

## Section 5

# Risk Management Issues Associated With Commitment of Navy Resources: What's Legal, What's Not

The Navy is authorized to provide four types of resources: personnel, in-kind donations, financial, and special Navy support.

Navy personnel participating in the Navy Community Service Program (NCSP) and Flagship Partnerships should be familiar with the policy, guidance, and procedures regarding the commitment of Navy resources. This section addresses issues related to personnel resources, in-kind donations, financial support, and special Navy support.

The Command Coordinator should maintain copies of the references noted throughout the NCSP Guidebook as well as other applicable policies, guidance, and procedures. Space has been allocated under a tab noted as References. Appendix A contains a list of references noted in the NCSP Guidebook. This list is included in Enclosure (1), Instructions and Guidance Pertaining to the Navy Community Service Program. Appendix A contains additional enclosures that provide supplemental information to issues addressed in this section. For clarification, see Appendix B, Definitions.

*The Command Coordinator should provide a briefing for the Flagship Partners to clarify relative Navy guidelines and legal restrictions.*

The Command Coordinator should utilize the reference documents for clarification to ensure that NCSP projects, partnerships, and activities comply with the goal and objectives of the program. Projects, partnerships, and activities should focus upon education, citizenship, health and fitness, environmental conservation, drug demand reduction, and humanitarian assistance.

The Attendant Geographic/Regional or Local Area Coordinator has access to the noted reference and should be contacted if the Command Coordinator is unable to locate the information. The Area Coordinator is also available to assist the Command Coordinator with briefings for potential Flagship Partners who may not be familiar with Navy regulations, policies, guidance, and procedures. The briefing should address legal issues associated with community service and volunteerism. For additional information, contact the Area Coordinator, Legal Officer, or Public Affairs Officer.

## **Personnel Resources**

Navy volunteers are a significant resource commitment. The Navy volunteers contribute to the success of the NCSP and Flagship Partnerships as well as impact communities by encouraging educational achievement, revitalizing citizenry, promoting health and fitness, implementing environmental stewardship, encouraging drug demand reduction, and participating in humanitarian assistance. Navy volunteers have experience and expertise in a wide variety of areas.

### ***Volunteer Participation***

The common ownership of the defense establishment by the citizens of the United States allows personnel to support certain events and participate in forums that serve the common good.

Participation in the NCSP and Flagship Partnerships shall be voluntary. Navy civilian and military men and women from afloat and shore commands should be encouraged to volunteer for this program to the extent that participation does not interfere with their assigned mission or compromise command operational goals or objectives.

Participation in the NCSP and Flagship partnerships shall be voluntary.

Volunteers shall be screened to identify and select Navy personnel possessing technical skills or a specific area expertise and projecting a proper military appearance and attitude. For additional information regarding the recruitment and screening of volunteers, refer to Section 4, Navy Volunteers. Improper screening techniques can

infringe on the rights of potential volunteers and lead to lawsuits. Thus, the Command Coordinator should understand how the legal system defines the liability for screening and placement.

### ***Leave and Work Scheduling***

The federal personnel system provides considerable flexibility to address requests for

leave or changes in work schedules to allow employees to engage in volunteer service. The Navy is encouraged to make appropriate use of this flexibility. It is recommended that consideration be given to the effects of the individual's absence or change in duty schedule on work operations and productivity before approving requests.

Participation in partnership activities should not conflict with assigned duties. Some events, however, occur during the working day. The Office of Personnel Management (OPM) recognizes that it may be appropriate, under limited conditions, to excuse employees for brief periods of time without loss of pay or charge to leave. Excused leave allows Navy personnel to participate in volunteer activities. OPM has determined that the granting of such excused absence would be limited to those situations in which the employee's volunteer service, in the agency's determination, satisfies one or more of the following criteria:

- It is related to the department's or agency's mission;
- It is officially sponsored or sanctioned by the head of the department or agency;
- It will enhance the professional development of the employee's skills in his or her current position; or
- It will not have an adverse effect on work operations or productivity.

Careful judgment should be exercised in reviewing requests by personnel to be granted excused absence to participate in voluntary service during working hours. Under law, an agency is authorized to pay the salaries only of employees who perform work related to the department or agency's mission. As a general rule, it is inappropriate to pay an employee engaged in volunteer service. When an employee is paid a regular salary while performing services on a voluntary basis, the employee, in essence, would no longer be a volunteer.

Based upon the determinations from OPM, the Commanding Officers may adjust normal schedules or may grant liberty, leave, or no-cost temporary additional duty (TAD) to naval personnel to permit their participation in volunteer activities if the project or activity meets the following criteria:

- It is directly related to the department's or agency's mission.
- It is officially sponsored or sanctioned by the head of the department or agency.
- It will enhance the professional development or skills of the employee in his or her current position.

