

§216.3

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Homeland Security (DHS), to the Coast Guard at all times, including when it is a service in the Department of Homeland Security. The policies herein also affect the Departments of Transportation, Homeland Security, Energy (National Nuclear Security Administration), the Central Intelligence Agency, and any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. The term “Military Services,” as used herein, refers to the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard, including their Reserve or National Guard Components. The term “Related Agencies” as used herein refers to the Armed Forces Retirement Home, the Corporation for National and Community Service, the Corporation for Public Broadcasting, the Federal Mediation and Conciliation Service, the Federal Mine Safety and Health Review Commission, the National Commission on Libraries and Information Science, the National Council on Disability, the National Education Goals Panel, the National Labor Relations Board, the National Mediation Board, the Occupational Safety and Health Review Commission, the Social Security Administration, the Railroad Retirement Board and the United States Institute of Peace.

§216.3 Definitions.

(a) *Anti-ROTC policy.* A policy or practice whereby a covered school prohibits or in effect prevents the Secretary of Defense from maintaining, establishing, or efficiently operating a unit of the Senior ROTC at the covered school, or prohibits or in effect prevents a student at the covered school from enrolling in a Senior ROTC unit at another institution of higher education.

(b) *Covered funds.* “Covered funds” is defined in 10 U.S.C. 983 as any funds made available for the Departments of Defense, Transportation, Homeland Security, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or any department or agency in which regular appropriations are made in the Departments of Labor, Health

and Human Services, and Education, as well as in Related Agencies Appropriations Act (excluding any Federal funds provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance).

(c) *Covered school.* An institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications:

(1) A determination (§216.5(a)) affecting only a subelement of a parent institution (see §216.3(f)) effects a limitation on the use of funds (see §216.4 (a)) applicable to the parent institution as a whole, including the institution’s offending subelement and all of its subelements, if any.

(2) When an individual institution of higher education that is part of a single university system (*e.g.*, University of (State) at (City)—a part of that state’s university system) has a policy or practice that prohibits, or in effect prevents, access to campuses or access to students on campuses in a manner that is at least equal in quality and scope to the access to its campus and students as it provides to any other employer, or access to student-recruiting information by military recruiters, or has an anti-ROTC policy, as defined in this rule, it is only that individual institution within that university system that is affected by the loss of Federal funds. This limited effect applies even though another campus of the same university system may or may not be affected by a separate determination under §216.5 (a). The funding of a subelement of the offending individual institution of a single university system, if any, will also be withheld as a result of the policies or practices of that offending individual institution.

(d) *Enrolled.* Students are “enrolled” when registered for at least one credit hour of academic credit at the covered school during the most recent, current, or next term. Students who are enrolled during the most recent term, but who are no longer attending the institution, are included.

(e) *Equal in quality and scope.* The term means the same access to campus and students provided by the school to

the any other nonmilitary recruiters or employers receiving the most favorable access. The focus is not on the content of a school's recruiting policy, but instead on the result achieved by the policy and compares the access provided military recruiters to that provided other recruiters. Therefore, it is insufficient to comply with the statute if the policy results in a greater level of access for other recruiters than for the military. The U.S. Supreme Court further explained that "the statute does not call for an inquiry into why or how the 'other employer' secured its access * * * We do not think that the military recruiter has received equal 'access' [when a law firm is permitted on campus to recruit students and the military is not]—regardless of whether the disparate treatment is attributable to the military's failure to comply with the school's nondiscrimination policy."

(f) *Institution of higher education.* A domestic college, university, or other institution (or subelement thereof) providing postsecondary school courses of study, including foreign campuses of such domestic institutions. The term includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term does not include entities that operate exclusively outside the United States, its territories, and possessions. A subelement of an institution of higher education is a discrete (although not necessarily autonomous) organizational entity that may establish policies or practices affecting military recruiting and related actions (e.g., an undergraduate school, a law school, a medical school, other graduate schools, or a national laboratory connected or affiliated with that parent institution). For example, the School of Law of XYZ University is a subelement of its parent institution (XYZ University).

(g) *Military recruiters.* Personnel of DoD whose current assignment or detail is to a recruiting activity of the DoD.

(h) *Pacifism.* Opposition to war or violence, demonstrated by refusal to participate in military service.

(i) *Student.* An individual who is 17 years of age or older and is enrolled at a covered school.

(j) *Student-recruiting information.* For those students currently enrolled, the student's name, address, telephone listing, age (or year of birth), place of birth, level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), most recent educational institution attended, and current major(s).

§216.4 Policy.

It is DoD policy that:

(a) Under 10 U.S.C. 983, no covered funds may be provided by contract or grant (to include payment on such contracts or grants previously obligated) to a covered school if the Secretary of Defense determines that the covered school:

(1) Has a policy or practice (regardless of when implemented) that either prohibits or in effect prevents the Secretary of Defense or Secretary of Homeland Security from obtaining, for military recruiting purposes, access to campuses or access to students on campuses that is at least equal in quality and scope, as defined in §216.3(d), to the access to campuses and to students provided to any other employer, or access to directory information on students;

(2) Has failed to disseminate military visit information or alerts at least on par with nonmilitary recruiters since schools offering such services to nonmilitary recruiters must also send e-mails, post notices, etc., on behalf of military recruiters to comply with the Solomon Amendment;

(3) Has failed to schedule visits at times requested by military recruiters that coincide with nonmilitary recruiters' visits to campus if this results in a greater level of access for other recruiters than for the military (e.g., offering non-military recruiters a choice of a variety of dates for on-campus interviews while only offering the military recruiters the final day of interviews), as schools must ensure that their recruiting policies operate such that military recruiters are given access to students equal to that provided to any other employer;

(4) Has failed to provide military recruiters with a mainstream recruiting location amidst nonmilitary employers to allow unfettered access to