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MEMORANDUM

TO: All Community College Presidents

FROM: Kenneth A. Tashjy, General Counsel

DATE: August 18, 2008

RE: FINAL RULES - MILITARY RECRUITING AT INSTITUTIONS OF HIGHER EDUCATION

In Spring 2008, the U.S. Department of Defense issued Final Rules addressing military recruiting and access to student information at institutions of higher education. The Final Rules affect the administration of 10 U.S.C. 983, a federal law generally referred to as the “Solomon Amendment.” In a recent case, *Rumsfeld v. Forum for Academic and Institutional Rights*, 126 S.Ct. 1297 (2006), the United State Supreme Court ruled that it was permissible for the federal government to withhold certain federal funds from institutions of higher education that chose to restrict or prohibit the military from conducting recruiting activities on campus or accessing student recruiting information. These Final Rules establish further guidance for the administration of the law at institutions of higher education.

The Final Rules, as stated at 32 Code of Federal Regulations Part 216, provide as follows:

- **Purpose**

The purpose of these Final Rules is to ensure that military recruiters are afforded access to students for recruiting purposes and access to student recruiting information in a manner “at least equal in quality and scope to the access provided to any other employer.” The term “equal in quality and scope” 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.

- **Applicability**

Failure to comply with the law will affect funding from the following federal departments and agencies: Departments of Defense, Labor, Homeland Security, Transportation, Health and Human Services, the Central Intelligence Agency, and the National Nuclear Security Administration of the Department of Energy. Some Department of Education funds may be affected, excluding student financial aid (Title IV funds).

- **Important Definitions**

- **“Anti-ROTC Policy”** – A policy or practice at an institution of higher education that prohibits or prevents the Secretary of Defense from maintaining, establishing, or efficiently operating a unit of the Senior ROTC, or prohibits or prevents a student from enrolling in a Senior ROTC unit.
- **“Student”** – An institution of higher education shall provide recruiting access to and make information available on any individual who is 17 years of age or older AND is enrolled at the institution.
- **“Enrolled”** – A student is enrolled at an institution of higher education, and therefore subject to these rules, when registered for at least one credit hour of academic credit at the institution.
- **“Student Recruiting Information”** – Recruiters shall have access to student recruiting information, which shall include the student’s NAME, ADDRESS, TELEPHONE LISTING, AGE (or year of birth), PLACE OF BIRTH, LEVEL OF EDUCATION (e.g., freshman, sophomore), DEGREE AWARDED, MOST RECENT EDUCATIONAL INSTITUTION ATTENDED, and CURRENT MAJOR(S). Previously, only name, address, phone listing, and if known, age, level of education and major was required.

- **Violations of Law**

It shall be a violation of the federal law if an institution of higher education:

- Has a policy or practice that prohibits or prevents the Secretary of Defense from access to campuses or access to students on campuses for recruiting purposes that is at least equal in quality and scope to the access to campuses and to students provided to any other employer, or access to directory information on students;
- Fails to disseminate military visit information or alerts to students at least on par with nonmilitary recruiters;
- Fails 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;

- Fails to provide military recruiters with a “mainstream” recruiting location amidst nonmilitary employers, thereby permitting unfettered access to interviewees;
 - Fails to enforce time, place, and manner policies such that the military recruiters experience an inferior or unsafe recruiting climate;
 - Has through policy or practice in effect denied students permission to participate, or has prevented students from participating, in recruiting activities; or
 - Has an anti-ROTC policy or practice regardless of when implemented.
- **Conflict With FERPA**

The Family Compliance Office of the Department of Education, which enforces the Family Educational Rights and Privacy Act (“FERPA”), has indicated that if compliance with the Solomon Amendment results in a conflict with an institution’s FERPA policy, the Solomon Amendment shall supersede FERPA. However, a student who has required non-disclosure of directory information to any party under FERPA shall be afforded that protection under FERPA, even when the requesting party is the military.

- **Charging Military Recruiters a Fee**

An institution of higher education may charge military recruiters a fee for the costs incurred in providing access to student-recruiting information when that institution can certify that such charges are the actual costs, provided that such charges are reasonable, customary and identical to fees charged to other employers.

If you have any questions pertaining to these new Final Rules or your College’s Solomon Amendment or FERPA policies, please do not hesitate to contact my office.

cc: Deans/VPs Student Services