

Securities, Services, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

1. The authority citation for part 500 continues to read as follows:

T4Authority: 50 U.S.C. App. 1-44; E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

#### **Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**

2. Section 500.573 is revised to read as follows:

#### **§ 500.573 Certain donations of funds and goods to meet basic human needs authorized.**

(a) The donation of funds for the purpose of contributing to the provision of humanitarian assistance to victims of natural disasters in North Korea is authorized, provided that such donations may only be made through the United Nations, related UN programs and specialized agencies, the American Red Cross and the International Committee of the Red Cross.

(b) With respect to transactions not within the scope of the general license contained in § 500.533 of this part, all transactions incident to the donation to North Korea of goods to meet basic human needs are authorized. For purposes of this section, *goods to meet basic human needs* shall be defined by reference to the Humanitarian License Procedure set forth in 15 CFR 773.5 (c) and (d) and supplement no. 7 to part 773 of the Export Administration Regulations.

(c) Note: Exports from the United States to North Korea or reexports to North Korea of U.S.-origin goods, or foreign goods containing U.S.-origin content or produced from U.S.-origin technical data, to meet basic human needs in North Korea may require authorization from the U.S. Department of Commerce.

Dated: February 28, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 29, 1996.

Dennis M. O'Connell

Acting Deputy Assistant Secretary  
(Regulatory, Tariff & Law Enforcement).

[FR Doc. 96-5487 Filed 3-5-96; 9:32 am]

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 23**

RIN 0790-AF87

#### **Grants and Agreements—Military Recruiting on Campus**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense (DoD) adopts this final rule to implement Section 558 of the National Defense Authorization Act for Fiscal Year 1995, as it applies to grants. Section 558 states that funds available to the Department of Defense may not 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 from obtaining for military recruiting purposes: entry to campuses; access to students on campuses; or access to directory information pertaining to students. The rule implements the law, as it applies to grants, by requiring inclusion of a clause in DoD grants with institutions of higher education. It also extends the requirement, as a matter of policy, to DoD cooperative agreements, because they are very similar to grants.

**DATES:** This final rule is effective on April 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mark Herbst, ODDR&E(R), 3080 Defense Pentagon, Washington, DC 20301-3080. Telephone (703) 614-0205.

#### **SUPPLEMENTARY INFORMATION:**

##### **Responses to Comments**

This final rule revises 32 CFR part 23, which was adopted as an interim-final rule on January 24, 1995 (at 60 FR 4544). In response to the publication of the interim-final rule, DoD received written comments from two associations and some telephonic comments. The responses to the comments are:

*Comment 1:* The clause is in the interim-final rule referred to "procedures established by the Secretary of Defense to implement section 558 of Public Law 103-337." It should refer to DoD's implementation of section 558, at 32 CFR part 216.

*Response 1:* Agree. At the time the interim-rule on grants and cooperative agreements was published 32 CFR part 216 had not been updated to implement section 558. Now that it has been updated (published elsewhere in the issue of the Federal Register), the clause in the final 32 CFR part 23 refers to it. The final rule also includes more

background and policy discussion, and more coverage on the grants officer's responsibilities, than did the interim-final rule—most of that discussion and coverage is based on 32 CFR part 216.

*Comment 2:* In implementing an earlier law that is similar to section 558, DoD recognized that it might, in some cases, find a subordinate element of an institution of higher education to be restricting military recruiters' access, but not the institution as a whole. In those cases, DoD established a policy (in 32 CFR part 216, before its recent update) that the subordinate element, but not the parent institution, would be denied DoD funds. If that policy is continued in 32 CFR part 216 when it is updated to implement section 558, the grants and cooperative agreements clause should be amended by adding:

(1) The following sentence after the first sentence of the clause: "A recipient will not be deemed to be such an institution if a subordinate element of the institution, but not the institution as a whole, has a policy of preventing or effectively prevents military recruiting of students;" and

(2) At the end of the clause the following two sentences: "If the Secretary determines that a subordinate element of an institution, but not the institution as a whole, has a policy of preventing or effectively prevents military recruiting of students, DoD may cease payment under, suspend, or terminate grants and agreements that relate solely to the relevant subordinate element, but may not take such action with respect to grant and agreements involving other elements of the institution or the institution as a whole."

