

FUNDRAISING

I. REFERENCES.

- A. Exec. Order No. 12,353, 47 Fed. Reg. 12785, Charitable Fund-Raising (Mar. 23, 1982)
- B. Exec. Order No. 12,404, 48 Fed. Reg. 6685, Charitable Fund-Raising (Feb. 10, 1983)
- C. 5 C.F.R. Part 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations (Combined Federal Campaign) (e-CFR current as of September 29, 2015)
- D. 5 C.F.R. § 2635.808, Standards of Ethical Conduct for Employees of the Executive Branch; Fundraising activities
- E. DoD 5500.07-R, Joint Ethics Regulation (JER) (August 30, 1993)(including Change 7, November 17, 2011)(subsections 2-302.a(2), 3-210; 3-211.b.; 3-300.a.)
- F. DoDI 5035.01, Combined Federal Campaign (CFC) Fundraising Within the Department of Defense (January 31, 2008)
- G. DoDI 5035.05, DoD Combined Federal Campaign – Overseas (CFC-O) (February 21, 2008)
- H. 41 C.F.R. § 102-74.410, Public Contracts and Property Management; Facility Management; Conduct on Federal Property; Soliciting, Vending and Debt Collection; What is the policy concerning soliciting, vending and debt collection? (e-CFR current as of Sept. 29, 2015)
- I. 32 C.F.R. Part 234, Conduct on the Pentagon Reservation (May 2007)
- J. 5 C.F.R. § 735.201, Employee Responsibilities and Conduct; Standards of Conduct; What are the restrictions on gambling? (e-CFR current as of Sept. 29, 2015)
- K. 41 C.F.R. § 102-74.395, Public Contracts and Property Management; Facility Management; Conduct on Federal Property; Gambling; What is the policy concerning gambling? (e-CFR current as of Sept. 29, 2015)

Fundraising
Ethics Counselor's Deskbook
June 2020

- L. DoDD 5410.18, Public Affairs Community Relations Policy (November 20, 2001)
(certified current as of May 30, 2007)
- M. DoDI 5410.19, Public Affairs Community Relations Policy Implementation (November 13, 2001)
- N. DoDI 1000.15, Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations (October 24, 2008)
- O. OGE DAEOGRAM, DO-93-024, Answers to Recurring Questions about Fundraising (August 25, 1993)
- P. OGE DAEOGRAM, DO-94-013, Fundraising Activities (March 22, 1994)(collection of nonmonetary items such as food and clothing does not require OPM permission)
- Q. OGE LEGAL ADVISORY, LA-12-08, A Reminder about Holiday Gifts & Fundraising (December 7, 2012)
- R. Army Guidance:
 - 1. AR 600-29, Fund-Raising Within the Department of the Army (7 June 2010)
 - 2. AR 930-4, Army Emergency Relief (22 February 2008)
 - 3. AR 608-1, Army Community Service (13 March 2013) [Appendix J, paragraph J-7 Family Readiness Groups informal funds and paragraph J-8 Family Readiness Groups external fundraising]
 - 4. AR 360-1, The Army Public Affairs Program (25 May 2011)
 - 5. AR 210-22, Private Organizations on Department of the Army Installations (22 October 2001)
- S. Navy Guidance:
 - 1. SECNAVINST 5340.7, Active Duty Fund Drive in Support of the Navy-Marine Corps Relief Society (NMCRS) (8 February 1999)

2. SECNAVINST 5340.2D, Fund Raising and Solicitation of Department of Navy (DON) Personnel, Military and Civilian, in the National Capital Area (NCA) (23 September 1999)
3. SECNAVINST 5720.44C, Department of the Navy Public Affairs Policy and Regulations (21 February 2012)

T. Marine Corps Guidance:

1. MCO 5726.14F, U.S. Marine Corps Reserve Toys for Tots Program (4 March 2004)
2. Standard Operating Procedures; Toys for Tots; Local Toys of Tots Campaigns (2012 Edition)
http://toysfortots.org/about_toys_for_tots/coordinators_corner/2012%20TFT%20SOP.pdf

U. Air Force Guidance:

1. AFI 34-223, Private Organizations (PO) Programs (8 Mar 2007 incorporating Change 1, 30 Nov 2010)
2. AFI 36-3101, Fundraising Within the Air Force (12 July 2002) [addresses CFC] [check for supplements, such as AFI 36-3101-62AWSUP1]
3. AFI 36-3109, Air Force Aid Society (AFAS) (5 March 2004)

V. DoD General Counsel:

1. DoD Military Ball Guidance (Participation in Military Balls Sponsored by Non-Federal Entities and Fundraising)(Revised April 14, 2004)
http://www.dod.mil/dodgc/defense_ethics/resource_library/military_ball_guidance.pdf
2. Guidance on Analyzing Invitations to DoD Officials to Participate in Fundraising Activities and to Accept Gifts Related to Events (DoD General Counsel Memo of August 18, 1997)
http://www.dod.mil/dodgc/defense_ethics/dod_oge/analyzing_invitations.htm

W. Internet Locations of Referenced Materials:

1. C.F.R.: <http://www.ecfr.gov/>

Fundraising
Ethics Counselor's Deskbook
June 2020

2. JER: http://www.dod.mil/dodgc/defense_ethics/
3. Federal statutes: <https://www.usa.gov/laws-and-regs>
4. Comptroller General: <http://www.gao.gov/legal/index.html/>
5. Executive Orders:
<http://www.archives.gov/federal-register/executive-orders/index.html>
6. Office of Legal Counsel (DOJ) opinions: <http://www.usdoj.gov/olc/opinions.htm>
7. DoD Directives and Instructions: <http://www.dtic.mil/whs/directives/>
8. Office of Government Ethics: <http://www.oge.gov>
9. CFC: <https://www.opm.gov/combined-federal-campaign/>
10. Army publications: <http://www.apd.army.mil/>
11. Air Force publications: <http://www.e-publishing.af.mil/>
12. Navy publications: <http://doni.daps.dla.mil/default.aspx>

II. ETHICS PRINCIPLES COMMONLY INVOLVED (SEE 5 C.F.R. § 2635.101).

- A. **Public service is a public trust**, requiring employees to place loyalty to Constitution, the laws and ethical principles above private gain (Principle #1).
- B. Employees shall not use public office for private gain (Principle #7).
- C. Employees shall not give preferential treatment to ***any private organization*** or individual (Principle #8).
- D. Employees shall not use Government property for other than authorized purposes (Principle #9).

Fundraising
Ethics Counselor's Deskbook
June 2020

III. ANALYTICAL METHOD TO EVALUATE FUNDRAISING ISSUES.

- A. Fundraising is complicated because no comprehensive fundraising regulation exists. Instead, it is governed by independent, overlapping, and unrelated regulations. Answering the following questions facilitates accurate and consistent analysis of questions involving fundraising.
- B. Is it within the definition of “fundraising”? What kind of “fundraising” is this? Are DoD personnel being asked to solicit funds or gifts-in-kind? (Funds for charities, funds for others, gifts-in-kind?)
- C. What kind of NFE is involved?
- D. Where is the fundraising being conducted? In the Federal workplace?
- E. Is DoD or DoD personnel being asked to endorse a fundraising effort or solicitation? If so, are DoD personnel being asked for an official or personal endorsement?
- F. Is DoD or DoD personnel being asked to support events or other efforts involving fundraising? If so, are DoD personnel being asked for official support or personal support?
- G. Is the fundraising for a partisan political event, party, or cause?

