

# **DESKTOP ETHICS GUIDE FOR AIR FORCE MEMBERS AND EMPLOYEES March 1998 Edition**

**Prepared by:**

## **Air Force Materiel Command Law Office**

**Wright-Patterson Air Force Base, Ohio**

**Anthony J. Perfilio, SES, Director**

This guide was prepared by Mr. Mark Stone, AFMC Law Office, Wright-Patterson AFB OH (html conversion accomplished by WR-ALC/JA, Robins AFB, Georgia). It will be updated periodically. Comments or suggestions about the pamphlet may be sent to Mr. Stone at [stonem@clcsmt.pwpafb.af.mil](mailto:stonem@clcsmt.pwpafb.af.mil). Additional ethics information can be found at the AFMC Law Office's ethics website at: <http://www.afmc-pub.pwpafb.af.mil/HQ-AFMC/JA/lo/lojaf/>.

Introduction. This guide contains a summary of some of the key ethics rules from the Joint Ethics Regulation (JER), DoD 5500.7-R, and other regulations. It is designed to be useful and understandable to non-lawyers. The rules in this guide apply to officers, enlisted personnel and civilians (unless otherwise indicated). Although this guide contains a lot of information, you should still seek advice from your Ethics Counselor on specific situations.

Questions. Questions should be directed to your [servicing Legal Office](#).

### Table of Contents

[Conflicts of Interest](#)

[Disclosure of Information](#)

[Financial Disclosure Forms](#)

[Fundraising](#)

[Gifts from Outside Sources](#)

[Gifts to Superiors](#)

[Government Property](#)

[Non-Federal Organizations – Official Involvement](#)

[Non-Federal Organizations – Personal Involvement](#)

[Off-Duty Employment](#)

[Political Activities](#)

[Post-Government Employment](#)

[Travel](#)

### CONFLICTS OF INTEREST

-- There are two conflict of interest rules that apply to employees (both military and civilian): the criminal conflict-of-interest rule and the appearance-of-impartiality rule.

-- Criminal conflict-of-interest rule. This rule can be stated as follows. An employee may not participate (e.g. make a decision, give advice, make a recommendation) in a government matter, if any of the following has a financial interest in the matter:

- (1) the employee,
- (2) the employee's spouse,
- (3) the employee's minor child,
- (4) the employee's general partner,
- (5) a company or organization in which the employee is serving as an officer, director, trustee, general partner, or employee,
- (6) a company or organization with which the employee is negotiating for employment,  
OR
- (7) a company or organization with which the employee has an arrangement for prospective employment. [18 USC 208(a); JER 5-301]

-- Appearance-of-impartiality rule. This rule can be stated as follows. If an employee:

- (1) Is serving as an "active participant" (e.g. committee or subcommittee chairperson, or spokesperson) in a company or organization;

(2) Has (or seeks) a business, contractual or other financial relationship with a company or organization;

(3) Has served, within the last year, as an officer, director, consultant, general partner, agent, attorney, trustee, contractor or employee of a company or organization; OR

(4) Has a spouse, parent or dependent child, who is serving (or is seeking to serve), as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee of a company or organization,

then the employee should not participate in any particular government matter involving the company or organization, unless the employee's supervisor has first determined that the government's need to have the employee work on the matter **outweighs** the appearance concerns resulting from the employee's personal involvement with the company or organization. [5 CFR 2635.502]

-- Stock ownership. An employee may not participate in a government matter if the matter will have a direct and predictable effect on the financial interests of a company in which he (or his spouse or minor children) owns stock. [5 CFR 2635.402(a)] There is an exception if the stock owned by the employee (and his or her spouse and minor children) has an aggregate market value of \$5000 or less. [5 CFR 2640.202(a)]

### DISCLOSURE OF INFORMATION

There are several laws that restrict employees from releasing information. If you are asked by anyone (including former Air Force employees) to disclose government information, make sure any disclosure of information would not violate the following rules. These rules apply to officers, enlisted personnel and civilian employees.

-- Non-public information. Employees may not disclose "non-public information" to further the private interests of any individual, company or organization. [5 CFR 2635.703(a)] "Non-public information" means 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. [5 CFR 2635.703(b)]

-- Acquisition-related information. "A high level of business security must be maintained in order to preserve the integrity of the acquisition process." [FAR 5.401(a)] Employees participating in the acquisition process may not disclose: (1) information on plans that would provide undue or discriminatory advantage to private or personal interests, (2) information received in confidence from an offeror, (3) information otherwise requiring protection under the Freedom of Information Act or the Privacy Act, or (4) information pertaining to internal agency communications (e.g., technical reviews, contracting authority or other reasons, or recommendations referring thereto). [FAR 5.401(b) & (c)]

-- Advance procurement information. Information concerning a proposed acquisition may not be released in a manner that gives one prospective bidder an unfair advantage over another. [See FAR 14.211] Also, when acquisition-related information is communicated to industry, "[a]ll potential industry sources must be treated fairly by providing equal access to information to all known potential offerors." [DOD Instruction 5000.2/Air Force Supplement, Part 5, Section A, para. 3g(3)]

-- Information related to a source selection. Employees may not disclose contractor bid or proposal information or source selection information. [41 USC 423(a), (f)(1), (f)(2); FAR 3.104-4(a)] [Note: This is information related to a specific source selection.]

