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February 17, 2000

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ASSISTANT DIRECTOR ELLEN R. AURITI

Re: Legislative Modifications to the Solomon Amendment

You inquired whether the recent legislative modifications to the Solomon Amendment affect the University's exposure to loss of funding should a sub-element of the University, such as a law school, be found to be out of compliance with the law. My interpretation of these recent modifications is that even with the new provision sparing student financial aid under the October amendment to the Defense Department's fiscal spending bill, an institution such as the University of California can no longer expect to remain immunized from loss of federal funding from sources such as the Department of Health and Human Services if a subelement of the University (such as a law school or medical school) is found to have violated the Solomon Amendment.

*The Solomon Amendment*

The Solomon Amendment, with certain limited exceptions, permits federal funding for grants and contracts to an educational institution to be terminated if the institution is found to have a policy or practice that prohibits military recruiting on campus, prohibits access to student directory information for the same purpose, or maintains an anti-ROTC policy. 10 U.S.C. § 503, Note (Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997); 10 U.S.C. § 983 (denial of Department of Defense grants and contracts) (see Tab 1). The reach of the Solomon Amendment as originally drafted extended to federally-funded student financial aid programs considered to be "grants" or "contracts" with institutions of higher education, such as the Federal Perkins Loan Program, Federal Supplemental Educational Opportunity Grant Program and Federal Work Study Program. 63 Fed. Reg. 56,819 (Oct. 23, 1998) (final rule). In addition, under the original Department of Defense regulations implementing the Solomon Amendment, the law limited the termination of federal funding only to those *sub-elements* of an institution (such as a law school) found not to be in compliance with the law. Specifically, under Department of Defense regulations issued in final form in 1998, a "covered school" under the Solomon Amendment was defined as a "an institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications: (1) In the event of a determination affecting only a subelement of a parent institution, the limitations on the use of funds shall apply only to the subelement and not to the parent institution as a whole, and (2) The limitations on the use of funds shall not apply to

any individual institution of higher education that is part of a single university system if that individual institution does not prevent entry to campus, access to students, or access to student recruiting information by military recruiters, . . .” 63 Fed. Reg. 56,819, § 216.3 (Oct. 23, 1998) (final rule) (citations omitted). So, under these regulations, if the law school of a campus were found to be out of compliance with the Solomon Amendment, the balance of federal contract or grant funding to the campus may not be threatened. Similarly, if a campus within a multi-campus university system were in compliance with the Solomon Amendment, its funding would not be threatened, even if a sister campus were found not to be in compliance with the law.

### *Recent Modifications to the Solomon Amendment*

In October 1999 and January 2000, the landscape of the Solomon Amendment changed in two significant – though contrary – ways. Last fall, Representative Barney Frank successfully sponsored a modification to the Defense Department’s fiscal-2000 spending bill that exempts student aid from those federal funds that can be cut off under the Solomon Amendment. As signed by President Clinton on October 25, 1999, the National Defense Authorization Act for Fiscal Year 2000 consolidates and recodifies the Solomon Amendment and similar provisions, but expressly overrides those provisions with respect to student financial aid:

“During the current fiscal year and hereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs may be used for the purpose for which the grant is made without regard to any provision to the contrary in section 514 of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997 . . .”

Publ. L. No. 106-79 (Department of Defense Appropriation Act for Fiscal Year 2000, § 8120 (see Tab 2).

As a result of the passage of this legislation and the prevailing interpretation of the law as threatening only an offending sub-element’s federal funding (and not the institution’s as a whole), some newspapers announced that colleges and law schools would be able to bar military recruiters from campus without risking a loss of student-aid dollars. *See Chronicle of Higher Education*, “New Law Allows Campuses to Bar Military Recruiters Without Risking Federal Student-Aid Funds,” at 2 (Oct. 26, 1999).

What was not widely reported, however, was Congress’ growing discontent with the Defense Department regulation limiting the scope of liability only to an institution’s offending sub-element. The Senate Armed Services Committee stated in a May 1999 report:

“The Committee strongly supports efforts to ensure military recruiters have access to high school and college campuses.

Section 568 of the National Defense Authorization Act for Fiscal Year 1995 prohibits the Department of Defense from providing funds by grant or contract to any institution of higher education that has a policy of denying or which effectively prevents military recruiters from entry to the campus, access to students on campuses, or access to directory information pertaining to students over the age of 17. The committee has learned that some in the Department of Defense may be interpreting this prohibition in a manner inconsistent with intent of Congress. The congressional intent is that if a college or university denies military recruiters access, then the entire institution shall be denied any further Department of Defense funds. The committee has been advised that if, for instance, a law school or medical school denies access to military recruiters only funds to that specific school would be withdrawn. The committee intends that the entire university or institution would be affected by the prohibition on providing Department of Defense funds. The committee directs the Secretary of Defense to review the policies related to the prohibition of Department of Defense funds to institutions of higher learning that deny access to military recruiters, to ensure that the policies and practices are consistent with the intent of Congress."

Senate Report 106-50 (Calendar No. 114), National Defense Authorization Act for Fiscal Year 2000, Senate Committee on Armed Services, at 313 (May 17, 1999) (accessible at [www.thomas.loc.gov](http://www.thomas.loc.gov)).

As a result of this concern, Congress quietly amended the Solomon Amendment on October 19, 1999, to ensure that "[n]o funds . . . may be provided by contract or grant . . . to an institution of higher education (*including any subelement of such institution*) if the Secretary of Defense determines that that institution (*or subelement of that institution*) has a policy or practice" that impairs access to the institution for military recruiting. 10 U.S.C. § 983 (a) (emphasis added) (see Tab 3).