IV. FUNDRAISING DEFINED.

- A. “Solicitation” (fundraising) per CFC Regulations “means any action requesting money either by cash, check or payroll deduction on behalf of charitable organizations.”
5 C.F.R. § 950.101.
 - 1. It does not include collection of gifts-in-kind, such as food, clothing, and toys.
See V.C., below.
- B. “Fundraising” is defined in the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. § 2635.808) as “the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. § 572(e), through:
 - 1. Solicitation of funds or sale of items; or

2. Participation in the conduct of an event in which any portion of the cost of attendance or participation may be taken as a charitable tax deduction by the person incurring that cost.” See 5 C.F.R. § 2635.808(a)(1).
 - a. Such participation means “active and visible participation” in the promotion, production, or presentation of the event. It includes, *e.g.*, serving as an honorary chairperson, sitting at a head table during the event, standing in a reception line, or being a celebrity judge.
 - b. The term does not include:
 - (1) mere attendance (which may include a group's brief acknowledgement [standing briefly in the audience or on stage] of receipt of an award, but does not include such an acknowledgement if the award is used by the organization to promote the event); and
 - (2) delivery of an official speech or any seating or other participation appropriate to such delivery (which may include acceptance of an award in conjunction with the official speech). [Note: The definition of “participation” explicitly excludes “mere attendance” and “official speeches.” See 5 C.F.R. § 2635.808(a)(2).]
- C. The term fundraising is also commonly used in conjunction with raising funds for groups that are not 501(c)(3) charitable or non-profit organizations (*e.g.*, parent groups, school projects, Spouses’ Clubs, military ball committees, etc.), or collection of gifts-in-kind, rather than funds. These fundraising activities are not subject to restrictions that apply to the definitions in A. & B., above. See V., below, for applicable restrictions.

V. OFFICIAL SUPPORT OF SOLICITATION OF FEDERAL PERSONNEL.

A. Combined Federal Campaign (CFC).

“Western philosophers, theologians, and statesmen of widely varying viewpoints have affirmed for over two thousand years that charity—the feeding of the hungry, the healing of the sick, and the educating of the ignorant—has a claim on the human conscience that transcends political differences. In response to this ancient claim, the federal government conducts an annual charitable drive among federal employees known as the Combined Federal Campaign.” *NAACP Legal Defense & Educational Fund, Inc. v. Devine*, 727 F.2d 1247 (D.C. Cir. 1984) (Starr, J. dissenting), *rev’d*, *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*, 473 U.S. 788 (1985).

Fundraising
Ethics Counselor’s Deskbook
June 2020

1. History of Charitable Fundraising within the Federal Government.

- a. Fundraising for charitable organizations in the Federal workplace can be traced to the late 1940's.

“Prior to the 1950's, on-the-job fundraising in the federal workplace was an **uncontrolled free-for-all**. Agencies, charities, and employees were all ill-used and dissatisfied. Some of the problems cited were:

* Quotas for agencies and individuals were freely established and supervisors applied pressure to employees.

* Designations were not allowed.

Even with the frequency of on-the-job solicitations, total receipts for charitable causes that were worthy of employee support were minor. In many cases, employees donated their pocket change. <http://www.opm.gov/combined-federal-campaign/>

Because no system-wide regulations were in place to provide for orderly procedure, fundraising frequently consisted of passing an empty coffee can from employee to employee. Eventually, the increasing number of entities seeking access to federal buildings and the multiplicity of appeals disrupted the work environment and confused employees who were unfamiliar with groups seeking contributions. *Executive Orders 12353 and 12404 As They Regulate the Combined Federal Campaign (Part 1), Hearings before the House Committee on Government Operations, 98th Cong., 1st Sess., 67-68 (1983).*

- b. Prior to 1957, there were no government-wide rules governing solicitation by charitable organizations in the federal workplace. In some federal facilities managers did not permit any solicitation; in others, there were no restrictions, and solicitations occurred so frequently that they disrupted the workplace. Federal officials in some facilities "were besieged by dozens of agencies seeking endorsements and the privilege of soliciting employees on the job." U.S. Civil Service Comm'n., *Manual on Fund-Raising Within the Federal Service for Voluntary Health and Welfare Organizations Section 1.1 (1977).*
- c. In 1957, President Eisenhower promulgated procedures for a program of charitable solicitation in the federal workplace and established in the President's Committee on Fund-Raising Within the Federal Service to review and modify the fund-raising program. Exec. Order No. 10,728, 22 Fed. Reg. 7219, Establishing

Fundraising
Ethics Counselor's Deskbook
June 2020

the President's Committee on Fund-Raising Within the Federal Service (Sept. 6, 1957).

- d. In 1961, President Kennedy abolished the Committee and directed the Chairman of the Civil Service Commission to "make arrangements for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit funds from Federal employees and members of the armed forces at their places of employment or duty stations." Exec. Order No. 10,927, 26 Fed. Reg. 2383, Abolishing the President's Committee on Fund-Raising within the Federal Service and Providing for the Conduct of Fund-Raising Activities (Mar. 18, 1961). The program developed in response to this directive came to be known as the Combined Federal Campaign.
- e. In 1983, President Reagan issued Executive Order No. 12353 to replace the 1961 Executive Order which had established the CFC. The new Order retained the original limitation to "national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate" and delegated to the OPM Director the authority to establish criteria for determining appropriateness. Shortly thereafter, the President amended Executive Order No. 12353 to specify the purposes of the CFC and to identify groups whose participation would be inconsistent with those purposes. Executive Order No. 12404. The Order specifically excluded those "[a]gencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves." Section 2(b)(3) of Executive Order 12404.
- f. In *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*, 473 U.S. 788 (1985), the U.S. Supreme Court held that the government did not violate the First Amendment by excluding legal-defense and political-advocacy organizations from participation in the Combined Federal Campaign (CFC), a charity drive directed at federal employees. The Court reasoned that the CFC was a "nonpublic forum," *id.* at 806; that, under this Court's decisions, control over access to a nonpublic forum may be based on subject matter and speaker identity as long as the distinctions drawn are "reasonable in light of the purpose served by the forum" (and viewpoint-neutral), *ibid.* (citing *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 49 (1983)); and that it was reasonable for the government to exclude the speakers in question, because they would "disrupt" the fund-raising program and "hinder its effectiveness for its intended purpose," *id.* at 811. Under the Court's "forum analysis," *id.* at 800, the program at issue in *Cornelius* was deemed property that was not a public forum and the government

Fundraising
Ethics Counselor's Deskbook
June 2020

was deemed to be acting, not as sovereign, regulating the speech of the citizenry, but simply as the owner of the property. In that circumstance, the Court made clear, restrictions on the speech of those permitted to use the property are reviewed deferentially, because "the Government, 'no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.'" *Ibid.* (quoting *Greer v. Spock*, 424 U.S. 828, 836 (1976)).

2. OPM Issues Final Rule to Amend the Combined Federal Campaign Regulations, 79 Fed.Reg. 21,581 (April 17, 2014) to replace 5 CFR Part 950. **Effective date: January 1, 2016.**
 - a. In 2011, the CFC celebrated its 50th anniversary. In connection with this landmark anniversary, OPM announced the formation of the CFC–50 Commission. The Commission, formed under the Federal Advisory Committee Act, was asked to study ways to streamline and improve the program; improve accountability, increase transparency and accessibility and make it more affordable.

