

(v) The event is of interest and benefit to the local civilian or military community as a whole;

(vi) 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;

(vii) The use is not restricted by other statutes or regulations; and

(viii) 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 the DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

(2) 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) 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.

(m) *Relationship governed by other authorities.* In addition to the provisions of this section, certain organizations have special relationships with the DoD or its employees specially recognized by law or by other directives. The organizations include:

(1) Certain banks and credit unions (32 CFR part 231);

(2) United Service Organization (DoD Directive 1330.12<sup>9</sup>);

(3) Labor organizations (5 U.S.C. Chapter 71; DoD 1400.25–M<sup>10</sup>, Chapter 711);

(4) Combined Federal Campaign (Executive Order 10927, 26 FR 2383, 3 CFR, 1959–1963 Comp., p. 508) DoD Directive 5035.1;

(5) Association of Management Officials and Supervisors (DoD Instruction 5010.30<sup>11</sup>);

(6) 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).

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20029, Apr. 24, 1995]

#### § 84.10 Personal participation in non-Federal entities.

(a) *Participation—(1) Fundraising and other activities.* Subject to other provisions of this part, 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 CFR part 950 and Executive Order 12353. These activities may be further limited by Federal Government building and grounds regulations.

(2) *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

<sup>9</sup>See footnote 4 to § 84.7(d).

<sup>10</sup>Written request should be forwarded to: OASD(P&R)/CPP/EEO, room 3D269, Pentagon, Washington, DC 20301.

<sup>11</sup>See footnote 4 to § 84.7(d).

presented at such association or society events or to be published in professional journals, when:

(i) The participation or paper is related to the DoD employee's official position or to DoD functions, management or mission; and

(ii) 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 recognitions of the DoD employee's competence;

(iii) The participation or preparation of the paper does not interfere with the performance of official DoD duties.

(3) *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.

(4) *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 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(b) *Membership and management.* DoD employees may become members and 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 § 84.9(k)(1), 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.

(c) *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 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(d) *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.

(e) *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.

(f) *Use of Federal Government resources—(1) Authorized uses.* Other than Federal Government time authorized in paragraphs (a)(2) and (a)(3) of this section, Federal Government assets, employees, or property may not be used in support of personal participation in non-Federal entities, except as follows:

(i) 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 § 84.7(b) and 41 CFR 201-21.6;

(ii) 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.

(2) *Prohibited uses.* (i) [The following is a General Order] 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 paragraph (a)(1) of this section [end of General Order].

(ii) [The following is a General Order] For the same reasons, copiers and other duplicating equipment may not be used for unofficial activity in support of non-Federal entities [end of General Order].

(g) *Prior approval of outside employment and business activities.* (1) 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 (g)(2) 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.

(i) 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.

(ii) 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.

(iii) Prohibited source has the meaning set forth in 5 CFR 2635.203(d), as modified by the separate agency designations in 5 CFR 3601.102.

(2) The DoD component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (g)(1) 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.

(3) 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, or with the local Ethics Counselor.

(4) 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.

(5) 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<sup>12</sup>, agency designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity.

(i) 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.

(ii) 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 part.

(h) *Teaching, speaking and writing—(1) Disclaimer for speeches and writings devoted to agency matters.* [The following is a General Order] 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 CFR 2635.807(b)(1), shall make a disclaimer if the subject of the teaching, speaking or writing

<sup>12</sup> See footnote 4 to § 84.7(d).

deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, as defined in 5 CFR 3601.102(a), and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position.

(i) 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.

(ii) 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 [end of General Order].

(2) *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.

(3) *Honoraria.* Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of 5 U.S.C. App. (Ethics in Government Act of 1978, sec. 501); 5 CFR part 2636, and 5 CFR 2635.807. However, the U.S. Office of Government Ethics, by memorandum dated February 2, 1994,<sup>13</sup> determined in accordance with a Department of Justice letter to the Director, Office of Government Ethics,<sup>14</sup> that the Department of Justice will not seek to impose penalties for violations of 5 U.S.C. App. (Ethics in Government Act of 1978, sec. 501); with respect to receipt of honoraria between September 26, 1993 and the date on which the Supreme Court issues its decision on this matter.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

<sup>13</sup> See footnote 2 to § 84.4(d)(7).

<sup>14</sup> See footnote 2 to § 84.4(d)(7).

## Subpart D—Travel Benefits

### § 84.11 Acceptance of official travel benefits in kind or payment for official travel expenses.

(a) *Acceptance from non-Federal sources—(1) 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 subpart of this part.

(2) *Personal travel.* This subpart 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 subpart G of this part. 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.

(3) *Acceptance procedures.* Any official travel benefits from non-Federal sources accepted by the travel approving authority must be:

(i) Approved in writing by the travel approving authority with the advice of the DoD employee's Ethics Counselor;

(ii) If accepted under the authority granted by 31 U.S.C. 1353, approved in advance of travel.

(4) *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:

(i) For DoD employees of OSD, Defense Agencies and OSD Field Activities, the Executive Secretary, OSD;

(ii) For DoD employees of Military Departments, the Secretaries concerned or their designees;

(iii) For DoD employees of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the United or Specified Commands, and the Combined Commands and agencies, the Chairman of the Joint Chiefs of Staff, or his designee.

(b) *Acceptance of travel and related expenses by a DoD component from non-Federal sources—(1) Attendance at a*