

The background of the slide is a faded, light blue seal of the Department of Defense. It features an eagle with wings spread, holding an olive branch in its right talon and arrows in its left. A shield with vertical stripes is on the eagle's chest. Above the eagle's head is a circular emblem containing a globe and a constellation of stars. A banner scrolls across the eagle's wings.

Ethical Considerations for Training with Industry Participants CY 2013

Office of the General Counsel of the Army
(Ethics & Fiscal)



Training Topics

- Why Ethics Training?
- Authority
- 14 Principles
- Gifts from Outside Sources
- Gifts to DoD
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- Seeking Employment
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- Salary Supplementation
- Bribery/Illegal Gratuities
- Misuse of Position
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Why Ethics Training?

Top Five Reasons:

5. There's not enough caffeine in the world ... we take a mountain of legalese woven into a myriad of statutes and regulations and give you the highlights!
4. DoD Directive 5500.07 makes all bolded sections of the *Joint Ethics Regulation* (JER) DoD 5500.07-R punitive - Potential UCMJ or adverse administrative action
3. Some ethics violations are criminal offenses under Title 18 of the U.S. Code
2. You never want to “fail” the “Washington Post Test”

AND

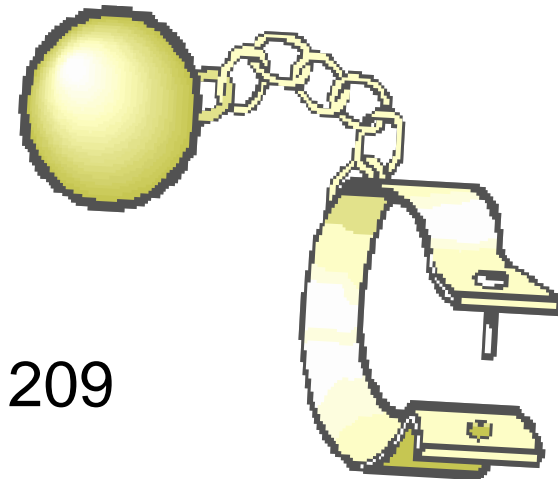
1. You do NOT want to be this guy:





Authority

- Standards of Ethical Conduct for Employees of the Executive Branch
 - 5 C.F.R. § 2635
- Joint Ethics Regulation
 - DoD 5500.07-R
- Criminal Statutes
 - 18 U.S.C. §§ 201, 203, 205, 207, 208, 209
- Training requirement
 - DoDI 1322.23 requires the General Counsel to provide legal and ethics advice, and provide appropriate materials highlighting ethical and other restrictions for use during orientation training





14 Principles of Ethical Conduct

Executive Order 12674

1. Place public service above private gain
2. Financial interests cannot conflict with official duties
3. Do not use non-public information for private gain
4. No gifts from prohibited sources
5. Employees must put forth honest effort in performance of duties
6. No unauthorized promises purporting to bind the government
7. Do not use public office for private gain
8. Act impartially and no preferential treatment
9. Protect and conserve government property and only use it for authorized purposes
10. No outside employment or job hunting that conflicts with Federal job
11. Obligated to disclose waste, fraud, and abuse
12. Satisfy financial obligations in good faith
13. Uphold EEO laws and regulations
14. Avoid appearance of unethical conduct/violating the law or ethics regulations



Gifts from Outside Sources

GIFTS FROM PROHIBITED SOURCES or GIVEN BECAUSE OF OFFICIAL POSITION:

- ***General Rule:*** Employees shall not solicit or accept a gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
 - "Given b/c of Official Position = one that would not have been given had the employee not held the status, authority or duties associated with their "federal" position
- ***Definition:*** A "gift" may be any tangible or intangible item of value, such as: Cash, service, entertainment, hospitality, travel or travel-related expenses; discount, loan, or forbearance.





Gifts from Outside Sources

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/dodgc/defense_ethics/
 - Under “Ethics Resource Library”
 - Not exhaustive



Gifts from Outside Sources

GIFTS FROM PROHIBITED SOURCES or GIVEN BECAUSE OF OFFICIAL POSITION:

- ***Following are NOT considered “Gifts:”***
 - Greeting cards & plaques
 - Refreshments served as other than part of a meal (Coffee, donuts, etc.)
 - Benefits/discounts available to the public, Government employees, or all militaryCommercial discounts
 - This **does not** include being able to buy at the “company store”
 - Gifts to the Government
 - Anything paid for by the Government under a contract.





Gifts from Outside Sources

- **Common Exceptions:** *You may accept -*
 1. *Gifts given on the same basis as to similarly situated company employees*
 2. Gifts of \$20 or Less. Unsolicited gifts with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50.
 3. Gifts Based on a Personal Relationship.
 4. Speaking Engagements
 - On the day of participation
 - Can include conference fees, food, instructions & materials, other items integral to the event.
 5. Widely Attended Gatherings (WAGs)
 - Large number of attendees
 - Diverse viewpoints
 - Opportunity to exchange ideas
 - Supervisor or agency designee determination required finding attendance will further agency interests
 - Ethics counsel can serve as agency designee for high level officials or blanket determinations
 - Supervisor determinations require consultation with ethics counsel
 - Attendance is in personal capacity & value may need to be reported on FDR.
 6. Social Invitations from Other Than Prohibited Sources





Gifts from Outside Sources

Gift Acceptance Analysis

- Ask yourself:
 - 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 if so, whether there is a “gift exception” that applies.
- Remember – just because you can doesn’t mean you should. Always consider public perception!