The Commission delivered its report to the OPM Director on July 20, 2012. The report contained 24 recommendations for improvement in the following areas: donor participation, CFC infrastructure, and standards of accountability and transparency. After OPM issued the proposed rule to amend the CFC in April 2013, OPM received over a thousand comments which were considered for changes represented in the final rule. Some of the changes from the proposed rule to the final rule include:

Solicitation Period: The Director of OPM will be given the authority to annually set the dates for the campaign period, but that it shall start no earlier than September 1 and end no later than January 15. While the CFC-50 Commission recommended expanding the solicitations period into January to give employees an opportunity to contribute after the holidays, OPM agreed with many comments it received that the CFC solicitation period should not be lengthened. The new rule gives the Director the flexibility to determine the solicitation period from year to year based on the input from the CFC’s stakeholders.

Immediate Eligibility. Under current regulations, new employees may not begin participating in the CFC until the next scheduled campaign solicitation period begins. OPM proposed to amend its regulation at § 950.102 to allow new employees to make CFC pledges immediately upon entering Federal service. Under OPM’s proposal, new employees would be provided information on the

Fundraising
Ethics Counselor’s Deskbook
June 2020

CFC at orientation and be able to make pledges within 30 days of being hired if hired outside of the solicitation period. This will enable those employees who wish to make an immediate contribution to do so.

Disaster Relief Program. Under current regulations, the OPM Director is authorized to allow special solicitations to respond to disasters. There is no standing mechanism in place, but rather each disaster requires a new authorization from the Director for a special solicitation period. OPM proposed to create a permanent structure to streamline and facilitate solicitations tied to disaster relief. Accordingly, OPM proposed to amend its regulations at § 950.102 to provide for the creation of a Disaster Relief Program that would be available to donors within hours after a disaster.

Local Federal Coordinating Committees (LFCCs): LFCCs are still a vital stakeholder to the CFC. Local ownership of campaigns still resides with the LFCCs - their responsibilities are simply altered to focus on campaign promotion and employee engagement, such as reviewing charity applications and finding outreach coordinators and fundraisers at the local level.

Outreach Coordinators: similar to the current marketing functions performed by PCFOs, Outreach Coordinators will be responsible for assisting the LFCCs in continuing to provide expertise in employee engagement and a local touch to the campaign.

Electronic Giving and Processing: Cash contributions are eliminated; however checks will be accepted and processed electronically. This will reduce campaign expenses due to the higher cost associated with processing cash contributions. Our research demonstrates that for the campaigns that have access to online giving, less than 10% of donations came through cash donations in 2012. In addition, electronic giving is exploding in growth, and overall (for the campaigns that possess online giving capabilities), the total of electronic giving is on the rise. Paper Charity Lists and pledge forms will be made available for the first five campaign periods after the rule is implemented. These documents will be made available exclusively through electronic means thereafter. This reduces campaign costs and the CFC's carbon footprint.

Charity Application Fees: All charities will pay a non-refundable application fee. Those that are approved may be charged an additional listing fee. These will help to recover the administrative costs that charities pay to participate in the CFC.

Fundraising
Ethics Counselor's Deskbook
June 2020

Any additional costs will be covered through distribution fees, similar to the current process of deducting campaign costs from charity distributions.

Payroll Deduction Disbursements: Federal payroll offices will disburse and provide detailed reports to the Central Campaign Administrator that will distribute funds to the charities designated by CFC donors. This streamlines the current distribution process by moving from 150+ CFC financial centers to one or a few Central Campaign Administrators (CCA).

3. The CFC is held annually and ***is the only authorized solicitation*** of Government personnel ***in the Federal workplace*** on behalf of charitable organizations. DoD personnel may be authorized to engage in such fundraising. See 5 C.F.R. Part 950 and 5 C.F.R. § 2635.808.
4. The CFC is intended to reduce disruptions in the Federal workplace by consolidating all approved solicitations into a single, annual, officially supported campaign. Solicitations that occur on the Federal installation, but outside of the Federal workplace, and 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. ***Except as discussed below, 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)-(d).
5. Ethics officials should work with CFC coordinators from the start of the campaign to ensure that fundraising events and strategies comply with the spirit and letter of applicable regulations. Fundraising events must be in compliance with statutes and regulations; truly voluntary; appropriate under the circumstances (not embarrassing or unfavorable to DoD, DoD personnel, or the CFC); and appropriate for the use of taxpayer funds. Guidance on CFC fundraising and innovative techniques follows. ***Note that because the CFC is an official program, most of the techniques discussed below may not be permitted to support other organizations.***
 - a. ***Be Aware:*** DoD personnel may ***not solicit*** individuals or entities that are not Federal personnel (including contractor employees) for prizes or other incentives or to make contributions to the CFC. Contractor employees, credit union employees, and other persons present on Federal premises, as well as retired Federal personnel, however, may make voluntary single contributions to the CFC through checks, money orders, cash, or by electronic means, including credit cards. 5 C.F.R. § 950.103(g). ***Remember no solicitation!***

Fundraising
Ethics Counselor's Deskbook
June 2020

- b. Contributions must be truly **voluntary**. The DoD Directive guarantees freedom of choice to give or not to give, and guarantees confidentiality of donation decision. Be alert for undue command pressure to contribute. Requests from a senior to a junior, particularly if they are in the same chain of command, inherently may be perceived as coercive. Tracking and requiring that 100 per cent of the personnel are contacted is permissible; tracking contributions is not. Watch for subtle actions like donor badges or ubiquitous awards that identify non-contributors. See 5 C.F.R. § 950.108, Preventing coercive activity.
- c. Fundraising events such as car washes, bake sales, and races are permitted by 5 C.F.R. § 950.602, Solicitation methods. If a special fundraising event is approved, the donor must be given the option of designating a participating organization or the donor must be advised that the proceeds will be donated to the CFC as an undesignated contribution. Note that unit fundraising for CFC should be similarly broadly aimed. See [SOCO Advisory 09-07](#) on CFC issues generally.
- d. **Lotteries and raffles** are permitted by 5 C.F.R. § 950.602 (b), when in compliance with gambling regulations and approved by agency head in accordance with agency regulations. Chances to win must be disassociated from the amount of contributions, if any. Raffle prizes should be modest in nature and value. Examples of appropriate raffle prizes may include opportunities for lunch with Agency Officials, agency parking spaces for a specific time period, and gifts of minimal financial value. Any special CFC fundraising event and prize or gift should be approved in advance by the Agency's ethics official. (See guidance on gambling, V.A.5., below, in this section.)
- e. Use of **appropriated funds** is authorized, but limited. Appropriated funds may be used when the proper authority reasonably determines that the proposed expenditure is logically connected to the appropriation's purpose, and that no statute prevents it. The use of appropriated funds is usually limited to expenses related to kick-offs, victory events, awards, and other events to build support for the CFC. The use of appropriated funds for refreshments or personal gifts (other than campaign worker recognition awards or prizes) is not authorized. Prizes must comport to fiscal law. See paragraph 4.4. of DoDI 5035.01. The expenditure of appropriated funds for any other item or activity that is not essential to support the CFC is not authorized. Appropriated funds cannot be used to conduct fundraising events. In making the determination, managers should be mindful of all the surrounding circumstances, including the amount of the proposed expenditure, the benefit expected to be gained, the importance to the mission served by the appropriation, prior Departmental practice, and possible

public perceptions as to the appropriateness of the expenditure. Be aware that the authority to use appropriated funds is not consistent among Federal agencies. Compare *IRS Purchase of T-Shirts for Employees Contributing Certain Amounts to the Combined Federal Campaign*, 70 Comp. Gen. 248 (February 8, 1991) (The IRS may not use appropriated funds to purchase T-shirts for employees contributing certain amounts to the Combined Federal Campaign) with *Invoice to IRS for that Agency's Share of CFC Solicitation Expenses Incurred in Northern Utah in 1985*, 67 Comp. Gen. 254 (February 12, 1988) (“that agencies may expend appropriated funds to support efforts to solicit contributions to the CFC from their employees.”).

