

SOCO ADVISORY

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Amendments to the Supplemental Standards of Ethical Conduct for Employees of the Department of Defense -- 5 CFR Part 3601

DoD, with the concurrence of the U.S. Office of Government Ethics (OGE), has amended the Supplemental Standards of Ethical Conduct for Employees of the Department of Defense (DoD Supplemental Regulation). The amendments revise and update the DoD Supplemental Regulation originally written in 1993 to supplement the OGE Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). **The regulation takes effect on March 30, 2023.**

Amendments to the regulation include changes in the following areas: designation of separate agency components for the purposes of gifts and teaching, speaking, and writing; additional exceptions for gifts from outside sources; additional limitations on gifts between DoD employees; documenting approval of outside employment, and authority to waive any of the provisions of the DoD Supplemental Regulation. Some of these changes are summarized below, but DoD ethics officials should read the Federal Register notice at 88 FR 12541. (February 28, 2023)

Removal of two sections

Two sections from the 1993 DoD Supplemental Regulation, “Standards for accomplishing disqualifications”; and “Limitation on solicited sales” have been removed.” With regard to disqualifications, the OGE government-wide standard at 5 CFR part 2635, subpart D and §§ 2635.502, 2635.604, and 2635.606, which require oral notification of disqualification, sufficiently protect DoD interests without concurrently creating an administrative burden. Irrespective of whether a written disqualification is required, employees remain obligated to disqualify themselves from participating in matters affecting their financial interests, pursuant to 18 U.S.C. 208 and OGE's implementing regulations at 5 CFR Part 2635, Subpart D. The elimination of the written disqualification requirement does not preclude employees from choosing to provide a written disqualification to a supervisor. The written disqualification will remain a best practice in the DoD Ethics Deskbook.

With regard to “Limitation on solicited sales,” this topic is not a supplementation of the OGE Standards, 5 CFR part 2635, and is, therefore, being removed consistent with the guidance in OGE Legal Advisory, LA-11-07 (2011). The subject matter of this section falls outside of OGE's authority and, therefore, cannot be included in the DoD Supplemental Regulation. The requirement, however, remains in effect through the Joint Ethics Regulation.

Edits and additions

- **Section 3601.102** – Designation of DoD components as separate agencies for purposes of gifts, and teaching, speaking, and writing. This Section is amended to update the list of components, designated as separate agencies for the purpose of accepting gifts from non-Federal sources and outside teaching, speaking, and writing activities. The amendment designates two additional separate agencies, the National Reconnaissance Office (NRO) and the Office of the Secretary of Defense (OSD) remainder agency. Officers and employees of DoD components not designated as separate agencies will be treated as officers and employees of the OSD remainder agency.

- **Section 3601.103** – Additional exception for gifts from outside sources and reassignment of approval authority for scholarships and grants.
 - **Section 3601.103(a)** – Highlights that officers and employees may accept an unsolicited gift of free attendance at certain events sponsored by a State or local government or by certain civic organizations when their personal attendance has been determined to serve a community relations interest of their agency. The amendment requires that the community relations interest outweigh any concern that acceptance would cause a reasonable person with knowledge of the relevant facts to question the employee's integrity or impartiality.
 - **Section 3601.103(b)** – Reassigns approval authority for acceptance of educational scholarships or grants from the Secretary of Defense, or Secretary of the Military Department concerned, to the Designated Agency Ethics Official (DAEO) or the DAEO's designee.
- **Section 3601.104** – Additional limitations on gifts between employees. This section modifies the current \$300 limit on gifts from subordinates on a “special infrequent occasion” permitted by 5 CFR § 2635.304(b) and (c)(1). This limit has not been increased since the implementation of the DoD Supplemental Regulation in September 1993. The new rule uses the “minimal value” threshold established in the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a)(5), which is adjusted every three years by the General Services Administration.
- **Section 3601.105** (formerly section 3601.108) – Disclaimer for teaching, speaking, and writing in a personal capacity related to official duties.
- **Section 3601.106** (formerly section 3601.107) – Prior approval for outside employment and business activities. This section was revised to require documenting approval for outside employment and business activities in electronic systems used to file financial disclosure reports, rather than a separate document. Beginning in 2016, DoD mandated the electronic filing of all financial disclosure reports, with a built-in mandatory supervisory review function. This electronic filing system is easily accessible and follows employees in DoD's mobile workforce. Using the electronic filing system ensures supervisors will have access to an employee's prior financial disclosure reports and consequently, information on their business activity and outside employment. Supervisors are required, as a part of their review, to determine if an employee's business activity or outside employment conflicts with the employee's official duties. Prior to certifying a filer's report, the supervisor will be required by departmental guidance to annotate their approval of the filer's business activity or outside employment on the report.
- **Section 3601.107** (new) – Waiver. Authorizes the DoD General Counsel to waive any provision of the DoD Supplemental Regulation provided that the waiver is not inconsistent with 5 CFR Part 2635 or otherwise prohibited by law.

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