Following this modification to the law, the Defense Department determined that "urgent and compelling reasons exist to publish" an interim rule revising the implementation of the Solomon Amendment. 65 Fed. Reg. 2056 (Jan. 13, 2000). Accordingly, it issued an interim rule on January 13, 2000 directing that no federal funds shall be made available by contract or grant "to an institution of higher education that has a policy or practice of hindering" the ROTC or military recruiting on a campus. Comments are invited through March 13, 2000.

The Defense Department's interim rule is ambiguous in many respects: it does not expressly repeal the former Defense Department regulations protecting an institution from an offending

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sub-element's or sister campus' conduct, and so it is inconsistent with those rules; it fails to acknowledge Representative Frank's revision to the Solomon Amendment that carves out student financial aid from the law's reach; and it is silent as to how other government agencies interpret the element/subelement issue in the newly-revised statute.

Nevertheless, one reasonable interpretation of the statutory modifications (particularly in view of Congress' recent statement of legislative intent) is that even with the new carve-out under the Solomon Amendment for student financial aid, an institution such as the University of California can no longer expect to remain immunized from loss of federal funding from sources such as the Department of Health and Human Services if a subelement of the University (such as a law school or medical school) is found to have violated the Solomon Amendment.

I hope you find this information useful. Please do not hesitate contacting this office in the event you have any questions or concerns.



Gary Morrison  
Deputy General Counsel

Encs.

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## WESTLAW ELECTRONIC RESEARCH

Armed Services cases: 34k[add key number]

See, also, WESTLAW guide following the Explanation pages of this volume.

## NOTES OF DECISIONS

- Enlistee and Inductee distinguished 1  
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U.S. ex rel. Diamond v. Smith, D.C.Mass. 1942, 47 F.Supp. 607.

Where draftee was physically examined and accepted for service but refused to take the oath administered to all men successfully passing the physical examination, he was "inducted" into the armed forces of the United States and was subject to the jurisdiction of the Army and military law. U.S. ex rel. Diamond v. Smith, D.C.Mass.1942, 47 F.Supp. 607.

Where a man successfully passes the physical examination and is accepted by the Army for training and service, and all the steps prescribed have been taken, he is "inducted" into the Army whether he takes the oath administered to him or not. U.S. ex rel. Diamond v. Smith, D.C.Mass.1942, 47 F.Supp. 607.

### 1. Enlistee and inductee distinguished

"Enlistee" voluntarily submits himself to military authority by virtue of his enlistment while "inductee" does not. Even v. Clifford, S.D.Cal.1968, 287 F.Supp. 334.

### 2. Enlistments requiring oath

Former § 1581 of this title, requiring every soldier, at time of his enlistment, to take oath of allegiance, applied only to voluntary enlistment, and one certified into military service under Selective Draft Act of 1917, former §§ 201 to 211 of Appendix to Title 50, could not escape liability to military law because he had not taken required oath. Franke v. Murray, C.C.A.8 (Mo.) 1918, 248 F. 865, 160 C.C.A. 623.

"Enlistment" within meaning of this section providing that each person enlisting in an armed force shall take a specific oath means original enlistment or reenlistment. U. S. ex rel. Stone v. Robinson, W.D.Pa.1970, 309 F.Supp. 1261, affirmed 431 F.2d 548.

### 3. Induction without oath

Where selectee was given required mental and physical examination and found mentally and physically fit for general military service, his induction was complete although he refused to take the oath. Smith v. Richart, E.D.S.C.1944, 53 F.Supp. 582.

"Induction" is completed upon acceptance by the government of the draftee irrespective of the desires, acts and mental attitudes of the draftee, and it is not the draftee's acceptance of the oath, but the acceptance by the government of him as a soldier that completes induction.

### 4. Force and effect of oath

Fact, if true, that taking of oath by enlistee at time of enlistment in United States military service is step which formalized the enlistment and without which there would be no binding enlistment would not cause all terms of enlistment to become subservient to the final oath. Pfile v. Corcoran, D.C.Colo.1968, 287 F.Supp. 554.

Where a person voluntarily enlists in the Navy and takes the prescribed oath, he enters the naval service of the United States government, and thereafter becomes subject to the orders and discipline provided for that branch of the service, although he is assigned to a naval training camp merely. Boatwright v. American Life Ins. Co., Iowa 1920, 180 N.W. 321, 191 Iowa 253.

### 5. Voluntary constructive enlistment

Where petitioner, believing that he would be enlisted in Navy as petty officer second class, refused to sign enlistment oath because enlistment contract indicated rank of petty officer third class, and petitioner subsequently signed contract upon being told that he would be court-

martialed for fraudulent enlistment and unauthorized wearing of the uniform, and oath was not subscribed before officer, fact that petitioner had followed orders, accepted pay and had eaten Navy's

food did not constitute voluntary constructive enlistment or ratification and petitioner was not member of United States Navy. U. S. ex rel. Norris v. Norman, N.D.Ill.1969, 296 F.Supp. 1270.

### **§ 503. Enlistments: recruiting campaigns; compilation of directory information**

(a) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(b)(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

(7) In this subsection, "directory information" means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most

recent previous educational agency or institution attended by the student.

(Added Pub.L. 90-235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754, and amended Pub.L. 97-252, Title XI, § 1114(b)(1), (2), Sept. 8, 1982, 96 Stat. 749; Pub.L. 104-106, Div. A, Title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502.)

## HISTORICAL AND STATUTORY NOTES

### Revision Notes and Legislative Reports

1968 Acts. Senate Report No. 931, see 1967 U.S. Code Cong. and Adm. News, p. 2635.

1982 Acts. Senate Report No. 97-330 and House Conference Report No. 97-749, see 1982 U.S. Code Cong. and Adm. News, p. 1555.

1996 Acts. House Conference Report No. 104-450, see 1996 U.S. Code Cong. and Adm. News, p. 238.

### Amendments

1996 Amendments. Subsec. (b)(5). Pub.L. 104-106, § 1502(a)(1), substituted "Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives" for "Committees on Armed Services of the Senate and House of Representatives".