- f. **Overseas program** may receive installation-level CFC administrative and logistical support and the use of military aircraft to transport CFC materials on a "space available" basis. DoDI 5035.05.
- g. Because the CFC is an official program, limited use of **resources** may be authorized in support. Use of DoD facilities, installations, or equipment, such as tours of warships, rides in military aircraft, and tours of historic base housing may be permitted by local commands and organizations. (Each must resolve issues of appropriate use of resources and interference with mission.) [Note: AF does not permit charging for tours of AF base housing, even for CFC or AFAS. See OpJAGAF 1997/59 (1 May 1997).] Awards or incentives derived by waiving regulations or similar rules, such as contributor casual day (exemption from uniform requirement) or time off work, are not allowed. May also officially provide logistical support to CFC events (JER 3-211).
- h. DoD CFC personnel sometimes ask **senior officials** to volunteer their status, position, and time as prizes for auctions or other fundraising events. For example, prizes could include a round of golf with the agency head, donuts served to an office by the installation commander, or use of a prime reserved parking spot. While senior officials may offer such personal contributions, the prerequisite that all contributions to the CFC be truly voluntary applies to them as well as to less senior employees. Special favors, privileges, or entitlements are impermissible. Be careful not to place inappropriate pressure on senior officials to volunteer for CFC activities. Also ensure that personal-service prizes are not inappropriate or potentially embarrassing.
- i. Commanders and organizations may **officially endorse** CFC (including use of title and position). JER 3-210. (See also Example 1 to 5 C.F.R. § 2635.808 (b)). This authority does not apply to individual charities within CFC. Note that the

Fundraising
Ethics Counselor's Deskbook
June 2020

suggestion in the initial OPM Katrina Relief memorandum that agencies could “adopt” hurricane-related charities is not a universal change to this policy:

"Individual Departments and Agencies (or subcomponents) may want to consider adopting one or more CFC-participating charities with hurricane relief programs and focus their campaign activities to the benefit of those charities."

Excerpted from *Director, OPM, Hurricane Katrina Disaster Relief Memo August 31, 2005*

- j. Don't forget – Just because something was done in the past does not mean that it is now permitted. If past activity violated the rules, it cannot be used as precedent to authorize such action in the future.
6. CFC lotteries or raffles must comply with gambling regulations. (Also applies to all other fundraising related to Federal personnel or property.)
- a. The Office of Personnel Management (OPM) at 5 C.F.R. § 735.201 prohibits civilian employees from gambling while on duty or while on Government-owned or leased property, unless necessitated by the employee's official duties or unless an agency approved activity. (Be aware of local or state law that may prohibit such activity.)
 - b. JER 2-302 prohibits DoD personnel from gambling on Federally owned or leased property or while on official duty. (Several exceptions exist, including an exception for organizations composed primarily of DoD personnel or their dependents when fundraising 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, and **subject to the limitations of local law or regulations**, and other JER provisions.)
 - c. Gambling is also prohibited by Federal building and grounds regulations. For GSA Federal property, see 41 C.F.R. § 102-74.395; for the Pentagon and Navy Annex, see 32 C.F.R. Part 234.
 - d. Gambling Defined: Gambling is generally considered to have three elements: (Federal statutes may apply. *See United States v. DiCristina*, 886 F.Supp.2d 164 (E.D.N.Y. 2012)(U.S. District Judge Jack Weinstein reversed federal conviction against man accused of running an illegal underground poker club in violation of the Illegal Gambling Business Act (IGBA), 18 U.S.C. § 1955, declaring that

Fundraising
Ethics Counselor's Deskbook
June 2020

poker is more a game of skill than chance. Reversed because “Texas Hold’em” poker was not covered by the IGBA), *reversed*, 726 F.3d 92 (2d Cir. 2013)(finding that the plain language of the IGBA covers defendant’s poker business even if the game involves more skill than luck), *cert. denied*, --- U.S. ---, 134 S.Ct. 1281, 188 L.Ed.2d 299 (2014). State statutes or case law may pertain, but see *Brooklyn Daily Eagle v. Voorhies*, 181 F. 579 (C.C.N.Y 1910.)

(1) Consideration (betting something of value, usually money),

(2) A game of chance, **and**

(3) An offering of a reward or prize.

(4) Events that do not include **all of these elements** are **NOT** considered to be gambling. Clever fundraisers have developed lottery-type games, door prizes and similar events that are not gambling. For example, a drawing using a CFC pledge card, when it is clear that the pledge card may include no contribution at all, is not gambling because the participants in the drawing are not required to furnish consideration to enter the drawing. ***Be aware***, however, because some overzealous fundraisers may fail to indicate in their solicitations that no contribution is required.

- e. The rules on lotteries are discussed in *Matter of: Prize Drawing by General Services Administration’s Public Buildings Service*, Comp. Gen. Dec. B-286536, November 17, 2000.

B. Fundraising For Emergencies And Disasters.

1. The Director, OPM, upon written request, may permit solicitations of Federal personnel to support victims of emergencies and disasters (5 C.F.R. § 950.102). The Director may only approve solicitations that are outside the officially established CFC period, unless there are extraordinary circumstances. Hurricane Katrina was not such an emergency. See V.A.2.i., above.
2. See [Combined Federal Campaign Special Solicitations for Disasters & Emergencies](http://www.opm.gov/cfc/disasters/index.asp) (<http://www.opm.gov/cfc/disasters/index.asp>). Contact Office of the Director of CFC at OPM ((202)-606-2564) or email at cfc.opm.gov for information to conduct disaster-related workplace fundraising (special solicitations). All requests should be in writing and sent to: Director, U.S. Office of Personnel Management, 1900 E Street, NW, Room 5450, Washington, D.C. 20415. The request should include: background

Fundraising
Ethics Counselor’s Deskbook
June 2020

on the emergency or disaster that is being addressed by the fundraiser; information on the agency(ies) and locations(s) where the fundraiser will be conducted; dates of the fundraiser; and information on the charitable organization(s) that will be the recipient of the funds.

3. Examples: Director, OPM, Special Solicitation for Victims of Hurricane Sandy (November 2, 2012)
<http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5121>

Director, OPM, *Relief and Reconstruction Efforts for Victims of the Japanese Earthquake and Tsunami* (March 23, 2011)
<http://www.chcoc.gov/Transmittals/Attachments/trans3702.pdf>

Director, OPM, *Special Solicitation for Haitian Earthquake Relief*, January 14, 2010
(<http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=27890>)

Director, OPM, *Hurricane Disaster Relief Memo, September 1, 2005*,
[CFC Memorandum 2005-10: HURRICANE Katrina, Rita, and Wilma RELIEF CONTRIBUTIONS AND THE COMBINED FEDERAL CAMPAIGN](#)

CFC Memorandum 2005-1: *Processing Special Solicitations for Victims of the Asian Earthquake and Tsunami Disaster* (<http://opm.gov/cfc/opmmemos/2005/2005-1.asp>).

