

**§ 84.3 General policy.**

*DoD policy.* It is DoD policy that:

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

(b) Although OGE regulations, cross-referenced in this part, do not apply to enlisted members of DoD, the provisions of 5 CFR parts 2634, 2635, 2638, 2639, 2640, and 2641, are determined to be appropriate for enlisted members and are hereby made applicable to enlisted members as if the terms “employee,” and “special Government employee,” as used in those OGE regulations, include enlisted members to the same extent that military officers are included within the meaning of those terms. The following exception applies to certain criminal statutes, 18 U.S.C. 203, 205, 207, 208, 209 and 218, and related provisions of OGE regulations, do not apply to enlisted members. Provisions similar to those of 18 U.S.C. 208 and 209 apply to enlisted members as follows:

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

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

(c) DoD employees shall become familiar with all ethics provisions, including the standards set out in Executive Order 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215-218, and comply with them;

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

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

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

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

**§ 84.4 General responsibilities.**

(a) The Head of each DoD component shall:

(1) Exercise personal leadership and take personal responsibility through the DoD component DAEO or designee for establishing and maintaining the DoD component's ethics program and be personally accountable for the DoD component's compliance with every requirement of this part, including the ethics and procurement integrity training requirements;

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

(3) When authorized, appoint a DoD component Alternate DAEO who shall serve in the absence of the DoD component DAEO;

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

(b) Each DoD component Designated Agency Ethics Official (DAEO) shall:

(1) Be responsible for the implementation and administration of all aspects of the DoD component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this part.

(2) Appoint DoD component Deputy DAEOs and Ethics Counselors and delegate to them written authority to act on behalf of the DoD component DAEO;

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

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

(5) Ensure that proper collection, review, and handling of the DoD component's financial and employment disclosure reports, including those submitted by Presidential appointees for confirmation purposes;

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

(7) Provide periodic ethics and procurement integrity training for Ethics Counselors;

(8) Certify Qualified Individuals to conduct ethics training;

(9) Assist agency designees, through the chain of command or supervision, in initiating prompt, effective action to evaluate and process violations, potential violations, and appearances of violations of ethics laws or regulations, in accordance with applicable procedures as discussed in subpart J of this part;

(10) Provide advice and assistance to DoD employees of the DoD component not otherwise served by a local Ethics Counselor;

(11) Oversee and coordinate local ethics programs through a system for periodic evaluation and ensure that the DoD component provides and maintains sufficient funding, staff, space

and resources to administer the DoD component's ethics programs;

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

(13) Represent the DoD component to OGE, Congress, the Executive Branch and the public on matters relating to ethics and standards of conduct.

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

(d) Each DoD component Deputy Designated Agency Ethics Official (Deputy DAEO) shall serve on behalf of the DoD component DAEO consistent with written delegation of authority from the DoD component DAEO.

(e) The head of each DoD component command or organization shall:

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

(2) Be personally accountable for the command's or organization's ethics program, including its ethics and procurement integrity training program, and the command's or organization's compliance with every requirement of this part;

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

(4) Ensure the prompt resolution of any actual or apparent conflict of interest involving a DoD employee of the command or organization;

(5) Direct administrative officers (or equivalent) of the command or organization to ensure that the position descriptions of the DoD component command or organization indicate if financial disclosure report filing, annual

ethics training or procurement integrity training is required and ensure the accuracy of personnel data provided by the director of the DoD component personnel office (or equivalent) on DoD employees of the command or organization;

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

(7) Ensure that DoD employees of the command or organization who are in positions requiring the filing of SF 450,<sup>2</sup> "Confidential Financial Disclosure Report," July 1992, do so in a timely manner;

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

(f) The General Counsel of each DoD component shall:

(1) Serve as the DAEO for the DoD component unless otherwise delegated;

(2) Support all aspects of the ethics program of the DoD component;

(3) Provide legal guidance and assistance to the DoD component DAEO or designee.

(g) The Judge Advocate General of each Military Department shall:

(1) Provide legal guidance and assistance to Ethics Counselors under his supervision;

(2) Support all aspects of the ethics program of the Military Department.

(h) The General Counsel, DoD (GC, DoD) shall:

(1) Maintain the DoD SOCO and provide sufficient resources to enable SOCO to oversee and coordinate DoD component ethics programs, to produce reports required by Congress and maintain report data, and to manage the DoD EOC;

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

(3) Have the authority to incorporate changes to Government-wide regulations that are reprinted in this part without formal coordination.

(i) Each agency designee shall:

(1) In accordance with § 84.10(g), provide prior approval or disapproval of outside activities by DoD employees under his responsibility;

(2) Receive and appropriately process reports of suspected violations of ethics statutes or regulations and possible conflicts of interest;

(3) Receive and appropriately process reports of non-compliance with the filing requirements of subpart G of this part;

(4) Perform all the other duties of an agency designee established in this part and in 5 CFR part 2635;

(5) Annually determine those positions under his responsibility that require the filing of SF 450s, and annual ethics and procurement integrity training.

(j) The DoD Standards of Conduct Office (SOCO) shall:

(1) Manage the DoD EOC and call periodic meetings to consider current issues in ethics and standards of conduct;

(2) Coordinate DoD component ethics programs, including providing uniform guidance and training material;

(3) Collect and publish important written opinions from DoD components, when practicable, to promote uniformity of ethics opinion throughout DoD;

(4) Monitor and assist DoD component DAEOs in ensuring effective corrective action is taken to remedy violations, potential violations and the appearance of violations of ethics laws or this part;

(5) Certify Qualified Individuals to conduct ethics training who may be used by DoD components;

(6) Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;

<sup>2</sup>Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

(7) Distribute ethics and procurement integrity training material to all DoD component DAEOs for use in all types of ethics and procurement integrity training;

(8) In the interest of Federal Government efficiency and economy, establish and maintain a resource center of ethics and procurement integrity materials (including training materials) developed by DoD components.