1982 Amendments. Pub.L. 97-252, § 1114(b)(2), included in heading "compilation of directory information".

Subsec. (a). Pub.L. 97-252, § 1114(b)(1)(A), designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 97-252, § 1114(b)(1)(B), added subsec. (b).

### Change of Name

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Armed Services of the House of Representatives treated as referring to the Committee on National Security of the House of Representatives, see section 1(a)(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

### Improvements in Physical Fitness of Recruits

Pub.L. 105-85, Div. A, Title V, § 533, Nov. 18, 1997, 111 Stat. 1740, provided that:

"(a) In general.—The Secretary of Defense shall take steps to improve the physical fitness of recruits before they enter basic training.

"(b) Specific steps.—As part of those improvements, the Secretary shall take the following steps:

"(1) Direct the Secretary of each military department to implement programs under which new recruits who are in the Delayed Entry Program [section 513 of this title] are encouraged to participate in physical fitness activities before reporting to basic training.

"(2) Develop a range of incentives for new recruits to participate in physical fitness programs, as well as for those recruits who improve their level of fitness while in the Delayed Entry Program [section 513 of this title], which may include access to Department of Defense military fitness facilities, and access to military medical facilities in the case of a recruit who is injured while participating in physical activities with recruiters or other military personnel.

"(3) Evaluate whether partnerships between recruiters and reserve components, or other innovative arrangements, could provide a pool of qualified personnel to assist in the conduct of physical training programs for new recruits in the Delayed Entry Program [section 513 of this title]."

### Improvements in Medical Prescreening of Applicants for Military Service.

Pub.L. 105-85, Div. A, Title V, § 532, Nov. 18, 1997, 111 Stat. 1739, provided that:

"(a) In general.—The Secretary of Defense shall improve the medical prescreening of applicants for entrance into the Army, Navy, Air Force, or Marine Corps.

"(b) Specific steps.—As part of those improvements, the Secretary shall take the following steps:

"(1) Require that each applicant for service in the Army, Navy, Air Force, or Marine Corps (A) provide to the Secretary the name of the applicant's medical insurer and the names of past medi-

cal providers, and (B) sign a release allowing the Secretary to request and obtain medical records of the applicant.

"(2) Require that the forms and procedures for medical prescreening of applicants that are used by recruiters and by Military Entrance Processing Commands be revised so as to ensure that medical questions are specific, unambiguous, and tied directly to the types of medical separations most common for recruits during basic training and follow-on training.

"(3) Add medical screening tests to the examinations of recruits carried out by Military Entrance Processing Stations, provide more thorough medical examinations to selected groups of applicants, or both, to the extent that the Secretary determines that to do so could be cost effective in reducing attrition at basic training.

"(4) Provide for an annual quality control assessment of the effectiveness of the Military Entrance Processing Commands in identifying medical conditions in recruits that existed before enlistment in the Armed Forces, each such assessment to be performed by an agency or contractor other than the Military Entrance Processing Commands."

#### **Reform of Military Recruiting Systems**

Pub.L. 105-85, Div. A, Title V, § 531, Nov. 18, 1997, 111 Stat. 1738, provided that:

"(a) **In general.**—The Secretary of Defense shall carry out reforms in the recruiting systems of the Army, Navy, Air Force, and Marine Corps in order to improve the quality of new recruits and to reduce attrition among recruits.

"(b) **Specific reforms.**—As part of the reforms in military recruiting systems to be undertaken under subsection (a), the Secretary shall take the following steps:

"(1) Improve the system of pre-enlistment waivers and separation codes used for recruits by (A) revising and updating those waivers and codes to allow more accurate and useful data collection about those separations, and (B) prescribing regulations to ensure that those waivers and codes are interpreted in a uniform manner by the military services.

"(2) Develop a reliable database for (A) analyzing (at both the Department of Defense and service-level) data on reasons for attrition of new recruits, and (B) undertaking Department of Defense or service-specific measures (or both) to control and manage such attrition.

"(3) Require that the Secretary of each military department (A) adopt or strengthen incentives for recruiters to thoroughly prescreen potential candidates for recruitment, and (B) link incentives for recruiters, in part, to the ability of a recruiter to screen out unqualified candidates before enlistment.

"(4) Require that the Secretary of each military department include as a measurement of recruiter performance the percentage of persons enlisted by a recruiter who complete initial combat training or basic training.

"(5) Assess trends in the number and use of waivers over the 1991-1997 period that were issued to permit applicants to enlist with medical or other conditions that would otherwise be disqualifying.

"(6) Require the Secretary of each military department to implement policies and procedures (A) to ensure the prompt separation of recruits who are unable to successfully complete basic training, and (B) to remove those recruits from the training environment while separation proceedings are pending.

"(c) **Report.**—Not later than March 31, 1998, the Secretary shall submit to Congress a report of the trends assessed under subsection (b)(5)[of this note]. The information on those trends provided in the report shall be shown by armed force and by category of waiver. The report shall include recommendations of the Secretary for changing, revising, or limiting the use of waivers referred to in that subsection."

#### **Denial of Funds for Preventing ROTC Access to Campus or Federal Military Recruiting on Campus; Exceptions**

Pub.L. 104-208, Div. A, Title I, § 101(e) [Title V, § 514], Sept. 30, 1996, 110 Stat. 3009-233, 3009-270, provided that:

"(a) **Denial of Funds for Preventing ROTC Access to Campus.**—None of the funds made available in this [Pub.L. 104-208, Div. A, Title I, § 101(e), Sept.



