

## **RULES FOR MANAGING AN NFE IN ONE'S PERSONAL CAPACITY**

### **I. REPRESENTING DOD TO, OR SERVING WITH, NFES**

**Often NFEs will invite DoD personnel to serve in either an official or personal capacity on one of their boards, councils, or committees, including advisory boards.**

**Personal Capacity:** In their personal capacities, DoD personnel are often active in NFEs, such as professional associations; civic, religious, or scouting groups, etc. If they serve with or want to represent such entities to Federal agencies, the following limitations apply:

1. When such personnel are officers, directors, trustees, general partners, or employees with the NFE, they may not participate in their official capacity at DoD in any particular matters that may directly and predictably affect the NFE. They may request a waiver if their interests are not so substantial as to affect their integrity. (18 U.S.C. 208)
2. When such personnel are active participants with the NFE (serving on committees, boards, etc), but not at the level in 1., above, they may not participate in their official capacity in any particular matters that may directly and predictably affect the NFE, or in which the NFE is, or represents, a party. They may request an authorization to participate from their Agency Designee based on a determination that the interests of the Government outweigh potential questions about the integrity of the agency's programs. (5 C.F.R. 2635.502; JER 3-302)
3. Federal personnel may not act as an agent for, or represent, an NFE before Federal agencies or courts on particular matters in which the Government is a party or has a direct and substantial interest. (18 U.S.C. 203 & 205)
  - a. Note: 18 U.S.C. § 205(d)(1)(B) permits Federal personnel to represent (without compensation) non-profit professional, recreational, or similar groups if the majority of the organization's members are Federal personnel or their dependents. (Limitations set out in 18 U.S.C. 205(d)(2).)
4. DoD personnel may not (in their official capacity) give their NFE preferential treatment, and they must ensure that they do not create an appearance that they are using their public office to assist the NFE in any way. (5 C.F.R. 2635.702)
5. DoD personnel may not (in their official capacity) endorse the NFE. Nor may they use, or permit the NFE to use, their official titles, positions, or organization names in connection with the NFE, which includes on the NFE's website, or any list, letterhead, or promotional materials. Active military members may use their rank and Service when identifying themselves in connection with the NFE. Retired members may do so only if they clearly identify the retired or inactive Reserve status. 5 C.F.R. 2635.702(c) and JER 3-300 a (1)

6. DoD personnel may not encourage, pressure, or coerce other personnel, especially subordinates, to join, support, or otherwise participate in outside organizations. (5 C.F.R. 2635.702(a))
7. They may not personally solicit funds for the NFE from subordinates or prohibited sources. (5 C.F.R. 2635.808(c))
8. They may not use appropriated funds, Government resources or official personnel to assist them in their work for the NFE. Note that Agency Designees may allow personnel the limited use of certain resources, which they may use in connection with their NFE participation. See VI.B.4., below; JER 2-301.b., and 3-300(b).
9. They may not disclose non-public Government information to the NFE. (5 C.F.R. 2635.703))
10. If they file financial disclosure reports, DoD personnel must disclose the position with the NFE on their next annual report after appointment. If the NFE provides any travel expenses or other compensation, they must also disclose any reportable amounts. (5 C.F.R. 2634.307)
11. Personnel have no official protection from liability stemming from their service to the NFE.

## **II. PARTICIPATING IN PROFESSIONAL OR STANDARD SETTING NFES**

**Personal Capacity:** Unless an outside activity is prohibited by statute or DoD regulation, or otherwise conflicts with their official duties, DoD personnel may voluntarily become members of, or participate in, NFES. When doing so, they must act exclusively outside the scope of their official position. See I., above, for precautions to take.

1. **Community Support Activities:** When DoD personnel are voluntarily participating in community support activities that promote civic awareness or in uncompensated public service, such as blood donations and voter registration, Agency Designees may grant excused absence (administrative leave) under JER 3-300.c.
2. **Professional Associations:** Under JER 3-300.b, Agency Designees may grant personnel excused absences for reasonable periods for voluntary participation in non-profit professional associations, and may provide limited use of DoD equipment and support services (including personnel) for papers to be published in professional journals or presented at association events if the paper relates to official duties, gives a benefit to the agency, and does not interfere with performance of duties.
  - a. Receiving compensation for such papers is generally barred by 5 C.F.R. 2635.807.
3. Use of Government Resources by DoD personnel.

- a. Agency Designees may allow limited personal use of Federal Government resources, other than personnel, if such use:
  - (1) Does not adversely affect performance of official duties,
  - (2) Is of reasonable duration and frequency and not on official time,
  - (3) Serves a legitimate public interest,
  - (4) Does not reflect adversely on DoD, and
  - (5) Creates no significant additional cost to DoD. (JER 2-301b)
- b. Note that Agency Designees may allow their personnel to use resources, as restricted above, but they may not allow NFEs to use those resources under this authority.

### **III. MANAGING NFEs**

**Personal Capacity:** DoD personnel may manage non-Federal entities in their personal capacity. See JER 3-301. Except for JER 3-210 organizations, however, DoD personnel may not so serve if the NFE position is offered because of the individual's assignment or position. The personnel must ensure that their participation is exclusively outside the scope of their official positions. See I., above, for precautions to take.

1. **COMMON PROBLEM:** DoD personnel who are active participants in an NFE may not take an official action involving that NFE. This prevents such personnel from approving requests from subordinates to attend meetings, to speak at an event, or to prepare papers for a meeting of the NFE. (See JER 3-300d).