Supervisors may authorize flextime or may excuse civilian employees for short periods of time without loss of pay or charge to leave to participate in command-sponsored volunteer activities. Use of overtime to support this program is not authorized.

*REFERENCE: Office of Personnel Management, <http://www.opm.gov>. DoD Directive 1400.25-M, Subchapter 630, Section G.*

### **Volunteer Liability**

Navy commands should be aware of liability issues regarding injuries that occur during NCSP and other volunteer activities. The Department of Labor advises that, in most instances, personnel who perform mission-related, agency sponsored or sanctioned, or skill-enhancing volunteer activities while on excused absence are covered by 5 U.S.C. Chapter 81, Compensation for Work Injuries. The Office of Personnel Management, Federal Personnel Manual, Chapter 810, Injury Compensation, contains further information and guidance on workers' compensation. Navy volunteers authorized by their Commanding Officer to participate in command-sponsored community service projects and activities are considered within the scope of official duties and employment.

Navy personnel, whether civilian or uniformed, are considered to be within the scope of their duty and are not liable for mishaps occurring in an official capacity during command-sponsored activities. Application of this general rule is dependent upon circumstances and does not protect the volunteer from the consequences of criminally negligent actions. Volunteers acting on their own initiative, without command sponsorship, are not similarly protected.

The Volunteer Protection Act of 1997 provides protection for volunteers from suits and liability of harm inflicted when they are volunteering with a nonprofit organization or a governmental entity when there is no criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights and safety of others. The law does not apply to the operation of a motor vehicle, vessel, aircraft or other vehicle nor to an activity requiring a license or certification.

It is the obligation of the command to ensure, to the best of its ability, that the Navy, the command, the Navy volunteers, and the community served are protected from harm. Commands should not rely upon community organizations to maintain liability insurance that extends coverage to include Navy personnel. It is the responsibility of the command to arrange for liability insurance to cover Navy personnel during volunteer activities.

Claims against the United States are processed in accordance with JAGINST 5800.7C,

Manual of the Judge Advocate General.

*REFERENCE: The Federal Employee's Liability Reform and Tort Compensation Act of 1988*

### **Waivers and Release Forms**

Signed release forms and waivers are an effective tool to limit liability against a Navy command in the event that an accident should occur to non-Navy individuals at a Navy site or on Navy transportation. The waiver or release form must be written properly to state the potential dangers or possible injurious situations to sustain the document. Commands should work closely with a Judge Advocate General when drafting a waiver or release document.

When planning activities at Navy commands, the use of a waiver or release form is encouraged. The visitors should sign and return the waiver or release form to the Command Coordinator. The forms are typically used to obtain a promise from the visiting individuals to surrender the right to sue. Waivers and release forms are only valid if signed by an appropriate person (parent or legal guardian for minor children). The waiver or release form should identify the risks involved. For example, a ship tour exposes the visitor to the possibility of slipping or falling when climbing ladders or walking on deck surfaces. Waivers and release forms do not protect a command from negligence, but provide a measure of protection from nuisance lawsuits. Contact the Navy Legal Officer to ensure that the command waivers and release forms comply with local legal requirements.

The waivers and release forms allow the Navy to take simple precautions to protect commands from allegations of volunteer wrong doing. It is important to manage the risks to volunteers, the command, and the Navy.

### **In-Kind Donations**

In-kind donations from the Navy are wide-ranging, but primarily consist of authorizing the use of facilities (buildings, rooms, athletic fields) at no cost. Other resources that are considered in-kind donations include supplies, materials, and equipment. Specifics concerning the use of these resources follow:

#### ***Use of Navy Facilities***

Commanding Officers may allow the use of command facilities in support of Flagship Partnership activities. All NCSP projects, partnerships, and activities must be conducted in a manner free of any discrimination on the basis of age, race, creed, religion, color, national origin or sex.

REFERENCE:

SECNAVINST 5720.44A, *Public Affairs Policy and Regulations (Chapter 4)*

OPNAVINST 5760.5B, *Navy Support and Assistance to Nationally Organized Youth Groups*

OPNAVINST 5760.2C, *Policy and Responsibility for Navy Youth Programs and Navy Supported Youth Organizations*

*United States Navy Regulations, 1990 (Art.0835)*

***Donation of Surplus Property***

Donations of Federal equipment including computer equipment to schools and nonprofit organizations is permitted by Presidential Executive Order 12999 of April 17, 1996, "Educational Technology: Ensuring Opportunity for All Children in the Next Century." This Executive Order promotes making modern computer technology an integral part of every classroom, providing teachers with the professional development they need to use new technologies effectively, connecting classrooms to the National Information Infrastructure, and encouraging the creation of excellent educational software. In addition, the Executive Order streamlines the transfer of excess and surplus Federal computer equipment to the Nation's classrooms and encourages Federal employees to volunteer their time and expertise to assist teachers and to connect classrooms. In addition, relevant information and materials are available at [www.nctc.navy.mil/ditms/ditms.htm](http://www.nctc.navy.mil/ditms/ditms.htm).