30, 1996, 110 Stat. 3009-233, for classification of which to Code, see Tables] or any other Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for any fiscal year may be provided by contract or by grant (including a grant of funds to be available for student aid) to a covered educational entity if the Secretary of Defense determines that the covered educational entity has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

"(1) the maintaining, establishing, or operation of a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of title 10, United States Code [section 654 of this title], and other applicable Federal laws) at the covered educational entity; or

"(2) a student at the covered educational entity from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

"(b) **Dental of Funds for Preventing Federal Military Recruiting on Campus.**—None of the funds made available in this [Pub.L. 104-208, Div. A, Title I, § 101(e), Sept. 30, 1996, for classification of which to Code, see Tables] or any other Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for any fiscal year may be provided by contract or by grant (including a grant of funds to be available for student aid) to a covered educational entity if the Secretary of Defense determines that the covered educational entity has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

"(1) entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of Federal military recruiting; or

"(2) access by military recruiters for purposes of Federal military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at the covered educational entity:

"(A) student names, addresses, and telephone listings; and

"(B) if known, student ages, levels of education, and majors.

"(c) **Exceptions.**—The limitation established in subsection (a) or (b) shall not apply to a covered educational entity if the Secretary of Defense determines that—

"(1) the covered educational entity has ceased the policy or practice described in such subsection;

"(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation; or

"(3) the institution of higher education involved is prohibited by the law of any State, or by the order of any State court, from allowing Senior Reserve Officer Training Corps activities or Federal military recruiting on campus, except that this paragraph shall apply only during the one-year period beginning on the effective date of this section [see subsec. (g) of this note].

"(d) **Notice of determinations.**—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

"(1) shall transmit a notice of the determination to the Secretary of Education and to the Congress; and

"(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the covered educational entity for contracts and grants.

"(e) **Semiannual Notice in Federal Register.**—The Secretary of Defense shall publish in the Federal Register once every 6 months a list of each covered educational entity that is currently ineligible for contracts and grants by reason of a determination of the Secretary under subsection (a) or (b).

"(f) **Covered Educational Entity.**—For purposes of this section, the term 'covered educational entity' means an institution of higher education, or a subelement [sic] of an institution of higher education.

"(g) **Effective date.**—This section [this note] shall take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act [Sept. 30, 1996], by which date the Secretary of Defense shall have published final regulations in consultation with the Secretary of Education to carry out this section."

**Military Recruiting on Campus**

Pub.L. 103-337, Div. A, Title V, § 558, Oct. 5, 1994, 108 Stat. 2776, as amended Pub.L. 104-324, Title II, § 206(a), Oct. 19, 1996, 110 Stat. 3908, provided that:

"(a) **Denial of funds.**—(1) No funds available to the Department of Defense or the Department of Transportation may be provided by grant or contract to any institution of higher education that has a policy of denying, or which effectively prevents, the Secretary of Defense or the Secretary of Transportation from obtaining for military recruiting purposes—

"(A) entry to campuses or access to students on campuses; or

"(B) access to directory information pertaining to students.

"(2) Students referred to in paragraph (1) are individuals who are 17 years of age or older.

"(b) **Procedures for determination.**—The Secretary of Defense, in consultation with the Secretary of Education and the Secretary of Transportation, shall prescribe regulations that contain procedures for determining if and when an educational institution has denied or prevented access to students or information described in subsection (a).

"(c) **Definition.**—For purposes of this section, the term 'directory information' means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student."

**Military Recruiting Information**

Section 1114(a) of Pub.L. 97-252 provided that:

"(a) The Congress finds that in order for Congress to carry out effectively its constitutional authority to raise and support armies, it is essential—

"(1) that the Secretary of Defense obtain and compile directory information pertaining to students enrolled in secondary schools throughout the United States; and

"(2) that such directory information be used only for military recruiting purposes and be retained in the case of each person with respect to whom such information is obtained and compiled for a limited period of time."

**Access of Armed Forces Recruiting Personnel to Secondary Educational Institutions; Release of Data**

Pub.L. 96-342, Title III, § 302(d), Sept. 8, 1980, 94 Stat. 1083, provided that: "It is the sense of the Congress—

"(1) that secondary educational institutions in the United States, the Commonwealth of Puerto Rico, and the territories of the United States should cooperate with the Armed Forces by allowing recruiting personnel access to such institutions; and

"(2) that it is appropriate for such institutions to release to the Armed Forces information regarding students at such institutions (including such data as names, addresses, and education levels) which is relevant to recruiting individuals for service in the Armed Forces."

**WESTLAW ELECTRONIC RESEARCH**

See WESTLAW guide following the Explanation pages of this volume.

**NOTES OF DECISIONS**

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**1. Misrepresentations**

Even accepting plaintiff's testimony that one of the factors that led him to execute an enlistment contract with the

Air Force was the existence of an Air Force program which allows a senior in medical school to be placed on extended active duty with full pay and allowances the first day of his matriculation as a senior, where it was uncontradicted that the Air Force never guaranteed or promised in any way that plaintiff would be accepted into the program and where it affirmatively appeared that plaintiff read and understood the enlistment contract he signed, circumstances did not create even the slightest inference that the Air

## § 981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

(Added Pub.L. 98-525, Title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

### HISTORICAL AND STATUTORY NOTES

#### Revision Notes and Legislative Reports

1984 Acts. House Report No. 98-691 and House Conference Report No. 98-1080, see 1984 U.S. Code Cong. and Adm. News, p. 4174.

#### Effective Dates

1984 Acts. Section effective Oct. 1, 1985, see section 1404 of Pub.L. 98-525, set out as a note under section 520b of this title.

#### Similar Provisions

Provisions similar to those comprising subsec. (a) of this section were contained in Pub.L. 94-106, Title VIII, § 820(a), Oct. 7, 1975, 89 Stat. 544, which was repealed by Pub.L. 98-525, Title XIV, §§ 1403(c), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985.

Provisions similar to those comprising subsec. (b) of this section were contained in the following prior appropriation Acts:

Pub.L. 98-473, Title I, § 101(h) [Title VIII, § 8034], Oct. 12, 1984, 98 Stat. 1904, 1930.