-- Trade Secrets Act. The Trade Secrets Act states that, unless authorized by law, an employee may not publish or disclose any information (1) that comes to him in the course of his employment or official duties, and (2) that concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. [18 USC 1905]

### FINANCIAL DISCLOSURE FORMS

-- Standard Form 278 (Public Financial Disclosure Report)

-- Must be filed by General Officers, SES, and SES-equivalents. [JER 7-200a]

-- Must be filed:

-- Within 30 days after one becomes General Officer, SES, or SES-equivalent,

-- Each year by 15 May, and

-- Within 30 days after leaving government service. [JER 7-203]

-- Late SF 278 filers are subject to a \$200 penalty. [JER 7-203g]

-- OGE Form 450 (Confidential Financial Disclosure Report)

-- Must be filed by the commanders of all Air Force installations, bases, air stations, and activities (unless they file a Standard Form 278). [JER 7-300a(1)]

-- Must be filed by employees who are Colonel/GM-15/GS-15 or below whose position requires them to participate personally and substantially through decision-making or the 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. [JER 7-300a(3)(a)]
- Does not have to be filed by employees who are not employed in contracting or procurement and who have decisionmaking responsibilities regarding expenditures of less than \$2500 per purchase and less than \$20,000 cumulatively per year. However, an employee who falls within this exclusion can be required by his supervisor to file the form (if the supervisor is a commissioned officer or a civilian GS-12 or above). [JER 7-300b(2) & 1-202]
- Must be filed:
  - Within 30 days after entering a position that requires the filing of an OGE Form 450, and
  - Each year by 31 October. [JER 7-303] [Note: The OGE Form 450 must be filled out with information that is current as of 30 September, so the form should not be signed before 1 October.]

-

### FUNDRAISING

- Expressing preference for contribution to charity in lieu of gift for speech. A DoD employee who will be making a speech to a group as part of his official duties may not inform the group that he would prefer the group to make a donation to a charity rather than give the employee a gift or memento in connection with the speech. [DoD/GC Ltr, 20 Feb 96; OpJAGAF 1995/21, 1 Mar 95]
- Private organizations. Fundraising events by AF-sponsored private organizations, such as the CGOC, must comply with the AFI on private organizations (AFI 34-223).
- Support for "unofficial fundraising". The following is a point paper on this subject.

-

### RULES ON SUPPORT OF "UNOFFICIAL FUNDRAISING" EVENTS

If ALL funds raised by an event or effort will go to CFC, an OPM-approved emergency or disaster appeal, Air Force Assistance Fund, Army Emergency Relief, or Navy-Marine Corps Relief Society, the event or effort is considered to be "official fundraising" (i.e. it is official business). But if ANY PART of the funds will go to an organization or effort other than these five, the event or effort is "unofficial fundraising." [See DOD/GC Ltr, 14 Mar 96, para. 2; 5 CFR 2635.808(b)] Employees **may** do the following in connection with an "unofficial fundraising" event or effort.

-- Participate in a personal capacity, if they act exclusively outside the scope of their official position. [JER para. 3-300a]

-- Use official channels (e.g., letters or e-mail) to notify other employees of the event or effort, if the notification does not appear to be an endorsement of the event or effort. [JER para. 3-208 & 3-209; 5 CFR 2635.702(c); DoD/GC Ltr, 28 May 96]

-- Use e-mail to disseminate information about approved unit fundraising activities. [AFMAN 37-126, AFMC Supplement 1, 30 Aug 96, para. 8.3.3]

-- Attend the event in an official capacity, if the employee will give an "official speech" at the event (the DoD Standards of Conduct Office says official speeches at unofficial fundraising events are discouraged). [5 CFR 2635.808(a)(2) & (3); DoD/GC Ltr, 14 Mar 96, para. 2a.; DoD/GC Ltr, 18 Aug 97]

-- Attend the event in a personal capacity, provided that, as far as the employee knows, the sponsoring organization will not use employee's attendance to promote the event. [5 CFR 2635.808(a)(2)]

Employees **may not** do the following in connection with "unofficial fundraising" events or efforts.

-- Use official time in support of the event or effort (including using official time to serve on a planning committee, advisory board, or oversight board). [5 CFR 2635.705(a); AFI 36-3101, 8 Jul 94, Table 1, Column C & Footnote 1] Exception: Official time may be used if the employee will give an official speech at the event.

-- Use government resources (e.g., funds, equipment, vehicles, supplies, postage) to support the event or effort. [5 CFR 2635.704(a); 5 CFR 2635.808(c) (Ex. 2)] Exceptions: (1) official channels (e.g., memos or e-mail) may be used to notify other employees of fundraising events by non-Federal organizations, and (2) e-mail may be used to disseminate information about approved unit fundraising activities.