The computer donation program is administered by the Defense Automation Resources Information Center (DARIC) of the Defense Information Systems Agency. For additional information and procedures for donating computer equipment, the Command Coordinator should refer to Appendix A, Enclosure (2), Donating Excess Computer Equipment to Schools.

Public Law 101-510, passed on November 5, 1990, encourages partnership agreements between defense labs and educational institutions and allows the director of defense laboratories to provide various types of assistance. This includes loaning defense laboratory equipment; identifying lab personnel available to teach or assist in the development of science courses for the institution; and involving the institution's faculty in defense laboratory research projects. The Command Coordinator should refer to additional information in Appendix A, Enclosure (3), Partnerships with Defense Labs and Educational Institutions.

Donation of other federal properties is permitted under the "Federal Surplus Property Donation Program" and is managed by the Property Management Division of United States General Services Administration (GSA). All requests for surplus property should be referred to the Chief Surplus Property Officer at the appropriate state agency for surplus property disposal. State surplus property agencies have been established by each State, the District of Columbia, and United States territories to distribute personal property designated as surplus by the Federal Government. For information regarding eligibility, program requirements, and procedures; contact should be established with the Director of the State Agency for Surplus Property for the appropriate State, or contact the appropriate GSA regional office.

*GSA is eligible, in appropriate cases, to transfer excess federal property to state agencies such as public schools.*

### ***Loan of Surplus Supplies and Equipment***

Government property and equipment under normal circumstances is not to be loaned on a permanent or semi-permanent basis to community organizations. However, unclassified government equipment or property may be loaned to the community organization for tutorial, short-term training, and demonstration purposes. No equipment should be lent out if the command utilizes the equipment, nor should it be lent with the intent or implication of permanency. Appendix A, Enclosure (4), Standard Property Loan Agreement, is a form that should be utilized by the Command Coordinator.

For command with surplus supplies, materials, and equipment; the command should reference the following procedures in order to lend Navy resources to Flagship Partners. The Commanding Officer should follow the identified steps:

1. The materials and equipment are first made available to anyone in the command who may want to use it. For example, the availability of the equipment could be advertised at a staff or department head meeting.
2. If no one in the command wants the materials or equipment, the Commanding Officer drafts a memorandum for the record that states that the equipment is not needed by the command; and was loaned to a Flagship Partner in accordance with provisions of the Department of Defense Manual 4160.21M.
3. The Commanding Officer completes a Standard Property Loan Agreement (Appendix A, Enclosure (4)). These agreements are not restricted to a long-term basis. If something is needed on a one-time basis or for a couple of days, the above procedures should be adequate. The terms of the agreement should

normally not exceed one year.

4. The community organization completes the acceptance blocks of the loan agreement. The Commanding Officer maintains the original on file and provides the Flagship Partner with a copy. Officially, the command keeps the materials and equipment on its inventory, but lends it to the school. When the community organization finishes with the materials, they are returned to the command for proper disposal.
5. If the agreement runs for an entire year, the command should reclaim the loaned materials or equipment during extended periods of disuse and renegotiate the loan. This procedure serves the triple purpose of: keeping a handle on the inventory; making sure that the agreement is renegotiated at regular intervals; and reminding everyone of the importance of renewing the partnership commitment at the start of the school year.

### ***Visits and Tours of Navy Facilities***

Navy commands may provide an opportunity for youth to be exposed first-hand to ships, aircraft, and Naval installations. No admission charge may be levied on the public solely to see a Navy demonstration or exhibit. Should admission be charged at an event in which the Navy is one of several participants, the Navy activity must not be the primary attraction.

*Tours should be arranged on a not-to-interfere basis.*

If the command does not have anything to show off, there are always ways of using other resources. For example, check with the Public Affairs Office for details regarding scheduled ship visits or open houses. It may also be possible to arrange a tour of another command.

### ***REFERENCES:***

*SECNAVINST 5720.44A (Section 0405), Public Affairs Policy and Regulations*

*OPNAVINST 5760.5B, Navy Support and Assistance to Nationally Organized Youth Groups*

### ***Transportation***

Transportation may be provided in support of NCSP projects, partnerships, and activities if local commercial transportation or other community support service is unavailable. The following circumstances must apply:

- There is no conflict with the command's military mission.

- Transportation costs can be absorbed within the existing budget.
- There is no conflict with private sector companies regarding provision of transportation at a reasonable rate.
- The purpose of the field trip is to increase an understanding of the Navy activities and mission.