Pub.L. 98-212, Title VII, § 742, Dec. 8, 1983, 97 Stat. 1446.

Pub.L. 97-377, Title I, § 101(c) [Title VII, § 745], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub.L. 97-114, Title VII, § 746, Dec. 29, 1981, 95 Stat. 1586.

Pub.L. 96-527, Title VII, § 747, Dec. 15, 1980, 94 Stat. 3089.

Pub.L. 96-154, Title VII, § 748, Dec. 21, 1979, 93 Stat. 1160.

Pub.L. 95-457, Title VIII, § 848, Oct. 13, 1978, 92 Stat. 1252.

Pub.L. 95-111, Title VIII, § 849, Sept. 21, 1977, 91 Stat. 908.

Pub.L. 94-419, Title VII, § 748, Sept. 22, 1976, 90 Stat. 1299.

Pub.L. 94-212, Title VII, § 745, Feb. 9, 1976, 90 Stat. 175.

Pub.L. 93-437, Title VIII, § 848, Oct. 8, 1974, 88 Stat. 1232.

### WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

## § 982. Members: service on State and local juries

(a) A member of the armed forces on active duty may not be required to serve on a State or local jury if the Secretary concerned

(1) would unreasonably interfere with the performance of the member's military duties; or

(2) would adversely affect the readiness of the unit, command, or activity to which the member is assigned.

(b) A determination by the Secretary concerned under this section is conclusive.

(c) The Secretary concerned shall prescribe regulations for the administration of this section.

(d) In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

(Added Pub.L. 99-661, Div. A, Title V, § 502(a), Nov. 14, 1986, 100 Stat. 3863.)

#### HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports and Statement by President, see 1986  
1986 Acts. Senate Report No. 99-331, U.S. Code Cong. and Adm. News, p.  
House Conference Report No. 99-1001, 6413.

#### WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

### § 983. Institutions of higher education that prohibit Senior ROTC units: denial of Department of Defense grants and contracts

(a) **Denial of Department of Defense grants and contracts.**—(1) No funds appropriated or otherwise available to the Department of Defense may be made obligated by contract or by grant (including a grant of funds to be available for student aid) to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education.

(2) In the case of an institution of higher education that is ineligible for Department of Defense grants and contracts by reason of paragraph (1), the prohibition under that paragraph shall cease to apply to that institution upon a determination by the Secretary that the institution no longer has an anti-ROTC policy.

(b) **Notice of determination.**—Whenever the Secretary makes a determination under subsection (a) that an institution has an anti-

ROTC policy, or that an institution previously determined to have an anti-ROTC policy no longer has such a policy, the Secretary—

(1) shall transmit notice of that determination to the Secretary of Education and to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives; and

(2) shall publish in the Federal Register notice of that determination and of the effect of that determination under subsection (a)(1) on the eligibility of that institution for Department of Defense grants and contracts.

(c) **Semiannual notice in Federal Register.**—The Secretary shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for Department of Defense grants and contracts by reason of a determination of the Secretary under subsection (a).

(d) **Anti-ROTC policy.**—In this section, the term “anti-ROTC policy” means a policy or practice of an institution of higher education that—

(1) prohibits, or in effect prevents, the Secretary of Defense from maintaining or establishing a unit of the Senior Reserve Officer Training Corps at that institution, or

(2) prohibits, or in effect prevents, a student at that institution from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(Added Pub.L. 104-106, Div. A, Title V, § 541(a), Feb. 10, 1996, 110 Stat. 315.)

## HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports**  
1996 Acts. House Conference Report  
No. 104-450, see 1996 U.S.Code Cong.  
and Adm.News, p. 238.

## WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

[§ 984. Omitted]

**§ 985. Persons convicted of capital crimes: denial of certain burial-related benefits**

(a) **Prohibition of performance of military honors.**—The Secretary of a military department and the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the

person who has been convicted of a capital offense under Federal or State law for which the person was sentenced to death or life imprisonment without parole.

(b) **Disqualification from burial in military cemeteries.**—A person convicted of a capital offense under Federal law is not entitled to or eligible for, and may not be provided, burial in—

- (1) Arlington National Cemetery;
- (2) the Soldiers' and Airmen's National Cemetery; or
- (3) any other cemetery administered by the Secretary of a military department or the Secretary of Defense.

(c) **Definitions.**—In this section:

(1) The term "capital offense" means an offense for which the death penalty may be imposed.

(2) The term "burial" includes inurnment.

(3) The term "State" includes the District of Columbia and any commonwealth or territory of the United States.

(Added Pub.L. 105-85, Div. A, Title X, § 1077(a)(1), Nov. 18, 1997, 111 Stat. 1914.)

### HISTORICAL AND STATUTORY NOTES

#### Revision Notes and Legislative Reports

1997 Acts. House Conference Report No. 105-340 and Statement by President, see 1997 U.S.Code Cong. and Adm.News, p. 2251.

#### Applicability

Pub.L. 105-85, Div. A, Title X, § 1077(b), Nov. 18, 1997, 111 Stat. 1915,

provided that: "Section 985 of title 10, United States Code, as added by subsection (a) [Pub.L. 105-85, Div. A, Title X, § 1077(a), Nov. 18, 1997, 111 Stat. 1914] applies with respect to persons dying after January 1, 1997."

### WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

number of training sorties for all forms of combat flight training which require aggressor aircraft, and the number of sorties that the dedicated aggressor squadrons can generate to meet these requirements; the ratio of the total inventory of attack and fighter aircraft to the number of aircraft available for dedicated aggressor squadrons; a comparison of the performance characteristics of the aircraft assigned to dedicated aggressor squadrons compared to the performance characteristics of the aircraft they are intended to represent in training scenarios; an assessment of pilot proficiency by year from 1986 to the present; Service recommendations to enhance aggressor squadron proficiency to include number of dedicated aircraft, equipment, facilities, and personnel; and a plan that proposes improvements in dissimilar aircraft air combat training.