*Response 2:* Adding the commenter's proposed sentences to the clause isn't necessary, for two reasons:

- The clause in the final rule has been amended to refer to "institution of higher education (as defined in 32 CFR part 216)." The definition in 32 CFR part 216 (which also appears in the final rule) incorporates the concept of the subordinate element of an institution of higher education that the comment sought to incorporate; and

- The final rule includes an expanded policy section that refers to the policy in 32 CFR part 216 concerning subordinate elements of institutions of higher education.

*Comment 3:* Under the interim-final rule, DoD will cease payments under existing grants and agreements, if a recipient is determined to have a policy of restricting military recruiters' access. This is unreasonable, since the institution already will have committed funds for personnel and other project

expenses. DoD instead should cease payments beginning with the next year.

*Response 3:* The restriction on providing by grant any funds available to DoD is a statutory requirement, and not a matter within DoD's regulatory discretion. To comply, payments on existing awards must cease promptly, once an institution is identified pursuant to 32 CFR part 216.

*Comment 4:* The interim-final rule's requirement for grants officers to include language in program solicitations seems an unnecessary, added burden.

*Response 4:* Agree. The requirement has been deleted from the final rule.

*Comment 5:* The interim-final rule doesn't state whether recipient of grants and cooperative agreements must include the clause in their subawards to institutions of higher education.

*Response 5:* Agree. That's clarified in the final rule.

#### Executive Order 12866

This rule is not a "significant regulatory action," as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)]

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### List of Subjects in 32 CFR Part 23

Grants programs.

Accordingly, Title 32 of the Code of Federal Regulations, part 23 is revised to read as follows.

## PART 23—GRANTS AND AGREEMENTS—MILITARY RECRUITING ON CAMPUS

Sec.

23.1 Military recruiting on campus.

Authority: 5 U.S.C. 301.

### § 23.1 Military recruiting on campus.

(a) *Purpose.* The purpose of this section is to implement section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337), as it specifically affects grants and cooperative agreements (note that section 558 appears as a note to 10 U.S.C. 503). This section thereby supplements DoD's primary implementation of section 558, in 32 CFR part 216, "Military Recruiting at Institutions of Higher Education."

(b) *Definitions specific to this section.* In this section:

(1) *Directory information* has the following meaning, given in section 558(c) of Public Law 103-337. It 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.

(2) *Institution of higher education* has the following meaning, given at 32 CFR 216.3(b). The term:

(i) Means a domestic college, university, or subelement of a university providing postsecondary school courses of study, including foreign campuses of such institutions. A subelement of a university is a discrete (although not necessarily autonomous) organizational entity that establishes policy or practices affecting military recruiting and related actions covered by 32 CFR part 216. For example, a subelement may be an undergraduate school, a law school, medical school, or graduate school of arts and sciences.

(ii) Includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees.

(iii) Does not include entities that operate exclusively outside the United States, its territories, and possessions.

(c) *Statutory requirement.* No funds available to the Department of Defense may be provided by grant to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students.

(d) *Policy.*—(1) *Applicability to subordinate elements of institutions of*

*higher education.* 32 CFR part 216, DoD's primary implementation of section 558, establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section. In cases where those procedures lead to a determination that specific subordinate elements of an institution of higher education have such a policy or practice, rather than the institution as a whole, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

(2) *Applicability to cooperative agreements.* As a matter of DoD policy, the restriction of section 558, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(3) *Deviations.* Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Research, ODDR&E(R), 3080 Defense Pentagon, Washington, D.C. 20301-3080.

(e) *Grants officers' responsibilities.* A grants officer shall:

(1) Not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified on the Governmentwide "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," as being ineligible to receive awards of DoD funds [note that 32 CFR 25.505(d) requires the grants officer to check the list prior to determining that a recipient is qualified to receive an award].

