



Ethical Considerations for Training With Industry Participants

U.S. Army Garrison, Fort Belvoir
Office of the Staff Judge Advocate
2012



U.S. Army Garrison

Office of the Staff Judge Advocate

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Why Bother with Ethics?

- ◆ Because People Watch the Army!
- ◆ Some ethics violations are criminal offenses under Title 18 of the US Code
- ◆ DoD Directive 5500.7 makes all bolded sections of the *Joint Ethics Regulation* (JER) DoD 5500.7-R punitive
 - Potential UCMJ or adverse administrative action
- ◆ *Standards of Ethical Conduct for Employees of the Executive Branch*, Title 5 CFR 2635



What We'll Discuss Today

- ◆ 14 Principles of Ethical Conduct for Government Officers and Employees
- ◆ Ethics Resource Websites
- ◆ Conflicts of Interest
- ◆ Gifts
- ◆ Travel Policy
- ◆ Membership in Non-Federal Entities



14 Principles of Ethical Conduct

- ◆ Many ethics questions can be answered by referring to these 14 principles
- ◆ Review of these Principles should be part of your annual ethics training [JER 11-301 & 5 CFR 2638.704]
- ◆ Post on bulletin boards and websites
- ◆ Available on the SOCO website
 - <http://www.jagcnet.army.mil/SOCO>



Ethics Resource Websites

- ◆ Army SOCO:
 - ◆ <http://www.jagcnet.army.mil/SOCO>

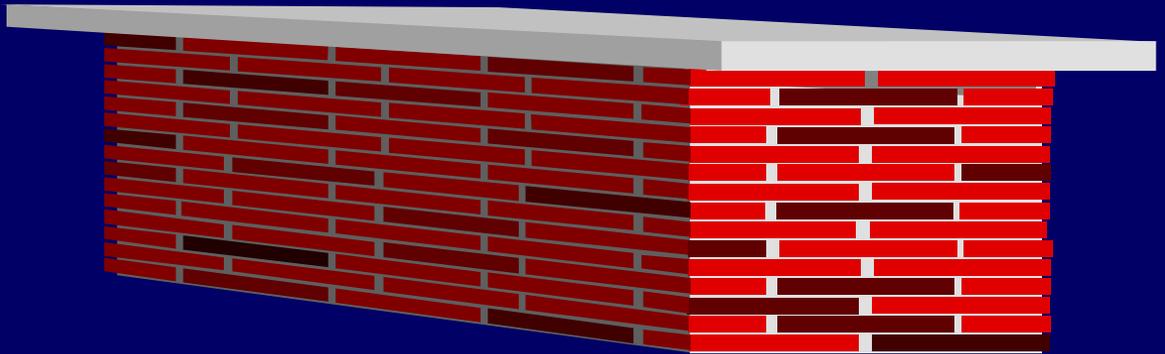
- ◆ Army Office of General Counsel:
 - ◆ <http://ogc.hqda.pentagon.mil/>

- ◆ Office of Government Ethics:
 - ◆ <http://www.usoge.gov>



Conflicts of Interest

- ◆ The Public expects their government to be *fair and impartial*.
- ◆ We cannot have conflicts of interest and still be impartial.
- ◆ Avoiding conflicts and improper influence -- *our ethics foundation*.





Conflicts of Interest Statute

- ◆ 18 US Code 208 is a criminal statute
- ◆ Avoid conflicts on and off duty
- ◆ Imputed relationship with persons with whom you have a covered relationship
 - Spouse or dependent child
 - Organization with whom you are seeking employment
 - ✦ Includes subdivisions of a large company



Conflicts of Interest Statute

- ◆ 18 USC 205 – also a criminal statute
- ◆ Military officers and Federal civilian employees are prohibited from representing non-Federal organizations before any Federal agency
- ◆ Examples of prohibited representational-type activities: (1) signing agreements with any Federal agency; (2) signing reports, memoranda, grant or other applications, letters, or other materials intended for submission to any Federal agency; (3) signing tax returns for submission to the Internal Revenue Service; and (4) arguing or speaking to any other Federal employee who is acting in his *official* capacity or before any Federal agency for or against the taking or non-taking of any action by the United States in connection with any matter involving the non-Federal entity and the United States.
- ◆ You may not represent a company to the government as part of TWI duties.



Conflicts of Interest Regulation

- ◆ 5 C.F.R. 2635.502
- ◆ “Covered Relationship”
 - Much broader than 18 USC 208
 - Includes “family members”
- ◆ Would a “reasonable person in possession of the relevant facts” see anything wrong?
- ◆ Avoid even the appearance of impropriety



“I must say, this looks really bad!”