-- Officially endorse or appear to endorse the event or effort. [JER para. 3-210a] Exception: Employees may officially endorse fundraising events by organizations composed primarily of Air Force employees or their dependents, when fundraising

among their own members, for the benefit of welfare funds for their own members or their dependents (examples: fundraiser for unit holiday party, or fundraiser for unit fund for flowers & departing gifts). [JER para. 3-210a(6)]

-- Use, or allow others to use, their official title, position, or organization name, in connection with the event or effort. Note: Military members may use their military rank and branch of service in connection with participation in unofficial fundraising activities. [5 CFR 2635.808(c)(2) (& Example 3 thereto); JER para. 3-300a(1)]

-- Participate actively and visibly, in an official capacity, in the promotion, production or presentation of an event (e.g., serving as honorary chairperson, host or emcee; sitting at the head table; standing in a reception line; or engaging in public speaking (except for an official speech)). [5 CFR 2635.808(a)(2)]

-- Ask or allow subordinates to use their official time in support of the event or effort. [5 CFR 2635.705(b); JER para. 3-305b]

-- Solicit funds or other support (e.g., personal time) from subordinates, in connection with the event or effort. [5 CFR 2635.808(c)(1)]

-- Solicit personnel junior in rank or grade to purchase items (such as tickets), in connection with the event or effort. [JER para. 2-205 & 5-409]

-- Solicit funds or other support from a company that the employee knows is a DoD contractor. [5 CFR 2635.808(c)(1)]

-

### GIFTS FROM OUTSIDE SOURCES

-- General rule against accepting gifts. DoD employees generally may not accept gifts that are offered because of their official position, or that are from a "prohibited source" (e.g., a DOD contractor). [5 CFR 2635.202(a)] However, there are several exceptions.

-- Exceptions. For example, it is permissible for employees in DoD to accept:

-- Modest items of food and drink that are not part of a meal (e.g. coffee, donuts, soft drinks, hors d'oeuvres). [5 CFR 2635.203(b)(1)]

-- Items with little intrinsic value that are intended solely for presentation (such as greeting cards, plaques, certificates and trophies). [5 CFR 2635.203(b)(2)]

-- A travel payment (e.g. plane ticket) from a non-Federal source, if you will attend a meeting or similar function in an official capacity & your travel-approving authority & JA approve in advance. Payments over \$250 must be reported. [JER 4-101]

-- Gifts of up to \$20 in value per occasion (not cash), as long as the total value of the gifts from one source (e.g. one company) does not exceed \$50 in a calendar year. [5 CFR 2635.204(a)] This is called "the \$20 / \$50 rule."

-- Free attendance for you and your spouse/guest at a "widely attended gathering" (e.g., a dinner or conference), if certain conditions are met, including that your attendance will further Air Force programs or operations. [5 CFR 2635.204(g)]

-- A gift from a foreign government if the value (in the United States) is \$245 or less. A gift with a value over \$245 belongs to the Air Force. [AFI 51-901]

-- If your commander or civilian director approves your attendance at an aircraft rollout (or similar) ceremony, you may accept: (1) free attendance at a dinner, lunch and/or reception in connection with the ceremony (if not lavish or extravagant), and (2) gifts or mementos in connection with the ceremony, if the aggregate retail value of the gifts or mementos does not exceed \$100 per family, and the cost of them is not borne by the Federal Government. [JER 2-300c]

-- An employee who will speak at an event in an official capacity may accept free attendance at the event (including a meal). If the event is more than one day long, can accept free attendance only for the day of the speech. [5 CFR 2635.204(g)(1)]

-- Soliciting gifts. DoD employees may not solicit gifts from DoD contractors or other non-Federal organizations (such as local businesses). [5 CFR 2635.203(a)(1) & (c)(2)]

### GIFTS TO SUPERIORS

-- General rule. Employees generally may not give gifts to their superiors. However, there is an exception for gifts on an occasional basis and special occasion gifts.

-- Gifts on an occasional basis. An employee may give to his superior, on an occasional basis, any of the following:

-- An item or items with a value of \$10 or less (other than cash);

-- Food and refreshments that are shared in the office among several employees;

-- Personal hospitality provided at a residence, of the type and value the employee normally provides to personal friends (e.g. inviting the boss home to dinner);

-- An item when the employee receives personal hospitality from the boss, of the value normally given on such occasions (e.g. when boss invites you to dinner); or

-- Leave transferred under Voluntary Leave Transfer Program (w/ some exceptions).



[Note: Employees may not solicit contributions for a "gift on an occasional basis." However, employees *may* solicit contributions for food and/or refreshments that will be consumed by everyone in the immediate office to mark the occasion for such a gift.]

-- Special occasion gifts. This term means gifts at the end of the superior-subordinate relationship (retirement, separation, PCS), or gifts for an infrequent occasion of personal significance (marriage, illness, birth or adoption). The rules for such gifts are:

-- An individual subordinate may give a gift that is "appropriate to the occasion" (there are no dollar limits).

