

# SOCO ADVISORY

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[OSD.SOCO@MAIL.MIL](mailto:OSD.SOCO@MAIL.MIL)

## 1. Guidance Regarding Section 1045 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA).

Many of you may have heard about the changes to the flag/general officer/civilian equivalent post-Government employment (PGE) rules that Congress enacted in Section 1045 of the National Defense Authorization Act for Fiscal Year 2018 ("section 1045"). In short, section 1045 limits the ability of former senior DoD officials from working in positions requiring communications with certain DoD officials or other Federal officials regarding DoD matters. Prohibited activities include behind-the-scenes efforts supporting lobbying contacts during the applicable "cooling off" period. Section 1045 applies to all flag/general officer/civilian equivalents who leave DoD service after December 12, 2017, and the "cooling off" restriction runs for two years for O-9s/O-10s (and civilian equivalents) and for one year for O-7s/O-8s (and civilian equivalents). For more guidance on this matter, see the SOCO handout on its web site at:

[http://ogc.osd.mil/defense\\_ethics/resource\\_library/fy18\\_ndaa\\_section\\_1045\\_summary\\_201801.pdf](http://ogc.osd.mil/defense_ethics/resource_library/fy18_ndaa_section_1045_summary_201801.pdf)

## 2. Fundraising Refresher.

At a recent monthly meeting a question arose regarding the limits of fundraising on behalf of another, specifically the support of "go-fund-me" causes. In order to properly analyze each scenario, ethics officials must determine if the proposed action is fundraising and, if so, exactly what is solicited and for whom.

Keep in mind that the CFC, generally speaking, *is the only authorized solicitation* of Government personnel *in the Federal workplace* on behalf of charitable organizations. See 5 C.F.R. Part 950 and 5 C.F.R. § 2635.808. The CFC is intended to reduce disruptions in the Federal workplace by consolidating approved solicitations into a single, annual, officially-supported campaign. Solicitations that occur on the Federal installation, but outside of the Federal workplace, as well as solicitations by organizations that do not affiliate with the CFC (other than those specifically outlined in 5. C.F.R. § 950.102, see sections below) may create additional disruptions and compete with the CFC for donations. *Unless an exception applies, no other solicitations on behalf of charitable organizations may be conducted in the Federal workplace or on a Federal installation.* See 5 C.F.R. § 950.102(a)-(e).

Note that CFC regulations do not apply to solicitations by non-Federal organizations that are composed of Federal personnel, when those solicitations are directed to their own

members for either organizational support or for the benefit of welfare funds for their members, in accordance with policies and procedures established by the pertinent agency (5 C.F.R. § 950.102(e)). Fundraising by organizations composed primarily of DoD employees or their dependents, ***among their own members for the benefit of welfare funds for their own members or their dependents***, when approved by the head of the DoD Component command or organization after consultation with the DAEO or designee, is lawful. See JER 3-210(a)(6). These fundraisers are colloquially referred to as “by our own, for our own” and cannot include the solicitation of contractors.

Occasionally, in more of an ad hoc manner, co-workers take up collections for items such as flowers, meals or even cash for ill or bereaved colleagues. This type of fundraising is not on behalf of a charitable organization or a formal non-Federal entity and is not prohibited even if the collected items are ultimately donated to a charitable organization related to the illness or in memory of a decedent, as gift is to the co-worker or donated on their behalf.

By contrast, if an individual solicits on behalf of himself, that request is not considered fundraising among the members of the organization for the benefit of the organization’s members. “Go Fund Me” type solicitations are similar in nature to an individual soliciting for themselves and such solicitations in the workplace are prohibited.

For more information on fundraising, please see the Ethics Counselor’s Deskbook Fundraising Chapter at:

[http://ogc.osd.mil/defense\\_ethics/resource\\_library/deskbook/fundraising.pdf](http://ogc.osd.mil/defense_ethics/resource_library/deskbook/fundraising.pdf)

### **3. Awards Selection Participation.**

At a recent monthly meeting a member sought clarification regarding when Federal personnel may participate in awards selections involving non-Federal entities (NFEs). Remember that the DoD may not provide *unauthorized* support to, or endorsement of, NFEs.

General Rule: Fiscal limitations and prohibitions on preferential treatment and official endorsements generally prohibit providing support to NFEs. Aside from NFEs granted statutory authorizations as identified by Enclosure 3 of DoDI 1000.15, “Procedures and Support for NFEs Authorized to Operation on DoD Installations”, Government resources, including personnel acting on official time, cannot be used to process, evaluate, or select recipients of NFE awards. Keep the following rules in mind when evaluating NFE requests for assistance:

- Government resources, time, and equipment may not be used for unauthorized purposes. (31 U.S.C. § 1301; 5 C.F.R. §§ 2635.704 & 705; JER 2-301)
- Performance of services by Government personnel for private entities constitutes an improper use of appropriated funds, even if the Government is compensated or reimbursed in kind. (34 Comp. Gen. 599 (1955))

- Employees shall act impartially and not give preferential treatment to any private organization or individual. (5 C.F.R. § 2635.101(b)(8))
- Employees may not use or permit use of their Government position, title, or authority to endorse any product, service, or enterprise. (5 C.F.R. § 2635.702(c), JER 3-209)

Bottom Line: Be leery of providing any Federal personnel to assist in determining who in the DoD workforce is eligible for an NFE award, even if your Service has historically provided such support.

#### **4. Encyclopedia of Ethical Failure Update.**

The Encyclopedia of Ethics Failure now includes updates for 2017. To view only the 2017 updates, see [http://ogc.osd.mil/defense\\_ethics/resource\\_library/eef\\_adds\\_2017.pdf](http://ogc.osd.mil/defense_ethics/resource_library/eef_adds_2017.pdf). These summaries of various ethical misadventures provide useful teaching aides.

#### **5. Simplified Acquisition Threshold Increase.**

Effective December 12, 2017, section 805 of the Fiscal Year 2018 NDAA amended the simplified acquisition threshold raising the threshold to \$250,000. This is relevant to ethics officials for purposes of procurement officer recusal at 41 U.S.C. section 2103(a).

#### **6. Updated White Paper on the Emoluments Clause.**

SOCO has updated its White Paper on the Emoluments Clause to the Constitution. The change involves the new debt collection procedures at the Department. The updated White Paper can be found at [http://ogc.osd.mil/defense\\_ethics/resource\\_library/emoluments\\_clause\\_applications.pdf](http://ogc.osd.mil/defense_ethics/resource_library/emoluments_clause_applications.pdf)

#### **7. \$25,000 and Top ten Defense contractor listings now available on the DoD SOCO website.**

The most recent list of defense contractors with contracts worth \$25,000 or more is now posted on the DoD web site at: [http://ogc.osd.mil/defense\\_ethics/resource\\_library/contractor\\_list.pdf](http://ogc.osd.mil/defense_ethics/resource_library/contractor_list.pdf). The most recent list of the top ten defense contractors is listed on the DoD web site at: [http://ogc.osd.mil/defense\\_ethics/resource\\_library/top10\\_contractor\\_list.pdf](http://ogc.osd.mil/defense_ethics/resource_library/top10_contractor_list.pdf).

**DISCLAIMER: The purpose of this advisory is to disseminate relevant information and sources of general guidance, policy and law on Government Ethics issues to the Department of Defense ethics community. Advisories are not intended to be and should not be cited as authoritative guidance, DoD policy, or law.**