(k) The DoD Ethics Oversight Committee (EOC) shall:

(1) Meet periodically, as necessary;

(2) Consider general ethics issues or current issues and make recommendations to promote uniformity of ethics opinions throughout DoD;

(3) Provide recommendations to DoD component DAEOs on particular ethics matters in accordance with this part;

(4) Provide recommendations for DoD input on proposed ethics legislation and regulations.

(l) The Director, Washington Headquarters Services shall:

(1) Prepare an annual report listing all the defense contractors that have been awarded \$10 million or more in defense contracts during the fiscal year and publish the report in the FEDERAL REGISTER not later than December 15 following the end of the fiscal year;

(2) Prepare an annual report listing all the defense contractors that have been awarded \$25,000 or more in defense contracts during the fiscal year and distribute to the DoD component DAEOs not later than December 31 following the end of the fiscal year.

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

(n) Each Ethics Counselor shall:

(1) Provide written and oral advice, counseling, and assistance to his DoD component command or organization and to the DoD employees of his DoD component command or organization, on all ethics matters, particularly

areas covered by this part and related statutes and regulations;

(2) Request assistance, through appropriate channels, from the DoD component DAEO or designee on any matter than cannot be resolved locally;

(3) Maintain a current copy of this part, and all changes, for review by any DoD employee;

(4) Maintain a thorough understanding of current DoD ethics policy through contact with the DoD component DAEO, attendance at periodic ethics training courses, and other appropriate methods;

(5) Promptly provide a copy to the DoD component DAEO of precedential written decisions to assist uniformity throughout the DoD components;

(6) Perform other duties as assigned by written delegation from the DoD component DAEO;

(7) Review financial disclosure reports in accordance with subpart G of this part.

(o) The Inspector General of each DoD component shall:

(1) Investigate ethics matters arising in the DoD component, and refer any such matters that involve suspected criminal violations to the appropriate criminal investigative office of the DoD component;

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

(3) Ensure inspectors and agents are educated in ethics matters to ensure appropriate handling of ethics related cases and calls;

(p) The director of each DoD component personnel office (or equivalent) shall:

(1) Provide the DoD component DAEO or designee such personnel data on DoD employees, both civilian and military, as may be required by the DoD component DAEO or designee;

(2) Assign personnel action officers the responsibility of providing the required information at local levels;

(3) In coordination with the DoD component DAEO or designee, establish procedures to inform new DoD employees of their obligation to receive

ethics and procurement integrity training as required;

(4) In coordination with the DoD component DAEO or designee, establish out-processing procedures and records to advise DoD employees of available counseling regarding post-employment and procurement integrity restrictions prior to departure from DoD;

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

(q) The administrative officer (or equivalent) of each DoD component command and organization shall:

(1) Ensure that each position description of the DoD component command or organization indicates if an SF 278,<sup>3</sup> “Public Financial Disclosure Report,” January 1991, or SF 450, and annual ethics and procurement integrity training are required so prospective or new DoD employees are on notice of such requirements prior to employment;

(2) Upon the request of the DAEO or designee, ensure the accuracy of personnel data provided by the Director of the DoD component personnel office on DoD employees of the DoD component command or organization;

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

(4) In coordination with the DoD component DAEO or designee, ensure that DoD employees of the DoD component command or organization are scheduled to receive required ethics and procurement integrity training;

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

(r) Each DoD employee shall:

(1) Abide by the ethical principles established by Executive Order 12674, ethics statutes, and the ethics regulations

promulgated by OGE and the DoD thereunder;

(2) Set a personal example for fellow DoD employees in performing official duties within the highest ethical standards;

(3) Report suspected violations of ethics regulations in accordance with § 84.38(a);

(4) Perform all official duties so as to facilitate Federal Government efficiency and economy;

(5) Attend ethics and procurement integrity training as required;

(6) File financial and employment disclosure reports as required.

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

## Subpart B—Standards of Ethical Conduct

### § 84.5 Office of Government Ethics regulation.

See 5 CFR part 2635, “Standards of Ethical Conduct for Employees of the Executive Branch.” The following sections of 5 CFR part 2635 are military general orders: § 2635.202(a); § 2635.202(c)(1),(2),(3),(4), and (5) (excluding example and paragraphs (c)(4) (i) through (iii)); § 2635.302; § 2635.402(a) (excluding note); § 2635.502(a) (excluding paragraphs (a)(1) and (2)); § 2635.503(a) (excluding examples); § 2635.604(a) (excluding the last sentence and examples); § 2635.606(a) (excluding the last sentence and example); the first sentence of § 2635.702; § 2635.702(a) (excluding examples); § 2635.702(b) (excluding examples); § 2635.702(c) (excluding examples); § 2635.703(a); § 2635.704(a); § 2635.705(b) (excluding examples); the first paragraph of § 2635.802; § 2635.802(a); § 2635.802(b) (excluding sentence beginning “Employees are cautioned \* \* \*” and excluding examples); § 2635.805(a); § 2635.807(a) (excluding paragraphs (a)(1) and (2)); the first sentence of § 2635.808; § 2635.808(b) (excluding example); and § 2635.808(c) (excluding paragraph (c)(3) and examples).

### § 84.6 DoD supplement to 5 CFR part 2635.

See 5 CFR 3601.101–3601.108, “Supplemental Standards of Conduct for Employees of the Department of Defense.” The following sections of 5 CFR

<sup>3</sup>Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.