-- If the gift is from a group containing one or more subordinates (a "donating group"), the following rules apply:

-- The gift(s) from a donating group cannot exceed a total of \$300 in value.

-- Employees may not be asked to contribute more than \$10 toward the gift(s).

-- The \$10 and \$300 limits do not apply to the food, refreshments or entertainment at the event where the group gift is given. For example, employees may each contribute \$14 (\$10 for the gift and \$4 for the retirement dinner).

-- No limit on the number of donating groups, but number must be reasonable.

-- Donating groups may not "pool" their money to buy a gift over the \$300 limit (e.g., two groups with \$250 may not combine their money to buy a \$500 gift).

-- An individual must not contribute to the gift of more than one donating group. If this happens, the two groups are then considered to be one donating group.

-- You may solicit contributions from other employees for special occasion gift. You may also suggest a particular dollar amount. But if you suggest a dollar amount, you must tell people "they are free to give less or nothing at all."

-

#### GOVERNMENT PROPERTY

-- Business cards. Government resources may not be used to buy or create business cards (except for professional recruiters). [See AFI 65-601, Vol. 1, para. 4.36; AFI 37-162, para. 1.12; AFI 34-201, para. 4.2.17; AFI 65-603, para. 5.5] This rule also applies to "organizational business cards," i.e. cards that do not have the name or title of any individual on them. [68 Comp. Gen. 467, B-231830, 5 Jun 89]

-- E-mail. Employees (both military and civilian) may use government e-mail systems to transmit personal communications if the employee's supervisor (who is a commissioned officer or civilian GS-12 or above) finds that all the following criteria apply.

- (1) The communications do not adversely affect the performance of official duties.
- (2) The communications are of reasonable duration and frequency, and whenever possible, are made during the employee's personal time, such as after duty hours or lunch periods.
- (3) The communications serve a legitimate public interest (such as enhancing the professional skills of the employee).
- (4) The communications do not put Federal Government communications systems to uses that would reflect adversely on DoD or the Air Force.
- (5) The communications do not overburden the communications system.
- (6) The communications create no significant additional cost to DoD or the Air Force. [AFI 33-119, para. 3.5.1.2; JER para. 2-301a]

However, government e-mail systems may not be used for (and a supervisor may not approve) any of the following practices:

- (1) Distributing copyrighted materials in violation of the copyright laws.
- (2) Sending or receiving e-mail for commercial or personal financial gain.
- (3) Intentionally misrepresenting your identity or affiliation.
- (4) Sending harassing, intimidating, abusive, or offensive material to or about others that violates Air Force standards of behavior. This includes, but is not limited to, humor considered in poor taste or offensive, political or religious lobbying, and pornographic material.
- (5) Using someone else's identity (userID) and password without proper authority.
- (6) Causing congestion on the network by such things as the propagation of chain letters, broadcasting inappropriate messages to lists or individuals, or excessive use of the data storage space on the e-mail post server. [AFI 33-119, para. 3.5.3; JER para. 2-301a(2)(d)]

-- Postage. On the next page is an opinion by the HQ USAF General Law Division on the rules for using appropriated fund postage. [OpJAGAF 1995/103, 28 Nov 1995]

HQ USAF/JAG Letter on Use of Appropriated Fund Postage, 28 Nov 95

Appropriated Fund Postage

Based on recent questions regarding the use of appropriated fund postage, it is probably time to review the rules in this area. The general rule for use of appropriated fund postage is that it can only be used for exclusively official U. S. Government business. The most common rules are set out below.

**Invitations to Official Social Events:** Use for invitations to official social events is authorized with the caution that the official nature of the event shall be clearly stated or readily evident on the face of the invitation. Appropriated fund postage cannot be used for purely social obligations, even when the obligations may have arisen out of an individual's official position.

**Congratulatory Letters and Condolences:** Use for personal congratulatory letters or condolences from one individual to another in a private personal capacity is not authorized. This does not preclude heads of staff agencies and commanders from fulfilling their official morale and esprit de corps obligations to members in their organizations or persons in their areas of technical responsibility on appropriate occasions. Please note that the exception is for "heads of staff agencies and commanders," and does not apply to other personnel. For example, the HQ USAF/DP and AFMC/CC could send congratulatory letters using appropriated fund postage to the AFMC/DP upon his selection for promotion. On the other hand, letters of congratulation from another MAJCOM commander or the head of another Air Staff functional area would not meet the test and the use of appropriated fund postage would not be authorized.

**Retirement Announcements:** Official announcements of official retirement or change of command ceremonies are authorized and, as a further limited exception, the date, time and location of a reception related to the retirement or change of command can be included so long as there is no additional cost to the government.

**Other Personal Correspondence:** The use of appropriated fund postage for personal mail, holiday and birthday greetings, retirement announcements, completed employment applications, resumes, and similar materials is prohibited.