Conflicts of Interest Situations

- ◆ Information – Public v. Non-Public
- ◆ Classified
- ◆ Integrity of procurement process
 - Advance procurement information or requirements
 - Proprietary Info/Trade Secrets
 - ✦ FOUO – exempt from release under FOIA
 - ✦ Releasable to contractor only if protected by appropriate contract clauses and non-release declarations



Conflicts of Interest Situations

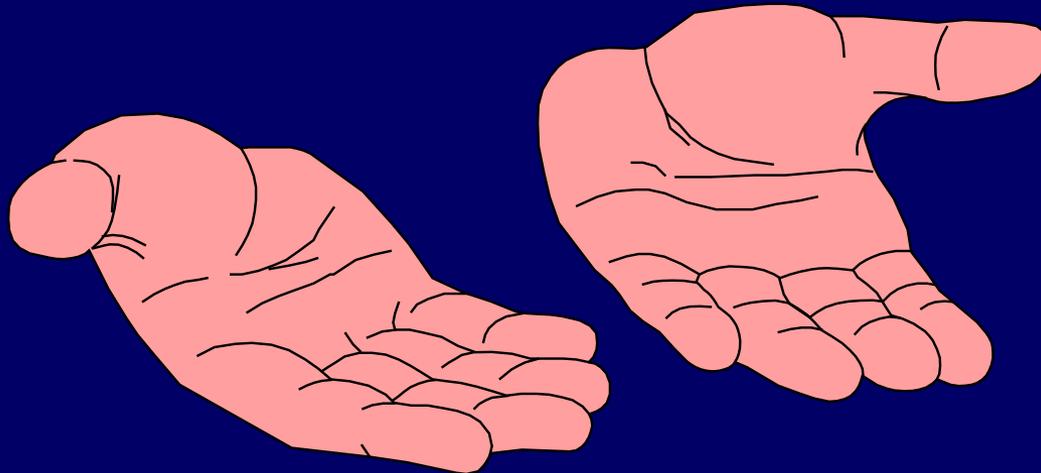
Personnel

- ◆ Identify contractor personnel in email, phone calls, meetings
- ◆ Be able to distinguish – badges or other identifier
- ◆ Be aware of different status
- ◆ Do not be afraid to clarify why personnel are attending and whom they represent.
- ◆ Do not be afraid to ask personnel to leave all or part of a brief.



Gifts

- ◆ A federal employee shall not solicit or accept
- ◆ Any gift or other item of monetary value
- ◆ From a prohibited source **OR**
- ◆ Given because of the employee's official position





What is a Prohibited Source ?

Any person or entity:

- ◆ seeking official action from, doing business with, or conducting activities regulated by the DoD or a DoD component **OR**
- ◆ whose interests may be substantially affected by the performance or non-performance of the individual's official duties
- ◆ DoD contractor list -
 - http://www.dod.mil/dodgdc/defense_ethics/



Gift Acceptance Analysis

- ◆ Is it from a prohibited source?
- ◆ Is it being offered because of your official government position?
- ◆ If the answer to either question is yes, determine whether the item is a gift and whether there is a “gift exception”



What is Not a Gift?

- ◆ Modest refreshments (when not a meal)
- ◆ Plaques or items intended solely for presentation (low intrinsic value and minimal functionality)
- ◆ Commercial discounts (available to **all military** members or DoD employees or to **all public**)
 - This **does not** include being able to buy at the "company store"
- ◆ Items for which fair market value is paid



Gift Exceptions

- Market value of \$ 20 rule (up to \$50 per year)
- Gifts based on personal relationships
- Awards based on merit
 - ✦ Written ethics counselor opinion if more than \$200, or if cash
- Widely attended gatherings
- Retirement:
 - ✦ Contractors shall not participate in donating groups
 - ✦ Retirement gifts from contractors subject to gift rules