SEC. 8114. None of the funds appropriated or otherwise made available by this or other Department of Defense Appropriations Acts may be obligated or expended for the purpose of performing repairs or maintenance to military family housing units of the Department of Defense, including areas in such military family housing units that may be used for the purpose of conducting official Department of Defense business: Provided, That the Department of Defense Office of the Inspector General shall provide a report to the House and Senate Committees on Appropriations not later than 90 days after the enactment of this Act which assesses the compliance of each of the military services with applicable appropriations law, Office of Management and Budget circulars, and Undersecretary of Defense (Comptroller) directives which govern funding for maintenance and repairs to flag officer quarters: Provided further, That this report shall include an assessment as to whether there have been violations of the Anti-Deficiency Act resulting from instances of improper funding of such maintenance and repair projects.

SEC. 8115. Notwithstanding any other provision of law, funds appropriated in this Act under the heading "Research, Development, Test and Evaluation, Defense-Wide" for any advanced concept technology demonstration project may only be obligated thirty days after a report, including a description of the project and its estimated annual and total cost, has been provided in writing to the congressional defense committees: Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying to the congressional defense committees that it is in the national interest to do so: Provided further, That none of the funds appropriated under the heading "Research, Development, Test and Evaluation, Defense-Wide" in the Department of Defense Appropriations Act, 1999 (Public Law 105-262) which remain available for obligation are available for the Line of Sight Anti-Tank Program: Provided further, That of the funds appropriated under the heading "Research, Development, Test and Evaluation, Defense-Wide" in Public Law 105-262, \$10,027,000 shall be available only for the Air Directed Surface to Air Missile.

SEC. 8116. None of the funds appropriated under the heading "Research, Development, Test and Evaluation, Defense-Wide" in the Department of Defense Appropriations Act, 1999 (Public Law 105-262) which remain available for obligation are available for the Medium Extended Air Defense System or successor systems.

SEC. 8117. Of the funds appropriated in title II of this Act under the heading "Operation and Maintenance, Army", \$250,000 shall be available only for a grant to the Nebraska Game and Parks Commission for the purpose of locating, identifying the boundaries of, acquiring, preserving, and memorializing the cemetery site that is located in close proximity to Fort Atkinson, Nebraska. The Secretary of the Army shall require as a condition of such grant that the Nebraska Game and Parks Commission, in carrying out the purposes of which the grant is

made, work in conjunction with the Nebraska State Historical Society. The grant under this section shall be made without regard to section 1301 of title 31, United States Code, or any other provision of law.

SEC. 8118. Notwithstanding any other provision of law, for the purpose of establishing all Department of Defense policies governing the provision of care provided by and financed under the military health care system's case management program under 10 U.S.C. 1079(a)(17), the term "custodial care" shall be defined as care designed essentially to assist an individual in meeting the activities of daily living and which does not require the supervision of trained medical, nursing, paramedical or other specially trained individuals: Provided, That the case management program shall provide that members and retired members of the military services, and their dependents and survivors, have access to all medically necessary health care through the health care delivery system of the military services regardless of the health care status of the person seeking the health care: Provided further, That the case management program shall be the primary obligor for payment of medically necessary services and shall not be considered as secondarily liable to Title XIX of The Social Security Act, other welfare programs or charity based care.

SEC. 8119. During the current fiscal year—

(1) refunds attributable to the use of the Government travel card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance accounts of the Department of Defense which are current when the refunds are received; and

(2) refunds attributable to the use of the Government Purchase Card by military personnel and civilian employees of the Department of Defense may be credited to accounts of the Department of Defense that are current when the refunds are received and that are available for the same purposes as the accounts originally charged.

SEC. 8120. During the current fiscal year and hereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs may be used for the purpose for which the grant is made without regard to any provision to the contrary in section 514 of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997 (10 U.S.C. 503 note), or section 963 of title 10, United States Code.

SEC. 8121. (a) REGISTERING INFORMATION TECHNOLOGY SYSTEMS WITH DOD CHIEF INFORMATION OFFICER.—After March 31, 2000, none of the funds appropriated in this Act may be used for a mission critical or mission essential information technology system (including a system funded by the defense working capital fund) that is not registered with the Chief Information Officer of the Department of Defense. A system shall be considered to be registered with that officer upon the furnishing to that officer of notice of the system, together with such information concerning the system as the Secretary of Defense may prescribe. An information technology system shall be considered a mission critical or mission essential information technology system as defined by the Secretary of Defense.

(b) CERTIFICATIONS AS TO COMPLIANCE WITH CLINGER-COHEN ACT.—(1) During fiscal year 2000, a major automated information system may not receive Milestone I approval, Milestone II approval, or Milestone III approval within the Department of Defense until the Chief Information Officer certifies, with respect to that milestone, that the system is being developed in accordance with the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.). The Chief Information Officer may require additional certifications, as appropriate, with respect to any such system.

(2) The Chief Information Officer shall provide the congressional defense committees timely

notification of certifications under paragraph (1). Each such notification shall include, at a minimum, the funding baseline and milestone schedule for each system covered by such a certification and confirmation that the following steps have been taken with respect to the system:

(A) Business process reengineering.

(B) An analysis of alternatives.

(C) An economic analysis that includes a calculation of the return on investment.

(D) Performance measures.

(E) An information assurance strategy consistent with the Department's Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance (C4ISR) Architecture Framework.

(c) DEFINITIONS.—For purposes of this section:

(1) The term "Chief Information Officer" means the senior official of the Department of Defense designated by the Secretary of Defense pursuant to section 3506 of title 44, United States Code.

(2) The term "information technology system" has the meaning given the term "information technology" in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

(3) The term "major automated information system" has the meaning given that term in Department of Defense Directive 5000.1.