There are other specific rules and exceptions, particularly in the areas of international organizations, overseas mail and private organizations. The specific rules are set out in Air Force DOD 4525.8-M/AF Supplement, 18 April 1994, *Official Mail Manual*. When in doubt, apply the general rule that if it is personal rather than official, appropriated fund postage should not be used.

NON-FEDERAL ORGANIZATIONS -- OFFICIAL INVOLVEMENT

-- Participating in a non-Federal organization in your official capacity. Employees may not participate, in an official capacity, in the management (e.g., as officer, director or trustee) of a non-Federal organization without approval by the DOD General Counsel (DoD/GC). [JER 3-202] However, DoD/GC has advised that, to prevent conflicts of interest from arising, they will not approve service in a management position of a non-Federal organization in an official capacity. [See HQ USAF/JAG Ltr, 28 Nov 97] However, an employee may serve, in an official capacity, as a "DOD Liaison" to a non-Federal organization with the written approval of his commander. [JER 3-201a]

-- Providing logistical support to events. Employees may not provide support to non-Federal organizations unless authorized by law or regulation. [JER 2-301] One example of permissible support is that commanders may provide logistical support to an event sponsored by a non-Federal organization if the seven criteria of JER paragraph 3-211 are met.

-- Endorsements & notifications. Employees may not endorse non-Federal organizations, or their products, services, events or enterprises (including conferences and golf tournaments). [5 CFR 2635.702(c)] Both express and implied endorsements are prohibited. [See JER 3-209] However, employees may use official channels (e.g., letter, fax or e-mail) to notify other employees of events of common interest that are sponsored by non-Federal organizations. [JER 3-208; DoD/GC Ltr, 28 May 96, subj: Endorsement vs. Information Memoranda]

-- Defense contractor advisory boards. Employees (both military and civilian) may not serve, in an official capacity, in any way as advisors to defense contractors or other entities that seek to do business with DoD. [DoD/GC Ltr, 5 Aug 96; HQ USAF/JAG Ltr, 9 Aug 96] This would include serving as an individual advisor, as well as serving on an advisory committee or advisory board.

-- Membership fees. O&M funds may be used to pay membership fees in a professional organization only if: (1) the membership is in the name of the Air Force organization, and (2) the membership will benefit the organization's mission. [AFI 65-601, Vol. 1, para. 4.44; JER 3-201b]

-- Membership drives. The rules on providing official support to membership drives of non-Federal organizations are covered in a 22 Mar 94 HQ USAF/CV memo and a 23 Mar 94 HQ USAF/JAG message. You can obtain these from your servicing Legal Office. They are also available on the ethics website of the AFMC Law Office. The address of this site is: [www.afmc.wpafb.af.mil/HQ-AFMC/JA/lojaf/ethics.htm](http://www.afmc.wpafb.af.mil/HQ-AFMC/JA/lojaf/ethics.htm)

## NON-FEDERAL ORGANIZATIONS -- PERSONAL INVOLVEMENT

-- Participating in a non-Federal organization in your personal capacity. Employees generally may participate in a non-Federal organization in a personal capacity. One

exception is that an employee may not serve, in a personal capacity, as an officer, member of the Board of Directors, or in any other similar position that is offered to the employee because of his DoD assignment or position. [JER 3-301]

-- Using your government title and organization name in connection with personal activities. The rules are as follows. [JER 3-300a; DoD/GC Ltr, 28 Feb 95]

-- Civilians. Civilians may not use (or permit the use of) their official title, position, organization name, office symbol, or military department, in connection with their involvement, in a personal capacity, in the activities of a non-Federal organization. Civilians may use (and permit the use of) only their name and educational title (e.g., Ph.D.) in an organization's materials (e.g., letterhead).

-- Military. Military members may not use (or permit the use of) their official title, position, organization name, or office symbol, in connection with their involvement, in a personal capacity, in the activities of a non-Federal organization. However, they may use (and permit the use of) their military grade and their military department in connection with such activities.

-- Receiving compensation for service as an officer or board member. General/Flag Officers may not receive compensation for serving as an officer or member of the board of any non-Federal entity (other than professional associations and closely-held family entities). Compensated service in the management of closely-held family entities or professional associations must be approved by the applicable Service Secretary. [DepSecDef Ltr, 23 Jul 96; HQ USAF/JAG Ltr, 30 Jul 96]

-- Representation before Federal agencies. Officers and civilian employees may not represent anyone (including individuals and companies) before any Federal agency. [18 USC 203 & 205] The ban applies to both compensated and uncompensated representation. It does not apply to enlisted personnel. [JER 5-401 & 5-403a] It does not apply to making wholly routine requests that do not involve any potential for controversy or dispute (such as a request to use a meeting room). [Department of Justice Memo, 27 Jan 94, page 10, fn. 55 & 58] Finally, the ban does not apply to the uncompensated representation of a non-profit organization under certain conditions, including: (1) a majority of the organization's members are current officers or employees of the U.S. or the District of Columbia, or their spouses or dependent children, and (2) representation of the organization is not inconsistent with the faithful performance of the person's official duties. [18 USC 205(d)]

-

### OFF-DUTY EMPLOYMENT

-- Off-duty employment. DoD employees (military & civilian) must obtain prior written approval for off-duty employment if: (1) they are required to file a financial disclosure report (SF 278 or OGE Form 450), and (2) the employment is with a DoD contractor.