4. **Practical Advice** --- leave fundraising to the professionals. Identify established charitable organizations with disaster relief missions and direct donors to those organizations. Often the CFC website will list charitable organizations.
 - a. Advantages. Established charities have the resources and experience to receive, account for, and distribute donations (and tax-exempt status!).
 - b. Avoid preferential treatment to any particular organization. Implement objective criteria for referral of donors.
5. **Again, Be Aware:** DoD personnel **may not solicit** individuals or entities that are not Federal personnel (including contractor employees) for prizes or other incentives or to make contributions to the CFC. Contractor employees, credit union employees and other persons present on Federal premises, as well as retired Federal personnel, however, may make voluntary single contributions to the CFC through checks,

Fundraising
Ethics Counselor's Deskbook
June 2020

money orders, cash, or by electronic means, including credit cards. 5 C.F.R. § 950.103(g).

6. May ***officially endorse*** (including use of title and position) approved emergency and disaster solicitations. JER 3-210.a(2)
 - a. For a summary of fundraising and other disaster-related ethics issues, *See* Antolin-Jenkins and Epstein, “How Can We Help? Ethics Issues in Disaster Relief,” Federal Ethics Report, CCH, November 2001.
- C. **Gifts-In-Kind**: Neither the OPM nor OGE regulations apply to the collection of gifts-in-kind, such as food, clothing and toys. **Note**: This can be a key exception for many traditional collection efforts including food drives, coats for the homeless, and toys for children (5 C.F.R. § 950.102(b)). Still must comply with other regulations applicable to solicitations.
 1. ***Again, Be Aware***: DoD personnel in their official capacities **may not solicit** individuals or entities that are not Federal personnel (including contractor employees) (5 C.F.R. § 2635.202(a)).
 2. Generally, Commanders approve this type of solicitation to be held in **public areas** of government buildings, such as lobbies or other entranceways.
 - a. Site regulations: **On GSA controlled property**, personnel may not solicit alms, including non-monetary items, unless sponsored or approved by the occupant agencies (41 C.F.R. § 102-74.410). OGE advises that this regulation does not prohibit employees from placing collection boxes in public parts of building to collect food or clothing for charity (DO-93-024 (August 25, 1993); DO-94-013 (March 22, 1994)).
 - b. **On DoD controlled property**, Commanders may approve use of areas that are ***outside of the Federal workplace***. (The workplace is where the employee normally performs his or her duties.) See V.D., below.
- D. **Outside the Federal Workplace**: The OPM regulations do not apply to solicitations of Federal personnel outside of the Federal workplace (5 C.F.R. § 950.102(b)). **Note**, however, that the OGE regulations do apply. See VI., below, for a more thorough discussion of their application.

1. Agency heads may define Federal workplace, consistent with GSA and other regulations (5 C.F.R. § 950.102(b)). Generally, workplace is the site for the performance of work.
 2. The Secretary of Defense, at JER 3-211.b. and 3-300.a.(2), delegated this determination to the heads of DoD component commands or organizations. They may determine which areas, if any, of the DoD installation are outside of the Federal workplace. For example, the housing area may be designated as outside the Federal workplace.
 3. See subparagraphs 3 and 4.7 of DoDI 5035.01, which requires the heads of DoD Component organizations to consider, when reviewing requests “by organizations composed of civilian employees or members of the Uniformed Services among their own members for organizational support, or for the benefit of specific member welfare funds,” to raise funds outside the CFC, the negative effects of soliciting on Federal installations, even when outside the Federal workplace, as they may create additional disruptions and possibly compete with the CFC for donations. The CFC is intended to reduce disruptions in the workplace by consolidating all approved solicitations into a single, annual, officially supported campaign. Fund-raising solicitations conducted by organizations composed of civilian employees or members of the Uniformed Services among their own members for organizational support, or for the benefit of specific member welfare funds, are permitted and may be conducted in the workplace. Again, such solicitations should be limited in number and scope during the official CFC period in order to minimize competition with CFC.
- E. Organizations of Federal Personnel: The OPM regulations do not apply to solicitations conducted by organizations composed of Federal personnel among their own members for organizational support or 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(d)). If, for example, contractors are solicited for funds or other support, then the rules prohibiting fundraising in the workplace are applicable.
1. Subsection 3-210.a. of the JER establishes the DoD policy and procedure. Because it is an agency regulation, it also provides the authority for (in accordance with 5 C.F.R. § 2635.808(b), the OGE fundraising regulation), and defines the extent of, official participation in such fundraising, whether on or outside the Federal workplace.
 2. It provides that DoD personnel may officially endorse membership drives or fundraising for the following organizations.

- a. Military Relief Societies. The Military Departments have issued their own specific guidance outlining permissible support:
 - (1) Army: AR 930-4, Army Emergency Relief (22 February 2008)
 - (2) Navy: SECNAVINST 5340.7, Active Duty Fund Drive in Support of Navy-Marine Corps Relief Society (NMCRS) (8 February 1999) (At paragraph 3.d, the Navy permits raffles and lotteries in support of Navy-Marine Corps Relief Society, if in accord with local law and site regulations. This authorization does not extend to casino-type games of chance.)
 - (3) Air Force: AFI 36-3101, Fundraising Within the Air Force (12 July 2002)
 - b. Other Organizations: Organizations composed primarily of DoD employees or their dependents *when fundraising 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. See JER 3-210.a(6). **NOTE:** Organizations composed of civilian employees and armed forces members have been recognized by Presidential Executive Orders dating back to 1957. See e.g., Section 7 of Executive Order No. 10728 (1957); Section 3 of Executive Order No. 10927 (1961); Section 7 of Executive Order No. 12353 (1983). **Cannot include contractors.**
 - c. National Guard: Charitable, community, or civic organizations as identified in 32 U.S.C. § 508, Assistance for certain youth and charitable groups (eligible organizations include the Boy Scouts, Girls Scouts, Boys Clubs, YMCA, YWCA, Civil Air Patrol, US Olympic Committee, the 4-H Club, Police Athletic League, and other youth or charitable organizations designated by SECDEF)
 - d. Innovative Readiness Training: DoDD 1100.20, when approved by head of DoD component command or organization after consultation with DAEO or designee.
3. Except for support authorized by the Military Departments for their relief societies, see above, any support other than endorsement must be authorized in accordance with paragraph 3-211.b. of the JER.

F. Non-Charitable Fundraising.

- 1. **On GSA controlled property,** no one may solicit alms (including non-monetary items), or commercial or political donations. Collection of non-monetary items may

Fundraising
Ethics Counselor's Deskbook
June 2020

be authorized when sponsored or approved by occupant agencies. (41 C.F.R. § 102-74.410). OGE advises that this regulation does not prohibit employees from placing collection boxes in public parts of building to collect food or clothing for charity. (OGE DAEOGRAM DO-93-24 (August 25, 1993); OGE Informal Advisory [93x19, Answers to Recurring Questions About Fundraising, August 25, 1993](#); OGE DAEOGRAM DO-94-13 (March 2, 1994)).