SEC. 8122. During the current fiscal year, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: Provided, That this restriction shall not apply if the Department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: Provided further, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8123. (a) RECOVERY OF CERTAIN DOD ADMINISTRATIVE EXPENSES IN CONNECTION WITH FOREIGN MILITARY SALES PROGRAM.—Charges for administrative services calculated under section 21(e) of the Arms Export Control Act (22 U.S.C. 2761(e)) in connection with the sale of defense articles or defense services shall (notwithstanding paragraph (3) of section 43(b) of such Act (22 U.S.C. 2792(b))) include recovery of administrative expenses incurred by the Department of Defense during fiscal year 2000 that are attributable to (1) salaries of members of the Armed Forces, and (2) unfunded estimated costs of civilian retirement and other benefits.

(b) REIMBURSEMENT OF APPLICABLE MILITARY PERSONNEL ACCOUNTS.—During the current fiscal year, amounts in the Foreign Military Sales Trust Fund shall be available in an amount not to exceed \$63,000,000 to reimburse the applicable military personnel accounts in title I of this Act for the value of administrative expenses referred in subsection (a)(1).

(c) REDUCTIONS TO REFLECT AMOUNTS EXPECTED TO BE RECOVERED.—(1) The amounts in title I of this Act are hereby reduced by an aggregate of \$63,000,000 (such amount being the amount expected to be recovered by reason of subsection (a)(1)).

(2) The amounts in title II of this Act are hereby reduced by an aggregate of \$31,000,000 (such amount being that amount expected to be recovered by reason of subsection (a)(2)).

SEC. 8124. (a) The Communications Act of 1934 is amended in section 337(b) (47 U.S.C. 337(b)), by deleting paragraph (2). Upon enactment of this provision, the FCC shall initiate the competitive bidding process in fiscal year 1999 and shall conduct the competitive bidding in a manner that ensures that all proceeds of such bidding are deposited in accordance with section

**This document has been amended. Use UPDATE.  
See SCOPE for more information.**

**UNITED STATES CODE ANNOTATED  
TITLE 10. ARMED FORCES  
SUBTITLE A--GENERAL MILITARY LAW  
PART II--PERSONNEL  
CHAPTER 49--MISCELLANEOUS PROHIBITIONS AND PENALTIES**

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Current through P.L. 106-73, approved 10-19-1999

§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

**(a) Denial of funds for preventing ROTC access to campus.**--No funds described in subsection (d)(1) may be provided by contract or by grant (including a grant of funds to be available for student aid) to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents--

(1) the Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of this title and other applicable Federal laws) at that institution (or any subelement of that institution); or

(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

**(b) Denial of funds for preventing military recruiting on campus.**--No funds described in subsection (d)(2) may be provided by contract or by grant (including a grant of funds to be available for student aid) to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents--

(1) the Secretary of a military department or Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(2) access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(A) Names, addresses, and telephone listings.

(B) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

**(c) Exceptions.**--The limitation established in subsection (a) or (b) shall not apply to an institution of higher education (or any subelement of that institution) if the Secretary of Defense determines that--

(1) the institution (and each subelement of that institution) has ceased the policy or practice described in that subsection; or

(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation.

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**(d) Covered funds.**--(1) The limitation established in subsection (a) applies to the following:

(A) Any funds made available for the Department of Defense.

(B) Any funds made available in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(2) The limitation established in subsection (b) applies to the following:

(A) Funds described in paragraph (1).

(B) Any funds made available for the Department of Transportation.

**(e) Notice of determinations.**--Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary--

(1) shall transmit a notice of the determination to the Secretary of Education and to Congress; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

**(f) Semiannual notice in Federal Register.**--The Secretary of Defense shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for contracts and grants by reason of a determination of the Secretary under subsection (a) or (b).

#### CREDIT(S)

#### 1998 Main Volume

(Added Pub.L. 104-106, Div. A, Title V, § 541(a), Feb. 10, 1996, 110 Stat. 315.)

#### 1999 Electronic Update

(As amended Pub.L. 106-65, Div. A, Title V, § 549(a)(1), Title X, § 1067(1), Oct. 5, 1999, 113 Stat. 609, 774.)

<General Materials (GM) - References, Annotations, or Tables>

### HISTORICAL AND STATUTORY NOTES

#### Revision Notes and Legislative Reports

1996 Acts. House Conference Report No. 104-450, see 1996 U.S. Code Cong. and Adm. News, p. 238.

1999 Acts. House Conference Report No. 106-301 and Statement by President, see 1999 U.S. Code Cong. and Adm. News, p. 94.

#### Codifications

Section 1067(1) of Pub.L. 106-65, directing that subsec. (b)(1) of this section be amended by substituting "Committee on Armed Services" for "Committee on National Security", was incapable of execution due to prior amendment by section 549(a)(1) of Pub.L. 106-65 which completely revised this section.

#### Amendments

1999 Amendments. Pub.L. 106-65, § 549(a)(1), rewrote this section which formerly read:

**"§ 983. Institutions of higher education that prohibit Senior ROTC units:** denial of Department of Defense grants and contracts

**"(a) Denial of Department of Defense grants and contracts.--**(1) No funds appropriated or otherwise available to the Department of Defense may be made obligated by contract or by grant (including a grant of funds to be available for student aid) to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education.

**"(2)** In the case of an institution of higher education that is ineligible for Department of Defense grants and contracts by reason of paragraph (1), the prohibition under that paragraph shall cease to apply to that institution upon a determination by the Secretary that the institution no longer has an anti- ROTC policy.

**"(b) Notice of determination.--**Whenever the Secretary makes a determination under subsection (a) that an institution has an anti-ROTC policy, or that an institution previously determined to have an anti-ROTC policy no longer has such a policy, the Secretary--

**"(1)** shall transmit notice of that determination to the Secretary of Education and to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives; and

**"(2)** shall publish in the Federal Register notice of that determination and of the effect of that determination under subsection (a)(1) on the eligibility of that institution for Department of Defense grants and contracts.

