Ethical Considerations for Training With Industry Participants

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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
Ethics Resource Websites

- Army 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:

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
“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
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?