[JER para. 2-206] Approval is obtained by completing the AF Form 3902. Medical personnel must also comply with off-duty employment rules in AFI 44-102, para. 3.52.

AFMC Instruction 51-201 says all AFMC personnel must obtain prior written approval for off-duty employment. This requirement applies to AFMC military personnel, AFMC civilians who are not part of a bargaining unit, and AFMC civilians who are part of a bargaining unit if the requirement has been negotiated with the union. If the Instruction has not been negotiated with the union, it does not apply to the union's members. On 9 Jan 98, negotiation of the Instruction was completed with the American Federation of Government Employees (AFGE) Council 214. Thus, it now applies to the approximately 40,000 AFMC employees who are members of this union.

-- Compensation for teaching, speaking or writing. Air Force employees (both military and civilian) may not accept compensation for teaching, speaking or writing in their personal capacity, if any of the following five conditions applies.

-- The subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD or the Air Force.

-- The subject of the teaching, speaking or writing deals in significant part with any matter to which the employee presently is assigned, or to which the employee was assigned during the previous one-year period.

-- The circumstances indicate that the invitation to engage in the teaching, speaking or writing was extended to the employee primarily because of his or her official position, rather than his or her expertise on the particular subject matter.

-- The invitation to engage in the teaching, speaking or writing (or the offer of compensation for the activity) was extended to the employee, directly or indirectly, by a person (or company) who has interests that may be affected substantially by performance or non-performance of the employee's duties.

-- The information conveyed through the teaching, speaking or writing draws substantially on ideas or official data that are "nonpublic information" (as defined at 5 CFR 2635.703). [5 CFR 2635.807(a)]

If certain conditions are met, the compensation ban does not apply to:

-- Teaching courses that require multiple presentations. [5 CFR 2635.807(a)(3)]

-- Teaching, speaking or writing on a subject within the member or employee's discipline or inherent area of expertise based on his or her educational background or experience. [5 CFR 2635.807(a)(2) (note thereto)]

## POLITICAL ACTIVITIES

-- Air Force members. The rules on political activity by Air Force members are found in AFI 51-902, *Political Activities by Members of the US Air Force*, 1 Jan 96. Paragraph 3 of the AFI has a list of 20 types of political activity that are prohibited. Paragraph 4 of the AFI contains a list of nine types of political activity that are permitted. This Air Force Instruction can be found on the ethics website of the AFMC Law Office. The address of this site is: [www.afmc.wpafb.af.mil/HQ-AFMC/JA/lojaf/ethics.htm](http://www.afmc.wpafb.af.mil/HQ-AFMC/JA/lojaf/ethics.htm)

-- Civilian employees. There are two sets of rules on political activity by civilian employees. The rules are based on a Federal law called the Hatch Act. One set of rules (the more restrictive rules) applies to career members of the Senior Executive Service (SES). This set of rules also applies to the civilian employees of 14 specified Federal agencies (but not including the Air Force). The ethics website of the AFMC Law Office has a six-page point paper that discusses this set of rules in detail.

The other set of rules (the less restrictive rules) applies to all Air Force civilian employees in the grade of GM/GS-15 or below. The ethics website of the AFMC Law Office has a nine-page point paper that discusses this set of rules in detail.

There are some rules on political activity that apply to both career SES members and civilian employees GM/GS-15 and below. For example, the following rules apply to both groups of civilian employees (i.e., these rules apply to all civilian employees).

-- On duty. An employee may not engage in political activity while the employee is on duty. [5 USC 7324(a)(1); 5 CFR 734.306(a)(1); 5 CFR 734.406(a)(1)]

-- In uniform. An employee may not participate in political activities while he or she is wearing a uniform, badge or insignia that identifies the employing agency or instrumentality or the position of the employee. [5 USC 7324(a)(3); 5 CFR 734.306(a)(2); 5 CFR 734.406(a)(2)]

-- Government offices. An employee may not engage in political activity 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. [5 USC 7324(a)(2); 5 CFR 734.306(a)(3); 5 CFR 734.406(a)(3)]

-- Government vehicles. An employee may not participate in political activities while using a Government-owned or leased vehicle, or while using a privately-owned vehicle in the discharge of official duties. [5 CFR 734.306(a)(4); 5 CFR 734.406(a)(4)]

## POST-GOVERNMENT EMPLOYMENT

### RESTRICTIONS ON SEEKING EMPLOYMENT

-- If you have duties involving a company. If an employee is seeking employment from a company, the employee may not participate personally and substantially (through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise) in any government matter (e.g., contract, source selection, claim, sale of asset) in which the company has a financial interest. [18 USC 208(a); 5 CFR 2635.604(a)] If an employee has duties involving a company, and he wants to seek employment with the company, he must be disqualified from such duties before he begins to seek employment with the company (i.e. before the resume is sent or the first conversation about employment has occurred with a representative of the company).

