

## Ethics Issues Concerning Non-Federal Entities Frequently Asked Questions

1. What is a non-Federal entity? A non-Federal entity or “NFE” is a self-sustaining, non-Federal person or organization that is established, operated and controlled by any individual(s) acting outside the scope of any official capacity as an officer, employee or agent of the Federal government.
2. Can you identify some NFEs? Some commonly known NFEs are the Association of the United States Army (AUSA), Army Engineer Association (AEA), Retired Officers Association, American Society of Military Engineers (ASME), Society of American Military Engineers (SAME), Red Cross, Fisher House Foundation, and, of course, all other entities that are not part of the Federal government, such as state and local government entities and the full range of private entities (private corporations, educational or charitable organizations, etc.).
3. What is a “prohibited source?” A prohibited source is any person, including an NFE, who (1) is seeking official action by the Federal 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 above.
4. Are SAME and other NFEs prohibited sources? Yes, SAME is a prohibited source, as are other NFEs, such as the AEA and the AUSA. They are prohibited sources because they are organizations a majority of whose members do business with the Department of Defense (DoD) and its components, such as the U.S. Army and the U.S. Army Corps of Engineers (USACE). Additionally, the prohibited source might be seeking official action from DoD or one of its components by, among other things, requesting logistical or other support in connection with the NFE’s programs and activities. Finally, the NFE might have interests that are substantially affected by the performance or nonperformance of official duties of DoD personnel, which would make the NFE a prohibited source.
5. Is the rule on prohibited sources a new rule or change to existing rules? This is not a new rule or a change to existing rules. According to the Army General Counsel’s office, DoD and its components have historically treated certain NFEs as prohibited sources. We are simply reminding our military and civilian employees about the long-standing ethics rules affecting their interactions with NFEs.
6. What are the implications of an NFE being a prohibited source? If an NFE is a prohibited source, the most significant implications involve the application of the Federal ethics rules concerning gifts. Gifts are tangible or intangible items of value that may be offered to a Federal employee or entity. There are numerous exemptions and exceptions to the gift rules, but, for purposes of understanding the implications of an NFE being a prohibited source, the most important point to

remember is that a Federal employee, civilian or military, must not, directly or indirectly, solicit or accept a gift from a prohibited source (or from anyone at all because of the Federal employee's official position).

7. What are the left and right boundaries of my interaction with NFEs? The Federal ethics rules concerning our interaction with NFEs are very complex and very fact-specific. There are numerous exemptions and exceptions to the rules concerning gifts in the context of our interaction with NFEs. The Ethics Counselor in your Office of Counsel can advise you if an exemption or exception fits your particular activity or situation. For example, if you want to participate in your NFE's local chapter, the scope of ethically permitted activities will be shaped by whether you are participating in your "official capacity" as a military or civilian Federal employee, or in your personal capacity as a private individual. In your official capacity, you may participate in certain NFE events, if authorized by your agency, and you may offer non-preferential logistical support to the chapter, but you may not serve as an officer of the organization in an official capacity as a military or civilian Federal employee or express or imply endorsement of the organization. On the other hand, in your personal capacity as a chapter member, you may serve as an officer of the organization, making it clear that you are not serving as an officer in an official capacity as a military or civilian Federal employee, and you may engage in limited fundraising activities on behalf of the NFE. Other areas where it is important to understand the rules and their exemptions or exceptions concern attendance at NFE events in either your official capacity or in a personal capacity, accepting reimbursement for travel and related expenses from an NFE, and participation in conferences involving NFEs.
8. How can I be sure that my interactions with NFEs comply with legal and ethics requirements? It is very important that you consult with the Ethics Counselor in your Office of Counsel before you engage in a particular activity involving an NFE (e.g., attending NFE events, providing logistical or other support to an NFE, accepting reimbursement for travel and related expenses from an NFE). The Ethics Counselor can help you understand the rules and ensure that you are complying with them. If necessary, he or she can assist you in obtaining a Joint Ethics Regulation (JER) section 3-211 determination, which confirms, in writing, that the particular activity or situation in which you are engaged complies with legal and ethical requirements.
9. If there is an inquiry about my activities involving NFEs, what should I do? Your first step in responding to any inquiry about your activities involving an NFE is to bring it to the attention of your Ethics Counselor. He or she will advise you as you respond to the inquiry and provide support, as appropriate, to address any ethics issues that might arise.
10. Where do I go for more information about my interaction with NFEs? The principal authorities that address your interaction with NFEs are the Standards of Conduct for Employees of the Executive Branch, 5 C.F.R. 2635; the Joint Ethics Regulation (JER), DoD 5500.07-R, which implements the Standards of Conduct; and a statutory

provision, 31 U.S.C. 1353, Acceptance of Travel and Related Expenses from Non-Federal Entities. Of course, you are strongly encouraged to speak with your Ethics Counselor in your Office of Counsel about any specific activities or situations that might implicate legal and Federal ethics rules.

### Some Basic “Dos” and “Don’ts” When Interacting with NFEs

#### *Do:*

When acting in your official capacity, as a District Commander, for example, have your planned participation in NFE events reviewed by your Ethics Counselor in your Office of Counsel, to include reviewing how you will travel to and from the event, whether you or the government may accept funds or other items of value from the NFE for your participation in the event, and a host of other event-specific issues.

When you are acting solely in your personal capacity (i.e., as a private individual and not as a government official), you may serve as an officer of an NFE, participate in certain fundraising activities for it, and provide an endorsement for the NFE, but you must be careful not to convey, either expressly or impliedly, that your activities are being undertaken in your official capacity as a Commander or other government official.

Any logistical support provided by the government to an NFE must be limited and nonpreferential (i.e., if you provide limited support for one NFE, then you must treat others similarly); your Ethics Counselor can help you structure your response to a request for support to avoid violations of the ethics rules or the appearance of impropriety.

#### *Don’t:*

Don’t solicit or accept a gift, directly or indirectly, from a prohibited source or from anyone else because of your official position.

Don’t be too quick to co-sponsor an NFE event. The criteria for approval and approval levels are cumbersome. You can still provide support to an NFE’s event -- limited logistical support, attendance, speaking roles, use of equipment, and other participation and support -- without actually being a co-sponsor. Your Ethics Counselor can help you structure the government’s participation to comply with ethics rules and avoid the appearance of preferential treatment or other impropriety.

Don’t attend an NFE-sponsored conference without first checking on whether your attendance will comply with both general Federal ethics rules and Department of the Army (DA) conference rules. Remember that your attendance must be mission critical and that any gifts (e.g., free attendance, free travel or lodging) will be scrutinized under both the DA conference and general Federal ethics rules.