*REFERENCES:*

*OPNAVINST 5350.6 Series, Navy Community Service Program*

*SECNAVINST 5720.44A (Section 0515) Public Affairs Policy and Regulations*

*OPNAVINST 5760.2C, Policy and Responsibility for Navy Youth Programs and Navy Supported Youth Organizations*

## **Financial Resources**

The term "financial resources" refers to the distribution of funds, grants, scholarships, monetary awards, and general fund-raising.

### ***Funds for Flagship Partnership Activities***

Fiscal expenditures for the community in support of NCSP goals will be kept at the absolute minimum necessary to accomplish official objectives.

There are no funds specifically designated for NCSP. Where appropriate under the noted guidance, public affairs funds may be spent in support of Flagship Partnerships. Examples of allowable expenditures include normal personnel pay, incidental expenses such as local transportation, routine utility and telephone charges, and other minor operating expenses.

In cases where a participation fee is required, Navy commands may not participate in partnerships unless outside funding can be arranged.

There will be no direct financial assistance to a private organization from a non-appropriated fund in the form of contributions, dividends, or other donations of monies or other assets.

Recreation funds may not be expended for cash donations to or cash donations for any charitable or fraternal group or organization.

*REFERENCES:*

*SECNAVINST 5720.44A (Section 0407), Public Affairs Policy and Regulations*

*OPNAVINST 5350.6 Series, Navy Community Service Program*

*SECNAVINST 5370.2J, Standards of Conducts and Government Ethics*

*DOD 5500.7-R, Joint Ethic Regulations (AUG 93)*

### **Meals**

Flagship Partners dining in the galley while visiting the base as part of a community service activity are required to pay the basic meal rate. Waiver requests should be submitted, via the "owner" of the galley, to the Assistant Secretary of the Navy, Financial Management (ASN (FM)) via the Commander, Naval Supply Systems Command (NAVSUP). Once the request has been received by NAVSUP, the Navy Food Service Division (SUP-51) will review and validate the request. Waiver applications must include:

- Name of event and organization requesting the waiver.
- Brief description of event and organization.
- Actual or estimated number of people for which waiver is requested.
- Reason the approval would be in the best interest of the Navy.

The request must be in writing, and signed by the Commanding Officer or an individual with "by direction" authority. Restrictions for granting waivers include a prohibition on authorizing "blanket" waivers for organizations or individuals, and a revenue loss cap of \$1 million per year. The galley must absorb costs and losses of revenue resulting from surcharge waivers.

#### **REFERENCE:**

*OPNAVINST 5760.5B, Navy Support and Assistance to Nationally Organized Youth Groups*

*NAVSUP P-468, Food Services Management - General Messes Manual (NOTAL)*

*UNSECDEF Memorandum to Secretaries of Military Department*

### **Fund-Raising**

Official Navy support of fund-raising events is limited to campaigns authorized by law or approved by the President or the Director of the Office of Personnel Management. Support for a single-cause fund-raising event may be authorized by the Chief of Naval

Information (CHINFO) when the fund-raising program is local in nature; of community wide benefit; and has the support or endorsement of the local, united, federated or joint campaign officials.

Support may also be authorized by the local commander when such action is judged an appropriate response to a community organization (volunteer fire department, rescue unit, or youth activity fund drives).

Navy personnel are encouraged to actively participate in federated, joint or authorized campaigns to the extent authorized by Department of Defense (DOD) policy and prudent use of official time. Support of fund-raising activities will be at no additional cost to the Government.

DOD employees may participate in community service activities of non-federal entities as individuals in their own capacities provided they act exclusively outside the scope of their official position. Purely personal, unofficial, volunteer efforts to support fundraising are not prohibited where the efforts do not imply DOD endorsement. The head of the DOD component command or organization may authorize such activities outside the federal Government workplace, such as at public entrances, in community support facilities and in personal quarters. These activities may be further limited by federal Government building and grounds regulations.

*REFERENCES:*

*SECNAVINST 5720.44A, (Section 0414), Public Affairs Policy and Regulations*

*OPNAVINST 5760.5B, Navy Support and Assistance to Nationally Organized Youth Groups*  
*DOD 5500-7R, Joint Ethics Regulations*

### **Special Navy Support**

Special Navy support includes organizations composed of current and former members of military services interested in promoting a strong defense. Close liaison with local chapters provides access to valuable resources for support of a partnership effort. The organizations include the Fleet Reserve Association, Navy League of the USA, Navy Wives Clubs of America, and National Naval Officers Association (NNOA). Addresses for these and other organizations can be found in SECNAVINST 5720.44A, Section 0406, Department of the Navy Public Affairs Policy and Regulations.