The disqualification must be in writing. [JER ¶ 2-204c] Disqualification must be approved by one's supervisor. Supervisors are not required to approve any disqualification from duties. If an employee's supervisor refuses to approve disqualification, the employee will be prohibited from seeking employment with the company for as long as the employee continues to have duties involving the company. The format for the disqualification letter is attached. A disqualification letter can disqualify the employee from duties involving one company, or many companies.

-- If you do not have duties involving a company. If you want to seek employment with a company, and you do not have any duties involving that company, you are not required to obtain a written disqualification letter. [5 CFR 2635.604(b), (c)] However, once you begin seeking employment with the company, you may not perform any duties involving matters in which the company has a financial interest. [18 USC 208]

-- Termination of disqualification. If your employment discussions with a company do not lead to a job, your disqualification from duties involving the company can be terminated. [JER ¶ 2-204d] However, your supervisor has the right to determine that, for appearance purposes, you should not immediately resume duties involving a company that you were recently discussing employment with. [5 CFR 2635.606(b)] If you got a disqualification letter, but never sought employment with a company, you may end the disqualification at any time. If you got a disqualification letter and did seek employment with a company (by having discussions or giving a resume), you may not end the disqualification and resume duties involving the company unless: (1) either you or the company has rejected the possibility of employment and all employment discussions have ended, or (2) two months have passed since you sent an unsolicited resume or employment proposal to the company, and you have received no indication of interest from the company. [5 CFR 2635.603(b)(2)]

-- Duty to report certain employment contacts. The Procurement Integrity Act states that if an employee who is participating personally and substantially in a procurement contacts, or is contacted by, a bidder or offeror in that procurement regarding possible employment for that employee, the employee must do two things. First, the employee must promptly report the contact in writing to the employee's supervisor and to the designated agency ethics official (or designee). Second, the employee must either reject the possibility of employment, or disqualify himself from further personal and substantial



participation in the procurement (until the employee has been authorized to resume participation in the procurement). [41 USC 423(c)]

## OTHER RULES RELATED TO SEEKING EMPLOYMENT

-- Permissive TDY. CONUS-based Air Force members who will be retiring are authorized up to 20 days of permissive TDY for "retirement relocation activity (such as job or residence search)." [AFI 36-3003, 1 Mar 97, Table 5, Rule 3]

-- Interviewing expenses. An employee may accept reimbursement from a prospective employer for meals, lodging, transportation, and other benefits in connection with bona fide employment discussions, as long as: (1) the employee does not have duties that can affect the interests of the prospective employer (if so, the employee must first become disqualified from performing duties involving the company), and (2) the benefits the employee receives are "customarily" provided by the prospective employer to the people being interviewed (i.e. the benefits you receive are not more extravagant than those received by others competing for the position). [5 CFR 2635.204(e)(3)]

-- Information. Employees may not disclose "non-public information" to companies with which they are seeing employment. [5 CFR 2635.703(a); JER para. 8-400b]

-- After accepting the job. If an employee has an employment arrangement with a company, he or she may not participate personally & substantially in any government matter (e.g. contract, source selection, claim, sale of asset) in which the company has a financial interest. [18 USC 208(a); 5 CFR 2635.606(a)] This ban lasts until the employee leaves Federal service (or until the employment arrangement is canceled).

-- Employment during terminal leave. If an Air Force member is required to obtain prior written approval of off-duty employment (see the section on this subject above), the requirement also applies to employment during terminal leave.

-- Representation during terminal leave. Military officers and civilian employees generally may not represent individuals, companies or organizations before any Federal agency. [18 USC 203 & 205; JER para. 5-401 & 5-403] This rule applies to officers on terminal leave. It does not apply to enlisted personnel. [18 USC 202(a)]

## POST-GOVERNMENT EMPLOYMENT RULES

1-year compensation ban. Employees who serve in any of seven positions or make any of seven decisions on a contract over \$10 million (\$10M) may not accept compensation from the contractor for 1 year. The seven positions are: Procuring Contracting Officer, Source Selection Authority, Source Selection Evaluation Board member, chief of a financial or technical evaluation team, Program Manager, Deputy Program Manager, or Administrative Contracting Officer. The seven decisions are:

- (1) Decision to award a contract over \$10M.
- (2) Decision to award a subcontract over \$10M.
- (3) Decision to award a modification over \$10M of a contract, or a modification over \$10M of a subcontract.
- (4) Decision to award a task order or delivery order over \$10M.
- (5) Decision to establish overhead or other rates applicable to a contract or contracts that are valued over \$10M. (6) Decision to pay or settle a contract claim over \$10M.
- (7) Decision to approve issuance of a contract payment or payments over \$10M.

