

## **Questions and Answers Regarding**

### **Participation of a Government Employee in a Non-Federal Entity Fundraiser**

#### **in a Personal Capacity**

This paper presents 10 questions and answers that apply when a Government employee (military or civilian) wants to participate in his or her personal, off-duty capacity (as a private citizen) in a fundraising event sponsored or organized by an off-base non-Federal entity (also referred to as an NFE).

*Note* - The rules below regarding official endorsement **do not** apply to the following:

1) Combined Federal Campaign (CFC); 2) Air Force Assistance Fund (AFAF); 3) Fundraising conducted by DoD members or dependents, among DoD employees, and for the benefit of DoD employees, when approved by the installation commander, after consultation with an ethics official. Joint Ethics Regulation (JER), DoD 5500.7-R, section 3-210a; AFI 36-3101, para 19 & Table 1, Rule 4. If the fundraising benefits external or "outside" interests, or is conducted by non-DoD members, the rules contained in this Q & A **do** apply.

#### **1) Can the Air Force officially endorse the fundraising event?**

No. Under JER, DoD 5500.7-R, section 3-209, endorsement of a non-federal entity's event or enterprise may be neither stated nor implied by DoD or DoD employees. DOD employees who choose to participate in this event in their personal capacities may not use their official titles, positions, or organizations in conjunction with their participation.

You may not officially endorse or appear to endorse the event. JER para. 3-210a; 5 CFR 2635.702(c)

#### **2) What is the policy for Air Force military and civilian employees who wish to participate (on leave or official duty status)?**

Under JER section 3-200a, Agency Designees may permit their employees to attend events sponsored by non-Federal entities in their official capacities at Federal Government expense if there is a legitimate Federal Government purpose, such as training or gathering valuable information in support of our mission. Generally, attendance at fundraising events do not support a legitimate Air Force or DoD mission. Therefore, Air Force personnel should not attend in a duty status

You may not use your official time in support of the event. 5 CFR 2635.705(a)

**3) Can I encourage subordinates in my unit to participate in the event? Can I appoint one of my subordinates to a committee organizing the event?**

No, you may not personally solicit funds or other support from a subordinate<sup>1</sup>. 5 CFR 2635.808(c)(1). This prohibition exists even if you may properly engage in fundraising in your personal capacity.

No, you may not use the official time of your subordinates in support of the event. 5 CFR 2635.705(b); Joint Ethics Regulation (JER), DoD 5500.07-R, para. 3-303b.

**4) In my personal capacity, can I engage in fundraising by soliciting funds from a prohibited source<sup>2</sup>?**

No, you may not personally solicit funds or other support from a prohibited source. 5 CFR 2635.808(c)(1)(ii). A prohibited source is often an entity that does business with or seeks to do business with the Air Force. A more complete definition is provided below.

**5) Can I use or permit the use of my official title, position or any authority associated with my government position to further the fundraising efforts? For example, can I say that I am a First Sergeant of the ABC Squadron and intend to participate in the fundraising event? Can I permit the organizers of the fundraiser to use my picture in uniform on its webpage or in other materials?**

No, you may not use or permit such use of your government position. 5 CFR 2635.808(c)(2). However, you may use or permit the use of your military rank as a term of address. This means that during an event, the event organizers may refer to you as "Master Sergeant Smith." It is **not** permissible for the organizers to refer to you as "Master Sergeant Smith, First Sergeant ABC Squadron, 366 Fighter Wing, Mountain Home AFB, Idaho."

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<sup>1</sup> The term "personally solicit" is defined as follows: "*Personally solicit* means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources.... It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions." 5 CFR 2635.808(b)(4).

<sup>2</sup> A prohibited source is defined as any person who: (1) Is seeking official action by the employee's agency; (2) Does business or seeks to do business with the employee's agency; (3) Conducts activities regulated by the employee's agency; (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or (5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

**6 ) Does this mean if I want to participate in the planning of the event, I must be in civilian clothes on leave or otherwise not in a duty status?**

Yes, you may not, if you are a military member, wear your uniform when participating in the event, if doing so would create the appearance that the Air Force is endorsing the event. JER para. 3-210a; 5 CFR 2635.702(c). Mere attendance at an event may be distinguished from participation, though one should always consider endorsement and appearance of endorsement risks. Planning of private organization events should be done on personal time (i.e. leave, pass, lunch, etc.) The wear of the military uniform to events other than as described creates the impermissible appearance of government endorsement.

**7) Can Mountain Home Air Force participate in set-up of the day's activities and are there any resources the Air Force can provide for the event?**

Under the JER, section 3-211a, i.e. an installation commander may authorize Air Force employees in their official capacities to express DoD policies as speakers, panel members or other participants or, on a limited basis, authorize the use of DoD facilities and equipment, if the commander makes certain determinations. However, the commander **may not** provide DoD employees or use of DoD facilities and equipment for fundraising and membership drives.

**8) Would it be appropriate for Air Force leadership to make comments in support of this event and solicit participation by Air Force personnel?**

No, as discussed in Question 1 above, the Air Force may not endorse or appear to endorse an NFE's fundraising activities. The JER requires even-handed support to non-DoD entities. We must act impartially and may not give preferential treatment to any private organization or individual. Our local communities host many special-interest events every year. According to the ethics rules, we cannot support or endorse one fundraising activity and withhold support for similar fundraising activities. Such a standard must be met regardless of the charitable and worthy cause supported by the fundraising event.

Commanders can publicize off-base fundraising activities and request for volunteers in daily bulletins, base radio, or television stations, or on bulletin boards. Commanders must not discriminate among organizations. During the CFC or AFAP, commanders may not publicize any external organization fundraising event. AFI 36-3101, Note 6. Remember if an event is placed in a daily bulletin or installation calendar, a commander may not endorse the event by encouraging attendance or support.

**9) Are there other restrictions I should know of before I engage in fundraising in my personal capacity?**

Yes, you may not use any of the following resources in support of an NFE fundraising event -

Government property. 5 CFR 2635.704; 5 CFR 2635.808(c) (Example 2)

Appropriated funds. AF Policy Directive 65-6, *Budget*

Nonappropriated funds. AFI 34-201, *Use of Nonappropriated Funds*, para 4.2.11 & 4.2.22

Special Morale & Welfare (SM&W) funds. AFI 34-201, *Use of Nonappropriated Funds* para 12.5.3 & 12.5.4

Government vehicles. AFI 24-301, *Vehicle Operations*, para 3.39

Official postage. DoD 4525.8-M, *DoD Official Mail Manual*, para C1.4.14 & C1.4.18

AF Visual Information resources. AFI 35-109, *Visual Information*, para. 2.2.1

**10) What can happen to me if I violate one of these rules?**

Military members may be subject to disciplinary action, including punishment under the U.C.M.J. Civilian employees may be subject to administrative disciplinary action.

This Q &A does not include all ethics rules or regulations. You should also know that certain other ethics rules are contained in criminal statutes, such as 18 U.S.C. 208, Conflict of Interest. Violation of these rules may subject you to criminal prosecution by the Department of Justice.