(2) Not consent to any subaward of DoD funds to such an organization, under a grant or cooperative agreement to any recipient, if such subaward requires the grants officer's consent.

(3) Include the clause in paragraph (f) of this section in each grant or cooperative agreement with an institution of higher education. Note that this requirement does not flow down (i.e., recipients are not required to include the clause in subawards).

(4) If an institution of higher education refuses to accept the clause in paragraph (f):

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession

Policy, Office of the Assistant Secretary of Defense for Force Management Policy, OASD (FMP), 4000 Defense Pentagon, Washington, D.C. 20301-4000. This will allow OASD (FMP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(f) *Clause for award documents.* The following clause is to be included in grants and cooperative agreements with institutions of higher education:

As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy of denying, and that it is not an institution of higher education that effectively prevents, the Secretary of Defense 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. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.

Dated: March 4, 1996.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-5556 Filed 3-7-96; 8:45 am]

BILLING CODE 5000-04-M

## 32 CFR Part 216

[DoD Directive 1322.13]

RIN 0790-AG13

### Military Recruiting at Institutions of Higher Education

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense adopts this final rule to implement the National Defense Authorization Act for Fiscal Year 1995. It updates policy, procedures, and responsibilities for identifying and taking action against any institution of higher education that has a policy of denying, or that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student directory information. No funds available to the Department of

Defense (DoD) may be provided by grant or contract to any such institution. The new law allows no basis for waivers.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ronald G. Liveris, Accession Policy, Room 2B271, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Telephone: (703) 697-9268.

#### SUPPLEMENTARY INFORMATION:

##### Responses to Comments

This final rule revises the interim-final rule adopted by DoD on May 30, 1995 (60 FR 28050). The Department of Defense received four comments on the interim-final rule. Each comment was reviewed and given careful consideration.

Two commenters favored the interim-rule. One of these commenters asked whether the interim-rule prohibits DoD contract and grant awards at institutions of higher education that have a policy against Reserve Officer Training Corps (ROTC) programs. 10 U.S.C. 503 note does not address policy and practices affecting ROTC programs. The final rule only applies to institutions that have a policy of denying, or that effectively prevent, entry to campuses, access to students on campuses, or access to student directory information for military recruiting purposes.

The other commenter in favor of the interim-rule specifically supported the provision that restricts the prohibition on the use of DoD funds to subelements of an institution of higher education that have a policy of denying, or that effectively prevent military recruiters access to campuses, access to students, or access to student directory information. A third commenter took the opposite view, arguing that the prohibition on the use of DoD funds should apply to an entire institution when the institution or any of its subelements are determined to have such a policy or practice. The final rule retains the provision that restricts the prohibition on DoD funds to subelements that deny access.

Subordinate elements of an institution of higher education that administer their own placement policies to permit recruiting will not be subject to a prohibition on receiving DoD funds. This reflects DoD's interpretation of the law and its legislative history and DoD's intent to avoid entanglement with the internal decisionmaking processes of institutions of higher education.

The fourth commenter stated that to protect individual privacy and "since the Department of Defense discriminates

against gays in the military," that the Department should not have any access to students on campus or to student directory information. DoD policies concerning gays in the military are the result of implementing 10 U.S.C. chapter 37, section 654 concerning homosexual conduct in the Armed Forces.

This final rule implements 10 U.S.C. 503 note, as added by section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337).

Executive Order 12866

This final rule is not a "significant regulatory action," as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

#### Regulatory Flexibility Act

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

#### Paperwork Reduction Act

This regulatory action will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

#### List of Subjects in 32 CFR Part 216

Armed Forces, Colleges and universities, Recruiting personnel.

Accordingly, 32 CFR Part 216 is revised to read as follows:

### PART 216—MILITARY RECRUITING AT INSTITUTIONS OF HIGHER EDUCATION

Sec.

216.1 Purpose.

216.2 Applicability.

216.3 Definitions.

216.4 Policy.

216.5 Responsibilities.

Appendix A to Part 216—Sample of Letter of Inquiry.

Authority: 10 U.S.C. 503 note.