Lifetime representation ban. Military officers and civilian employees who participate personally and substantially in a particular government matter (e.g. contract, source selection, claim, sale of asset) are prohibited for life from representing the contractor (or any other third party) before the Air Force or any other Federal agency, in connection with that contract or other matter. [18 USC 207(a)(1)] The ban does not apply to enlisted personnel. Behind the scenes assistance to the contractor (or other party) is permitted.

2-year representation ban. Military officers and civilian employees who have a contract or other particular matter under their official responsibility during their last year in the government are prohibited, for 2 years, from representing the contractor (or any other third party) before the Air Force or any other Federal agency, in connection with that contract or matter. [18 USC 207(a)(2)] The ban does not apply to enlisted personnel. Behind the scenes assistance to the contractor (or other party) is permitted.

1-year no contact rule. General Officers, and SES who are ES-6 or ES-5, may not, for one year after retirement, make any communication to, or appearance before, any AF employee, with the intent to influence that employee, on behalf of any third person, in connection with any matter on which the third person seeks official action by the AF. [18 USC 207(c)]

1-year ban on advising or representing foreign entities. General Officers, and SES who are ES-6 or ES-5, may not, for 1 year after retirement: (1) represent a foreign entity before any US Govt. agency with intent to influence a decision by that agency, or (2) aid or advise a foreign entity with intent to influence a decision by a US Govt. agency. "Foreign entity" means a foreign govt. or a foreign political party. [18 USC 207(f)]

-

TRAVEL

-- Frequent flyer miles. Miles earned through government travel may be used to obtain a ticket that is used in government travel, or an upgrade to business class on government travel (not first class), but not for any other purpose. [JFTR, Vol. 1, ¶ U2010(B)(6)]

-- Summary of rules. The following is a policy letter issued on 4 Feb 98 by The Judge Advocate General (TJAG) of the Air Force. It contains a summary of the rules that apply to Air Force personnel who participate in frequent flyer programs.

## TJAG POLICY NUMBER 8

### SUBJECT: Frequent Flyer Programs

1. This policy outlines the rules with which all judge advocates should be familiar regarding Air Force personnel who participate in frequent flyer programs (FFP) sponsored by commercial airline carriers.
2. The following rules are applicable to Air Force members and employees enrolled in FFPs who accumulate "bonus" mileage and other benefits while performing official government travel:
  - a. Members and employees are obligated to turn in to the government any gift, gratuity, or benefit received from private sources incident to the performance of official duty. That such benefits are nontransferable or unavailable to the government is irrelevant.
  - b. A bonus or discount ticket received by a member or employee as a result of trips paid for by appropriated funds, while on official travel, is the property of the government.
  - c. Access to VIP lounges, free food or drink offered to individuals, due to their status as a member of FFPs or given to all passengers, may be accepted provided the "benefits" are not obtained by "cashing in" mileage credits earned on government travel. In addition, "on-the-spot" upgrades may be accepted provided they are not offered because of one's official position or through redemption of mileage credits.
  - d. Mileage credits may be accrued for official travel by Air Force personnel who desire to participate in frequent flyer programs on a voluntary basis. Under no circumstances may credits earned with official travel be used for personal travel, which includes permissive TDY. Credits earned during official travel are a result of government expenditures, and therefore, may only be redeemed to defray official travel costs.
  - e. Members and employees must travel by coach class, unless other accommodations are approved in advance of air travel in accordance with applicable travel regulations. Mileage credits accumulated while traveling on official business may not be used to upgrade to first class air accommodations, although, when on official travel, such mileage credits may continue to be used to upgrade to premium class, other than first class accommodations. However, frequent flyer mileage credits earned while on official business may never be used to upgrade to any class while traveling on personal trips.

Note: The prohibition on first class air travel also applies when transportation expenses are accepted from a non-Federal source under 31 U.S.C. 1353.

f. If a member or employee on official business is voluntarily bumped off a flight, the individual may keep the compensatory money or complimentary tickets; however, the person must pay any added expenses and take regular leave in case of delay. Such delay, of course, cannot interfere with the TDY mission.

g. If a member or employee is involuntarily "bumped," delayed, or otherwise inconvenienced by the airline from a scheduled flight and accepts money, complimentary tickets, or lodging certificates from the airline, the traveler must turn in such items received with his TDY voucher, and the government pays for any additional per diem associated with the delay. This is true whether or not the government incurs additional subsistence expense or the traveler reports for duty at the same time as originally intended.

h. Lodging certificates provided to a member or an employee on official TDY/travel by hotels that overbook also belong to the government.

3. In those rare instances when a FFP participant may have unintentionally commingled personally earned mileage with official business travel mileage, the participant should not use any of the mileage for personal use, unless he or she can clearly establish that the portion of mileage used was not earned on official government business. For those who elect to participate in FFPs for both personal and business travel, the simple solution is to establish two separate accounts with the respective airlines.

4. Members who use personal credit cards on official government travel and accrue mileage based upon use (such as to pay for lodging on a TDY) may keep those mileage points for personal use.

[Return to Ethics Page](#) / [Home](#)