

**BACKGROUND PAPER
ON
BRAC 2005 AND JOINT ETHICS
REGULATION (JER) STANDARDS**

Background: Congress has authorized DoD to conduct a further round of base realignments and closures (BRAC) in 2005. Both the BRAC Law, DoD and AF BRAC implementing policy and guidance, and DoD's JER place significant prohibitions and limitations on DoD personnel's participation and membership in organizations' whose purpose is to insulate a military installation from BRAC similarly, unauthorized disclosure of BRAC data and information is prohibited.

Discussion

- Legal References
 - 18 USC § 208 Acts Affecting a Personal Financial Interest
 - 5 CFR § 2635 Standards of Ethical Conduct for Employees of the Executive Branch
 - DoD 5500.7-R, Joint Ethics Regulation
 - 10 USC § 2687, notes, §§ 3901 sec., the Defense Base Closure and Realignment Act of 1990, as amended (AKA: BRAC)
- Purpose of BRAC law is "...to provide a fair process..." (§ 290(b)) that "...shall consider all military installations inside the United States equally..." (§ 2903(c)(3)(A))
 - JER General Prohibitions
 - § 5-410(c) prohibits DoD members from engaging in outside activities that conflict with official duties (sec 5 CFR § 2635.802)
 - § 5-410(d) prohibits misuse of one's official position, such as the improper use of non-public information (5 CFR § 2635.701-.705)
 - SECAF's 25 Nov 02 Memorandum "2005 Base Realignment and Closure (BRAC 2005)"
 - "It is essential that we conduct a fair and effective process."
 - "We must avoid taking any actions which predetermine or appear to predetermine a closure or realignment selection decision for any installation."
 - 13 Feb 03 DoD Public Affairs Guidance for BRAC (PAG)
 - "To provide SECDEF, the Commission and the President with the optimal set of recommendations, the analytical work and subsequent deliberations must occur free from opinions, internal or external, based on non-certified data and speculation."
 - "This guidance is aimed at ensuring the fairness and rigor of this BRAC process."
 - DoD and AF Nondisclosure Agreement
 - Mandated by USA (AT&L) 16Apr 03 memorandum. "Transformation Through Base Realignment and Closure (BRAC 2005) Policy Memorandum One-Policy, Responsibilities and Procedures" for all participants in BRAC process

- Use of military grade and department **allowed**
- May not serve in management/officer if offered because of one's DoD position or assignment
- Speeches and writing: If use/permit use of military grade, or includes/permits inclusion of title or position in biographical background, must make express disclaimer if subject deals in significant part with any ongoing or announced policy, program or operation of DoD/AF (such as BRAC) that views presented are solely those of speaker/author, **and** don't necessarily represent DoD or component views
 - If article, must be in prominent position
 - If speech, at the beginning
- Release/Disclosure of Information
 - JER §5-410d prohibits misuses of official position by improper use of non-public information
 - USD (AT&L) April 16, 2003 "Transformation Through Base Realignment and Closure (BRAC 2005) Policy Memorandum one--Policy, Responsibilities, and Procedures"
 - "Data and analyses used...to evaluate military installations for realignment and closures will not be released until the Secretary has forwarded his recommendations to the 2005 Commission no later than May 16, 2005, unless specifically required by law"
 - All such files, data, and materials relating to BRAC 2005 process and deemed deliberative, sensitive and internal to DoD and '[a]ll members ... must use every precaution to prevent the improper release of and/or access to BRAC 2005 data and information" (Appendix B, pages 5-6)
 - All participants in BRAC 2005 process must sign a non-disclosure agreement before they are allowed access to BRAC 2005 process. (Appendix C to memo)
 - Nondisclosure agreement binds person not to disclose such information, except as specifically authorized by law
 - DoD PAG, Section 8-1, also clarifies that "[u]nauthorized discussion, dissemination of information or speculation regarding BRAC matters by DoD personnel and contractors is prohibited"
 - FOIA and release authorities
 - All request for release of AF BRAC 2005 data and materials, to include under Freedom of Information Act, received prior to date SECDEF forwards realignment & closure recommendations to BRAC Commission shall be forwarded to SAF/IEB
 - See DoD BRAC policy memo one, Appendix B, page 5 and DoD PAG, section 8.1

Conclusion: Significant JER and DoD and AF BRAC policy, requirements limit or preclude AF personnel participating in their official and personnel capacity in state and local organizations related to the BRAC status of military installations, as well as to the release of BRAC data and information. Personnel should direct questions to their organizational JER advisor/counselor. Due to the perception of conflict, and potential

actual conflict, of interest, key base, MAJCOM and other AF organizational personnel, and BRAC participants, should exercise extreme discretion and caution and discuss such matters in advance with their JER advisor/counselor.