2. **On DoD controlled property**, Commanders may approve, on a limited basis, the use of areas that are outside of the Federal workplace (such as public entrances to base and post exchanges, community support facilities, or personal quarters) for DoD personnel's purely personal, unofficial volunteer efforts to support such fundraising (Spouse clubs, DoD school projects, etc.), as long as the efforts do not imply DoD endorsement. See JER 3-300.a.(2).

G. Toys For Tots.

1. The Toys for Tots program is an official activity of the Marine Corps, and an official mission of the Marine Corps Reserve (Marine Corps Order 5726.14F).
 - a. Marine Corps resources and personnel are utilized in accordance with MCO 5726.14F.
 - b. As Toys for Tots is not soliciting for the welfare of its own members, it does not qualify as a JER 3-210 organization. Use C. and D., above, to analyze requests to solicit DoD personnel.

H. Entities Leasing Space in GSA Buildings.

1. GSA regulations (41 C.F.R. §§ 102-74.460 et seq.) permit the GSA Building Administrator to lease portions of GSA buildings to religious and tax-exempt organizations. The lease allows these groups to solicit in public areas. Such solicitations are monitored by the GSA Building Administrator.
2. **Be Aware**: DoD does not qualify for these types of leases. Just because GSA allows these types of solicitations does not mean that DoD personnel have approval to do similar things.

VI. SUPPORT OF OTHER SOLICITATIONS.

- A. Official Support Using Logistical Resources (Not Personnel): Such support of fundraising by NFEs (including all JER subsection 3-210 organizations when fundraising outside their membership and Toys for Tots [Marine Corps Reserve, See MCO 5226.14F]) must be in accord with JER 3-211.b.
1. Heads of DoD Component commands or organizations may provide, *on a limited basis*, the use of facilities and equipment (and the services of DoD personnel necessary to properly use the equipment) to support charitable fundraising events sponsored by an NFE when they determine **all** of the following:
 - a. The support does not interfere with the performance of official duties (including the duties of the entire office, not merely the personnel directly concerned) and does not detract from readiness;
 - b. DoD community relations with the immediate community (community of interest [not merely local physical community], not merely sponsoring organization), legitimate DoD public affairs interests, or military training interests are served by the support;
 - c. It is appropriate to associate DoD or concerned component, with the event;
 - d. The event is of interest and benefit to the local community, DoD component command or organization providing support, or any other part of DoD;
 - e. The DoD component command or organization is able and willing to provide the same support to comparable events sponsored by other similar NFEs; and
 - f. The use is not restricted by other statutes.
 2. Note that these same factors apply to non-charitable NFE-sponsored events, as well as an additional factor, which requires either free attendance or a reasonable cost for attendance, or else only incidental DoD support may be provided. Because charitable fundraisers exceed reasonable cost, by definition, that factor could not be included. Note, however, that DoDD 5410.18, subparagraphs 4.1.4 and 4.2.5.1, generally require that DoD support to non-public community relations events, which include fundraisers, not exceed an incidental level (Enclosure 2, E2.1.14 “Support (Incidental)” defined).

3. DoD Commanders must also ensure that such support does not constitute DoD endorsement or the appearance of DoD endorsement of the entity or the event (JER 3-209).
4. May use official channels to notify DoD personnel of events of common interest sponsored by non-Federal entities (JER 3-208).

B. Support Using Personnel in Their Official Capacities: This is one of the most complicated areas to analyze, as it involves both the OGE fundraising rule and the JER.

1. Official Participation: Except for 5 C.F.R. Part 950, see V. above, DoD personnel may participate in fundraising only in accordance with 5 C.F.R. § 2635.808(b) (for official capacity) or (c) (for personal capacity). This section addresses official capacity and section C. addresses personal capacity.
 - a. Under 5 C.F.R. § 2635.808(b), DoD personnel may participate in fundraising in an official capacity only if they are authorized to do so by statute, Executive Order, or agency regulation. The only DoD authorizations are JER 3-210 (endorsement of certain organizations), the Military Department relief society regulations. See V.E., above. [For the Army, Public Law 99-145, Section 1459, as amended by Public Law 104-106, Section 280, allows the Secretary of the Army to fundraise on behalf of the National Science Center.]
 - b. When so authorized, DoD personnel may use their official titles, positions, organizations names or other authority associated with their office.
2. Official Speech: An official speech is not considered to be “active and visible participation” in fundraising. Accordingly, DoD personnel may deliver an *official speech*, which is a speech on a subject matter that relates to their official duties, provided that DoD has determined that the event provides an appropriate forum for the dissemination of the information to be presented. Because of the great number of charitable entities and the prohibition on giving preferential treatment, DoD does not generally favor delivering official speeches at fundraising events. See, DoD General Counsel Memo, [Guidance on Analyzing Invitations to DoD Officials To Participate in Fundraising Activities and to Accept Gifts Related to Events](#).
 - (1) Official Duties: The subject matter relates to official duties if it specifically focuses-
 - (a) On the individual’s official duties,

- (b) In significant part with any ongoing or announced policy, responsibilities, programs or operations of DoD (see 5 C.F.R. § 2635.807(a)(2)(i)(E)),
 - (c) In case of a non-career employee, the general subject matter area, industry, or economic sector primarily affected by DoD programs or operations (see 5 C.F.R. § 2635.807(a)(2)(i)(E)), or
 - (d) On matters of Administration policy on which the individual is authorized to speak.
 - (e) Note that any other speech is considered active and visible participation and is prohibited.
- (2) Appropriate Forum: The head of the DoD Agency organization (or delegee) must determine that the event provides an appropriate forum for the dissemination of the information in the official speech.
- (3) When DoD personnel speak at events in their official capacities sponsored by non-Federal entities (including fundraising events), they must follow both public affairs guidance and the JER.
- (4) DoD Public Affairs Community Relations Policy (DoDD 5410.18, sections 4.1, 4.2, and 4.4) and Implementation (DoDI 5410.19, Enclosure 4): Goal is to inform the public about DoD, U.S. Armed Forces, and national security.
- (a) Since the public official is paid by the taxpayer, the public should not be required to pay admission to hear a public official speak;
 - (b) When admission is charged, DoD participation must be incidental and may not be a primary attraction. Incidental support is defined as support that has a negligible or minimal impact on the planning, scheduling, functioning, or audience draw of a public event. Examples are a military color guard, or three DoD speakers at a conference featuring dozens of non-DoD speakers. Thumb rule: If the audience would attend the event even if DoD did not participate, then DoD participation is incidental. (E2.1.14 of DoD 5410.18);
 - (c) No preferential treatment;
 - (d) No release of non-public information;

- (e) Funding programmed for public affairs activities is an integral part of the O&M fund account of each DoD Component. Except for those programmed O&M funds, community relations activities shall not involve any additional cost to the Government;
 - (f) Views must reflect U.S. Government policy;
 - (g) Participation may not appear to endorse views contrary to U.S. Government policy;
 - (h) Speech text and subject matter may require review and clearance for security and policy by proper authority (DoDD 5230.9);
 - (i) May not appear at events staged for controversy or confrontation;
 - (j) Speaking activity may not associate DoD with partisan political cause or activity (see VII., below);
 - (k) May not appear at events at which admission is restricted because of race, creed, color, national origin, or gender; and
 - (l) May not appear at events sponsored by groups that restrict membership based on race, creed, color, national origin, or gender.
- (5) Use the factors at 3-211.b. of the JER. See VI.A.1., above.
- (a) Because most fundraising events are social in nature, rather than attracting an audience whose primary interest is focused on defense issues, DoD must exercise caution and discretion before accepting invitations to speak at fundraising events.
 - (b) Personnel ***may not solicit donations*** or other support for the nonprofit organization as it would constitute prohibited fundraising.
 - (c) Personnel ***may not endorse*** the sponsoring organization, the benefiting non-profit organization, or any other activities of either organization.
 - (d) Because personnel would be delivering an official speech, the sponsoring organization may use their titles, positions or organization names to identify them in connection with the official speech.

