.

### PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Amend section 12.503 by revising paragraphs (a)(1), (2), (4), and (5), adding paragraph (a)(6), and revising paragraphs (a)(7) through (9) to read as follows:

#### 12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) \* \* \*

(1) 10 U.S.C. 983, Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies (see 9.110).

(2) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans’ employment reporting requirements (see 22.1302).

\* \* \* \* \*

(4) 41 U.S.C. 2303, Policy on Personal Conflicts of Interest by Contractor Employees (see subpart 3.11).

(5) 41 U.S.C. 3901(b) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).

(6) 41 U.S.C. 4706(d)(1) and 10 U.S.C. 2313(c)(1), GAO Access to Contractor Employees, Section 871 of Public Law 110-417 (see 52.214-26 and 52.215-2).

(7) 41 U.S.C. chapter 65, Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (see subpart 22.6).

(8) 41 U.S.C. chapter 81, Drug-Free Workplace (see 23.501).

(9) Section 806(a)(3) of Public Law 102-190, as amended by Sections 2091 and 8105 of Public Law 103-355, (10 U.S.C. 2302 note), Payment Protections for Subcontractors and Suppliers (see 28.106-6).

\* \* \* \* \*

### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 6. Amend section 13.005 by—

■ a. Removing paragraphs (a)(1) through (5);

■ b. Adding new paragraph (a)(1);

■ c. Redesignating paragraphs (a)(6) through (9) as paragraphs (a)(2) through (5);

■ d. Adding new paragraphs (a)(6) through (9);

■ e. Revising paragraphs (a)(10) and (11); and

■ f. Adding paragraph (a)(12).

The additions and revisions read as follows:

#### 13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

(a) \* \* \*

(1) 10 U.S.C. 983, Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies (see 9.110).

\* \* \* \* \*

(6) 22 U.S.C. 2593e (Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States).

(The requirement at 22 U.S.C. 2593e(c)(3)(B) to provide a certification does not apply.)

(7) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans’ employment reporting requirements (see 22.1302).

(8) 40 U.S.C. 3131 (Bonds statute). (Although the Bonds statute does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see 28.102) are still required if the contract exceeds \$35,000 (40 U.S.C. 3132).)

(9) 40 U.S.C. chapter 37 (Contract Work Hours and Safety Standards—Overtime Compensation).

(10) 41 U.S.C. 8102(a)(1) (Drug-Free Workplace), except for individuals.

(11) 41 U.S.C. 8703 (Kickbacks statute). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(12) 42 U.S.C. 6962 (Solid Waste Disposal Act). (The requirement to provide an estimate of recovered material utilized in contract performance does not apply unless the contract value exceeds \$150,000.)

\* \* \* \* \*

### PART 43—CONTRACT MODIFICATIONS

■ 7. Amend section 43.105 by adding paragraph (c) to read as follows:

**43.105 Availability of funds.**

\* \* \* \* \*

(c) In accordance with 10 U.S.C. 983, do not provide funds by contract or contract modification, or make contract payments, to an institution of higher education that has a policy or practice of hindering Senior Reserve Officer Training Corps units or military recruiting on campus as described at 9.110.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****52.209–XX [Added]**

■ 8. Add section 52.209–XX to read as follows:

**52.209–XX Reserve Officer Training Corps and Military Recruiting on Campus.**

As prescribed in 9.110–5, insert the following clause:

**Reserve Officer Training Corps and Military Recruiting on Campus (Date)**

(a) *Definitions.* As used in this clause—  
“Institution of higher education” means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

“Covered agency” means—

- (1) The Department of Defense;
- (2) Any department or agency for which regular appropriations are made in a

Department of Labor, Health and Human Services; and Education, and Related Agencies Appropriations Act;

- (3) The Department of Homeland Security;
- (4) The National Nuclear Security Administration of the Department of Energy;
- (5) The Department of Transportation; or
- (6) The Central Intelligence Agency.

(b) *Limitation on contract award.* Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents—

- (1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution (or any subelement of that institution);
- (2) A student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

- (i) Name, address, and telephone listings.

(ii) Date and place of birth, educational level, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(c) *Exception.* The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the institution has violated the contract in paragraph (b) of this clause—

(1) The institution will be ineligible for further payments under this and any other contracts with this agency and any other covered agency, except for contracts at or below the simplified acquisition threshold or contracts for the acquisition of commercial items; and

(2) The Government will terminate this contract for default for the institution’s material failure to comply with the terms and conditions of award.

(End of clause)

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