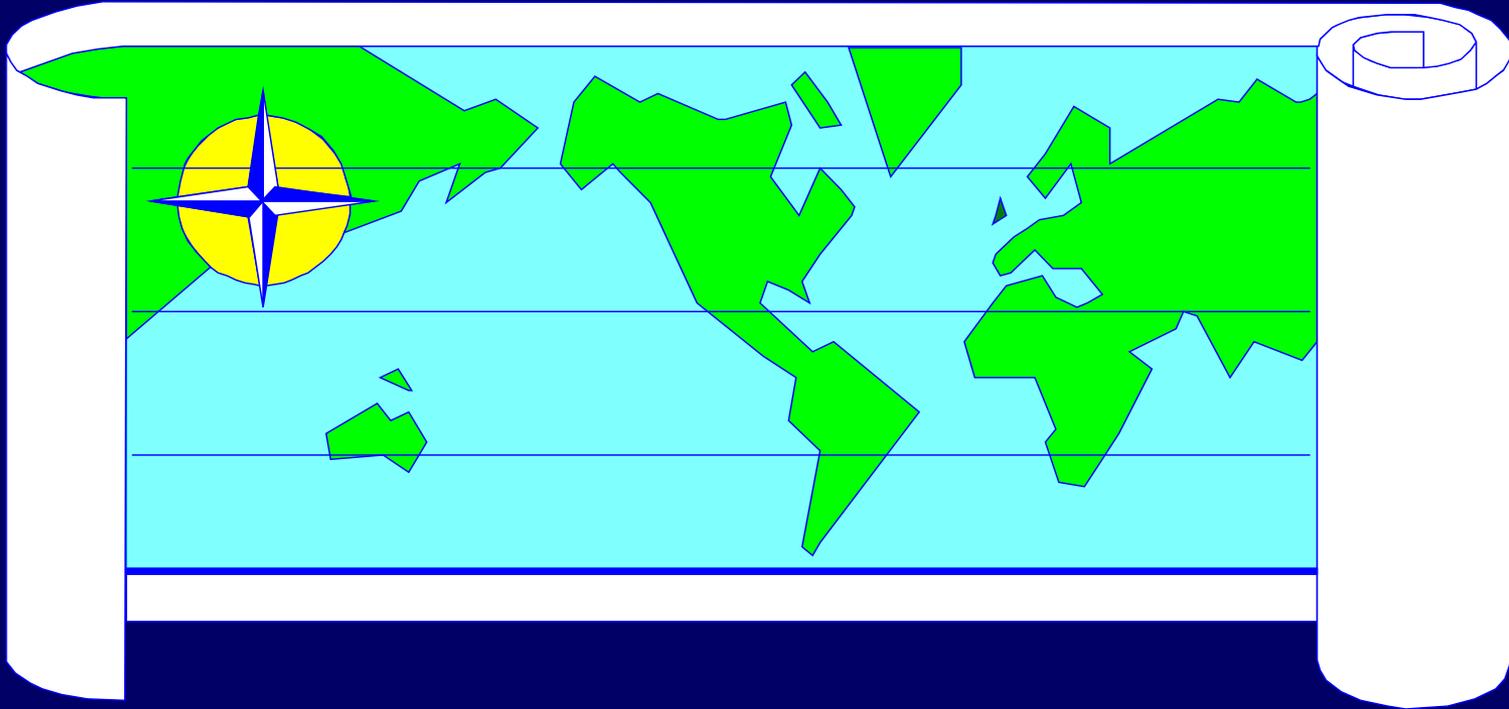


Non-Acceptance of Gift

- ◆ Contact Ethics Counselor
- ◆ Decline when presented
- ◆ Share perishable items
- ◆ Return as soon as possible
- ◆ Pay full fair market value
 - (not just the dollar difference between what you can and cannot accept)



Travel





Contractor Offered Travel

- ◆ Official travel by DoD employees must be funded by the Federal Government directly or through a contract
- ◆ Unless
 - Accepted as an individual gift
 - Accepted as a gift to the Agency – e.g. 31 USC 1353
 - Part of official government travel



Title 31 US Code Section 1353

- ◆ In order that an Army employee may attend a meeting, conference or similar event related to official duties,
- ◆ An event where you will participate as a speaker or panel member, or
- ◆ An event where you will receive an award or honorary degree:
- ◆ Army may accept unsolicited reimbursement of travel expenses from a non-federal entity
- ◆ Employee may accept travel expenses provided “in kind”
 - no \$\$\$\$ may be accepted by the employee



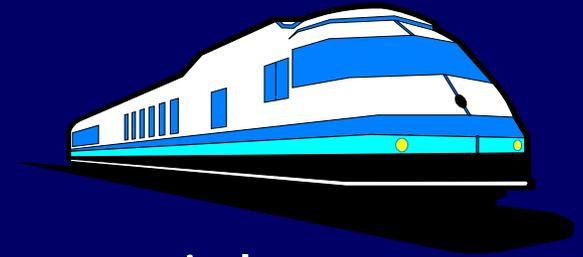
Title 31 US Code Section 1353

- ◆ “In-kind” acceptance better than Government receiving reimbursement
- ◆ Prior written approval of travel approving authority and Ethics Counselor
- ◆ If value is over \$335, a report MUST be filed through Ethics Counselor
- ◆ Annual agency report to Office of Government Ethics (OGE) through Army SOCO (SF 326)



Title 31 US Code Section 1353

- ◆ NO SOLICITATION
- ◆ FOR OFFICIAL TRAVEL
 - Mission-enhancing, not mission essential
- ◆ DO NOT CLAIM ON TRAVEL VOUCHER
- ◆ NO CASH





Frequent Flyer Benefits

- ◆ You may now KEEP benefits that were obtained during official TDYs
 - Includes Frequent Flyer miles
- ◆ Now OK to use for personal travel
- ◆ Don't abuse this change in policy !
 - Modifying travel in order to accept benefits
 - Extending travel
 - Incurring expenses to the government



Non-Federal Entities

- ◆ Some Army personnel continue to report being subjected to undue influence to join certain non-Federal entities and private organizations (POs)
- ◆ AR 600-20, para 4-11 prohibits any practice that involves or implies compulsion, coercion, influence, or reprisal in the conduct of membership campaigns.
- ◆ Information may be provided, but one PO cannot receive preferential treatment



*Questions,
Comments
or
Concerns ?*