- (e) ***Disclaimers***: As titles and positions will generally be used, DoD personnel must make a disclaimer at the beginning of the speech if they have not been authorized by appropriate DoD authority to present the speech as DoD's position. The disclaimer must state that the views presented are those of the speaker and do not necessarily represent the views of DoD and its components. See 5 C.F.R. § 3601.108 and JER 2-207. Official policy speeches that present an official DoD position and are so authorized do not require the disclaimer. See 2-207 and 3-211.c. of the JER. Generally, senior officials are the ones invited to speak at fundraising events, and they would be authorized to make official policy speeches.
- (6) Sitting at a head table, dining, and viewing any entertainment that is part of the event is appropriate to the delivery of an official speech and is not considered to be active and visible participation. See 5 C.F.R. § 2635.808(a)(2).
3. **Activities That Are Not "Official Participation"**: DoD personnel may *merely attend* an event provided that the sponsor does not use their attendance to promote the event. See 5 C.F.R. § 2635.808(a)(2). Mere attendance may not include active and visible participation. Attendance in an official capacity is very rare and must comply with fiscal restrictions.
- (1) **Problem area**: Organizations ask senior officials to visibly participate at fundraising events, *e.g.*, receive an award, present an award, or accept position as Honorary Chairperson or as a Celebrity Judge. Senior officials thus become the "star attraction" for the fundraiser. Such support constitutes "active and visible participation."
4. **Gifts**: Sections 1, 2 and 3, above, merely address whether DoD personnel in their official capacities may attend a fundraising event, and if so, what they may do. An entirely different issue is how a gift of free attendance to the event may be accepted. This is extremely important as the attendance costs are generally expensive. -- Dining and viewing any entertainment that is part of the event are a customary and necessary part of making a speech and do not involve a gift to the individual or DoD (5 C.F.R. § 2635.204(g)(1)).

C. Personal Fundraising and Support of Fundraising Events In a Personal Capacity.

1. Under 5 C.F.R. § 2635.808(c), DoD personnel may fundraise in their personal capacities (which includes active and visible participation in fundraising events, merely attending such events, and making non-official speeches at such events) provided they comply with the following:
 - a. They do not personally solicit funds or other support from subordinates or entities that they know are prohibited sources, such as any DoD contractor. Be aware that they **may not** solicit contractor employees who work in the Federal workplace. Other rules apply to special Government employees (SGEs). See 5 C.F.R. §2635.808(c)(1). Note that this prohibits the solicitation of in-kind support as well as funds.
 - (1) Personal solicitation is to request or encourage donations or other support through person-to-person communication or the use of their name in correspondence. Solicitations through media, or oral remarks or mass mailings addressed to many people are not prohibited unless the personnel know that the solicitation is targeted at subordinates or prohibited sources.
 - (2) Personal solicitation does not include behind-the-scenes assistance, such as drafting correspondence, stuffing envelopes, or counting contributions.
 - b. They do not solicit or otherwise support fundraising in the Federal workplace. See 3-300.a.(2) of the JER. Such activity disrupts work, competes with the CFC for donations, invites an abuse of power by superiors, and tempts subordinates to contribute in order to curry favor with seniors.
 - (1) Occasionally, personnel will make collections for items like flowers, a book or even cash, for ill co-workers, or for those with a death in the family. They are collecting for individuals, not on behalf of a charitable organization, so the activity is not considered prohibited fundraising. Sometimes, however, the funds or items collected are given to charitable organizations related to the illness of the personnel or in memory of the decedent, etc. The collection does not become fundraising “on behalf” of that organization, even though it will benefit, because the gift is really to the co-worker or donated on their behalf. See Chapter on Gifts for rules on gifts to superiors.
 - (2) Remember, contractors may not be solicited and, if a contractor contributes to the gift, the gift may not exceed \$20.00.

Fundraising
Ethics Counselor’s Deskbook
June 2020

- c. They do not use, or permit others to use, their official titles, positions, organization names, or any authority associated with their office to assist the fundraising (5 C.F.R. § 2635.802(c)(2)).
 - d. Be aware that the personal capacity of very senior officials (Secretary of Defense, Deputy Secretary of Defense, Secretaries of the Military Departments, and the Chairman, Vice Chair and members of the Joint Chiefs of Staff), especially for fundraising, is only minimal, since, in most cases, they are known to the public only because of their office. Analyze the following criteria on a case-by-case basis to determine if there is personal capacity: the individual's office, public awareness of the individual, and past history of association between the individual and the organization and/or event, and how active and visible the association was. Usually organizations invite senior DoD officials because of their public office. In such cases, attendance should be considered to be in their official capacity. See, DoD General Counsel Memo, [*Guidance on Analyzing Invitations to DoD Officials To Participate in Fundraising Activities and to Accept Gifts Related to Events*](#).
2. With the authorization of DoD Agency organization heads, DoD personnel may solicit in their personal capacities in designated areas outside the Federal workplace on Federal installations. See JER 3-300.a.(2) and V.C., D. and F., above, for additional information.
3. Non-Official Speech: DoD personnel who are delivering a speech that relates to their official duties (5 C.F.R. § 2635.807) in their personal capacity at a fundraising event must exercise caution to ensure that there is no confusion or appearance that DoD is endorsing the event.
- a. Personnel must be very careful that their official titles, positions, organization names, or any other authority associated with their office are not used except as part of biographical details and are not used prominently. They may use general terms of address, such as "The Honorable" or rank and Service.
 - b. Disclaimers: If the speech deals significantly with any ongoing or announced policy, program or operations of DoD or its components, and their titles and positions will be used in biographical details, DoD personnel must make a disclaimer at the beginning of the speech. The disclaimer must state that the views presented are those of the speaker and do not necessarily represent the views of DoD and its components. See 5 C.F.R. § 3601.108 and JER 2-207.

- c. Compensation for Speech: (See chapter on outside activities.)
- d. Gifts: DoD personnel may be offered gifts of free attendance at fundraising events.
 - (1) If DoD personnel, for example, give an official speech, the offer of free attendance is not considered a gift, so they may accept the offer. 5 C.F.R. § 2635.808(a)(2).
 - (2) If DoD personnel merely attend an event, apply the OGE gift rules discussed in the Gift Chapter.
 - (3) Widely Attended Gatherings. To determine the value of the gift, use the cost of an individual ticket if one is offered to the public to attend. If individual tickets are not sold, and the personnel will be seated at tables, divide the cost of the table by the number seated to determine the value of the gift (5 C.F.R. § 2635.204(g)).

VII. FUNDRAISING FOR PARTISAN POLITICAL PARTIES OR EVENTS.

A. Official Capacity.

DoD personnel may not officially support, endorse, or participate in partisan political fundraising efforts on behalf of candidates or parties ([DepSecDef Memo, dated June 19, 2012, Subject: Civilian and Military Personnel Participation in Political Activities](#)) (http://cpol.army.mil/library/general/elections/depsecdef_06192012.html) and DoDD 1344.10).