**"(c) Semiannual notice in Federal Register.--**The Secretary shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for Department of Defense grants and contracts by reason of a determination of the Secretary under subsection (a).

**"(d) Anti-ROTC policy.--**In this section, the term "anti-ROTC policy" means a policy or practice of an institution of higher education that--

**"(1)** prohibits, or in effect prevents, the Secretary of Defense from maintaining or establishing a unit of the Senior Reserve Officer Training Corps at that institution, or

**"(2)** prohibits, or in effect prevents, a student at that institution from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education."

Subsec. (b)(1). Pub.L. 106-65, § 1067(1), which directed the substitution of "Committee on Armed Services" for "Committee on National Security", could not be executed due to prior amendment by Pub.L. 106-65, § 549(a)(1). See Codifications note set out under this section.

#### Change of Name

The Committee on National Security of the House of Representatives was changed to the Committee on Armed Services of the House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999, 145 Cong. Rec. H6- 10.

10 U.S.C.A. § 983

10 USCA § 983

END OF DOCUMENT

Citation  
65 FR 2056-01  
2000 WL 18540 (F.R.)  
(Cite as: 65 FR 2056)

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## RULES and REGULATIONS

## DEPARTMENT OF DEFENSE

48 CFR Parts 209, 243, and 252

[DFARS Case 99-D303]

Defense Federal Acquisition Regulation Supplement; Institutions of Higher  
Education

Thursday, January 13, 2000

**\*2056** AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 549 of the National Defense Authorization Act for Fiscal Year 2000. Section 549 amends statutory provisions pertaining to the denial of Federal contracts and grants to institutions of higher education that prohibit Senior Reserve Officer Training Corps units or military recruiting on campus.

DATES: Effective date: January 13, 2000.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 13, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99-D303 in all correspondence related to this rule. E-mail comments should cite DFARS Case 99-D303 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0288.

SUPPLEMENTARY INFORMATION:

65 FR 2056-01

(Cite as: 65 FR 2056, \*2056)

#### A. Background

This interim rule revises DFARS 209.470, 243.105, and 252.209-7005 to implement Section 549 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 549 amends 10 U.S.C. 983 to prohibit DoD from providing funds by contract or grant to an institution of higher education (including any subelement of that institution) if the Secretary of Defense determines that the institution (or any subelement of the institution) has a policy or practice that prohibits, or in effect prevents, Senior Reserve Officer Training Corps (ROTC) units or military recruiting on campus.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule applies only to institutions of higher education that prohibit Senior ROTC units or military recruiting on campus. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99-D303.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

#### D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 549 of the National Defense Authorization Act for Fiscal Year 2000. Section 549 amends statutory provisions pertaining to the denial of Federal contracts and grants to institutions of higher education that prohibit Senior ROTC units or military recruiting on campus. Section 549 became effective on October 5, 1999. DoD will consider comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 209, 243, and 252

Government procurement.

Michele P. Peterson,

65 FR 2056-01

(Cite as: 65 FR 2056, \*2056)

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 209, 243, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 209, 243, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 209--CONTRACTOR QUALIFICATIONS

2. Sections 209.470 through 209.470-3 are revised and section 209.470-4 is added to read as follows:

209.470 Reserve Officer Training Corps and military recruiting on campus.

##### 209.470-1 Definition.

Institution of higher education, as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

##### 209.470-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits DoD from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents--

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that--

(1) The institution has ceased the policy or practice described in paragraph (a) of this subsection; or **\*2057**

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

##### 209.470-3 Procedures.

If the Secretary of Defense determines that an institution of higher education is ineligible to receive DoD funds because of a policy or practice described in

65 FR 2056-01

(Cite as: 65 FR 2056, \*2057)

209.470-2(a)--

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by General Services Administration (also see FAR 9.404 and 32 CFR part 216); and

(b) DoD components--

(1) Must not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Must make no further payments under existing contracts with the institution; and

(3) Must terminate existing contracts with the institution.

209.470-4 Contract clause.

Use the clause at 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

PART 243--CONTRACT MODIFICATIONS

3. Section 243.105 is amended by revising paragraph (a)(ii) and removing paragraph (a)(iii). The revised text reads as follows;

243.105 Availability of funds.

(a) \* \* \*

(ii) In accordance with 10 U.S.C. 983, do not provide funds by contract or contract modification, or make contract payments, to an institution of higher education that has a policy or practice of hindering Senior Reserve Officer Training Corps units or military recruiting on campus as described at 209.470.

PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.209-7005 is revised to read as follows:

252.209-7005 Reserve Officer Training Corps and Military Recruiting on Campus.

As prescribed in 209.470-4, use the following clause:

Reserve Officer Training Corps and Military Recruiting on Campus (Jan 2000)

(a) Definition. "Institution of higher education," as used in this clause, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

(b) Limitation on contract award. Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents--

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in

65 FR 2056-01

(Cite as: 65 FR 2056, \*2057)

accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.

(ii) Address.

(iii) Telephone number.

(iv) Date and place of birth.

(v) Educational level.

(vi) Academic major.

(vii) Degrees received.

(viii) Most recent educational institution enrollment.

(c) Exception. The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that--

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Agreement. The Contractor represents that it does not now have, and agrees that during performance of this contract it will not adopt, any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has granted an exception in accordance with paragraph (c)(2) of this clause.

(e) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the agreement in paragraph (d) of this clause--

(1) The Contractor will be ineligible for further payments under this and other contracts with the Department of Defense; and

(2) The Government will terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award.

(End of clause)

[FR Doc. 00-765 Filed 1-12-00; 8:45 am]

BILLING CODE 5000-04-M

65 FR 2056-01, 2000 WL 18540 (F.R.)

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