B. Personal Capacity.

1. DoD personnel acting in their personal capacities are limited in such fundraising, depending upon their status (military members, career civilian, non-career appointee, career SES), and local political jurisdiction. The short answer is that military personnel and civilian employees of DoD may not solicit, accept, or receive funds for partisan political activities. See the Deskbook Chapter, Political Activities, for guidance on political activities.

VIII. COMMON FUNDRAISING REQUESTS.

- A. **Golf Tournaments**: Some organizations hold golf tournaments to raise funds. Commonly, charitable groups will solicit corporations for sizeable contributions in return

Fundraising
Ethics Counselor's Deskbook
June 2020

for the opportunity for the corporation's employees to play golf and socialize with senior Government officials who have been offered free tickets to participate. This situation presents real and perceived ethical challenges, specifically:

1. Are Government personnel participating in their **official or personal capacities**?
Answer: Unlikely there is ever a situation in which one may play golf at a fundraiser in an official capacity. While the particular official may be invited because of the official's office, it is unlikely that participation would be included in the official's official duties. Additionally, consider the perception of senior military officials golfing with defense contractors. Apply the "front-page of the newspaper" test.
2. May Government personnel accept the **gift of free attendance**? See the Chapter on Gifts. [Hint: See DAEOGRAM DO-07-047 (December 5, 2007)].

B. **Military Balls**: If a DoD official is making an official speech, he or she may attend in an official capacity. All others must attend in their personal capacities. Wearing of the uniform is determined by the individual Service uniform regulation. If there is an offer of free attendance, it may be accepted if it complies with the OGE gift regulation. See the Chapter on Gifts. If personnel must travel to attend the event, they must pay their own way, unless they may otherwise accept a gift of travel expenses. If they will be in the location because they have traveled officially using Government funds, there must be a bona fide reason for the travel as it will be subject to increased scrutiny. Moreover, personnel cannot incur additional lodging, per diem, or costs to attend. Such expenses are personal expenses and personnel attending in a personal capacity (e.g., non-speaker) must be in a non-duty status.

C. **Requests for DoD Bands**: See 10 U.S.C. § 974. Section 591 of the FY 2010 NDAA amended 10 U.S.C. § 974. Neither Section 591 nor 10 U.S.C. § 974 creates a right for the use of military bands. These statutes merely authorize commanders to employ bands under specific conditions. The use of military bands is still subject to existing directives and regulations, such as DOD 5500.07-R, "Joint Ethics Regulation" and DOD public affairs policies. Significantly, subparagraph 4.2.4.2 of DOD Directive 5410.18, "Public Affairs Community Relations Policy" provides:

A military band or choral group, or portion thereof, is **NOT** logistical support as defined in enclosure 2 (E2.1.15., "Support (Logistical)") and is **not generally available to support non-Federal entity events**.
Providing support at events sponsored by non-Federal entities by **Military Service members in uniform performing in a military band, choral group, or portion thereof, is particularly inappropriate**

Fundraising
Ethics Counselor's Deskbook
June 2020

because they convey in that context a strong visual appearance of a DoD endorsement of the non-Federal entity, its event, or its goals. When determined to be in the Department's best interest, a military band or choral group, or portion thereof, **may be provided for ceremonial support of non-Federal entity events that are not used for fund-raising.**

Accord DOD Instruction 5410.19, "Public Affairs Community Relations Policy Implementation," subparagraph E2.1.8 ("Social events such as concerts, dinners, and other entertainment performances sponsored by non-Federal entities do not meet the criteria for ceremonial support [marching bands, band detachments, and buglers]). The Assistant Secretary of Defense for Public Affairs, set forth interim guidance in a memorandum dated November 5, 2009. In accordance with the interim guidance, performing background, dinner, dance, or other social music at an event that is sponsored by the Army Emergency Relief, the Navy-Marine Corps Relief Society, and the Air Force Aid Society is allowed only at events that do not receive support or donations from prohibited sources and the event is held only for service members or service members and their immediate families. Military musical units are prohibited from performing at events sponsored by a military welfare society when solicitation is not limited to the historical "by our own, from our own, for our own" premise. See Section 7 of Exec. Order No. 12353 and JER 3-210.a(6).

D. Requests for DoD speaker and/or offer to present award:

1. Often an organization will offer to give an award to a senior DoD official, hoping that the individual will attend, which will be an attraction to promote increased attendance at the fundraising event. First, make sure that the award is a bona fide award that may be accepted under 5 C.F.R. § 2635.204(d). Second, ensure that the official will make an official speech. If he or she can't make the speech, then the award may not be accepted or acknowledged at the event, as it would otherwise constitute active and visible participation. Most organizations are more than willing to cooperate and do what is necessary to make it right.
2. If awards are offered to several uniformed personnel, recommend that they be given immediately prior to the event. The group may briefly acknowledge [standing in the audience or very briefly on stage] receipt of the award, as long as attendance by the personnel is not used by the organization to promote the event.

Fundraising
Ethics Counselor's Deskbook
June 2020

- E. **Request for official letter of endorsement or support:** Many organizations request senior officials, such as local Commanders, to sign a letter that endorses the organization, *e.g.*, USO, AUSA, Joe’s Barbershop. Official endorsements are prohibited. JER 3-209, 5 C.F.R. § 2635.702(c). If appropriate, DoD personnel may sign a factual acknowledgement and thank-you for services received from the NFE. ***Be careful***, such thank-you’s may show up in promotional literature or other materials.
- F. **Serving as Honorary Chairperson:** Senior officials are often asked to “lend their name” as an honorary chairperson for a fundraising event or committee. Permitting the use of their name constitutes an endorsement. If this is done strictly in the official’s personal capacity (without mention of office), it is permitted as long as the correspondence is not targeted to subordinates or prohibited sources. If the official’s office or position is included, or if the official is recognized primarily because of his or her public office, such use constitutes an official endorsement, and is prohibited by JER 3-209 and 5 C.F.R. § 2635.702(c).
- G. **Request for installation Spouses’ Club to hold bake sale:** Since the club is an organization composed of the installation’s personnel and dependents, whose sole purpose is to support those individuals, and is presumably only fundraising among its own members (installation personnel), the Commander may endorse the sale. He or she may also provide the club a place to hold the bake sale (preferably outside the Federal workplace), as long as similar organizations and spouses' clubs receive the same treatment. Other support for the fundraiser may be authorized using the analysis in JER 3-211.
- H. **Fundraising by Impromptu Groups:** What about fundraising by groups that are not charitable or non-profits organizations, such as parent groups raising funds to donate equipment to their school, or a church group raising funds for an injured member of their parish, or a group of employees who are collecting for hurricane victims? These groups don’t qualify for “fundraising” as defined by OGE or OPM.
1. **Site Regulations:**
 - a. **On GSA controlled property**, no one may solicit alms (including non-monetary items), or commercial or political donations. Collection of non-monetary items may be authorized when sponsored or approved by occupant agencies. (41 C.F.R. § 102-74.410) OGE advises that this regulation does not prohibit employees from placing collection boxes in public parts of building to collect food or clothing for charity. (OGE DAEOGRAM, DO-93-024 (August 25, 1993); OGE DAEOGRAM, DO-94-013 (March 23, 1994).)