Gifts from Outside Sources



Non-Acceptance of Gift

- Options:
 - Just say “No, Thanks” - Decline when presented.
 - Return item – Where declining at time of presentation is impractical, return the item as soon as possible.
 - Perishable items – may be shared in the office.
 - Pay full fair market value
 - **NOT** just the dollar difference between what you can and cannot accept
- When in doubt, contact Ethics Counselor



Gifts to DoD



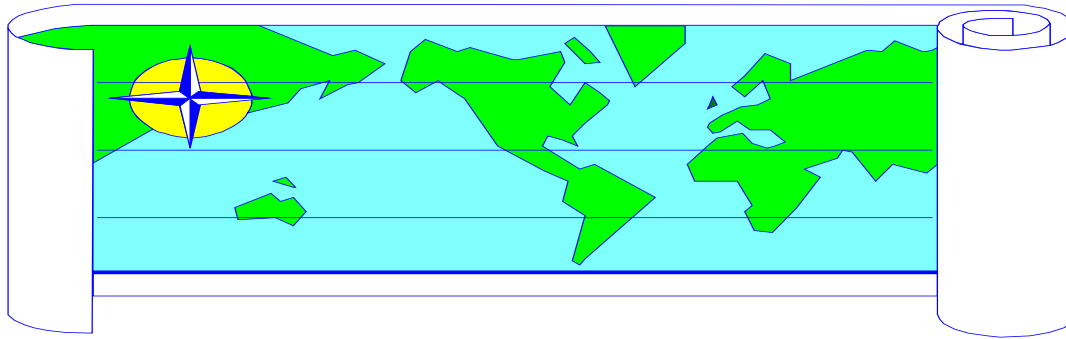
- Some gifts may be accepted under agency gift acceptance authority.
- To determine whether a gift may be accepted under DoD gift acceptance authority, contact your local legal advisor, or the Army OGC (Ethics & Fiscal).



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





Travel

31 U.S. Code § 1353

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



Travel

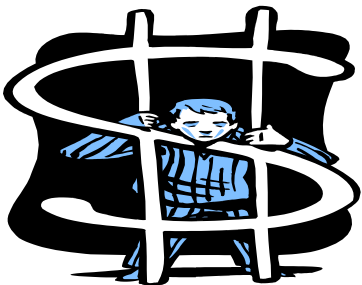
31 U.S. Code § 1353

- “In-kind” acceptance is preferred over Government receiving reimbursement
- Prior written approval of travel approving authority and Ethics Counselor required
- If value is over \$335, a report **MUST** be filed through Ethics Counsel
- Bi-annual agency report to Office of Government Ethics (OGE) through Army OGC (E&F)



Conflicting Financial Interests

- **18 U.S.C. § 208** prohibits you from participating in matters in which you have a financial interest
 - Imputed Interests: Financial interests of your spouse, minor child and entity with whom you are seeking or have an arrangement for future employment are considered your interests.
- You may not hold a financial interest in the organization to which you will be assigned.
 - There are some exceptions, including one for securities valued at less than \$15,000 in publicly traded companies and one for diversified mutual funds.



Note: This is a criminal statute!



Conflicting Financial Interests



Regulatory prohibition (5 C.F.R. 2635.502) - Two Tests:

An employee is disqualified from participating in a particular matter where the employee:

1. knows that a matter is likely to have a direct and predictable effect on the financial interests of a member of his household
- OR*
2. knows that a person with whom he has a [covered relationship](#) is or represents a party to such matter and the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality

**Broader application and reach than the criminal conflict of interest statute*



Conflicting Financial Interests

- An employee has a *covered relationship* with:
 - A person, other than prospective employer, with whom the employee has or seeks a business, contractual or other financial relationship (other than routine consumer transaction);
 - Members of the household and relatives with whom the employee has a close personal relationship;
 - A person for whom the employee's spouse, parent or dependent child serves as an officer, director, trustee, general partner agent, attorney, consultant, contractor or employee;
 - Former business partners, clients, and employers (within last year or last two years if received extraordinary severance payment);
 - Organizations in which the employee is an active member.

When there is a covered relationship, there is a presumption that the employee's impartiality will be questioned



Conflicting Financial Interests

Public Perception & Appearances

- During the first year following completion of your Fellowship, you should consult with your supervisor and ethics counsel before you participate in matters affecting the company that sponsored you.





Seeking Employment

- An employee has begun seeking employment when he has made a response other than rejection to an unsolicited communication from any person regarding possible employment with that person. 5 C.F.R. § 2635.603
- You must recuse yourself from participating in matters affecting the entity with whom you are seeking employment unless you reject the possibility of employment.



Representation Back to the Government



- **18 U.S.C. §§ 203 and 205** prohibit you from acting as attorney or agent for anyone, including the company where you are performing your fellowship, in any matter in which the United States is a party or has a direct and substantial interest.

Note: This is a criminal statute!



Representation Back to the Government

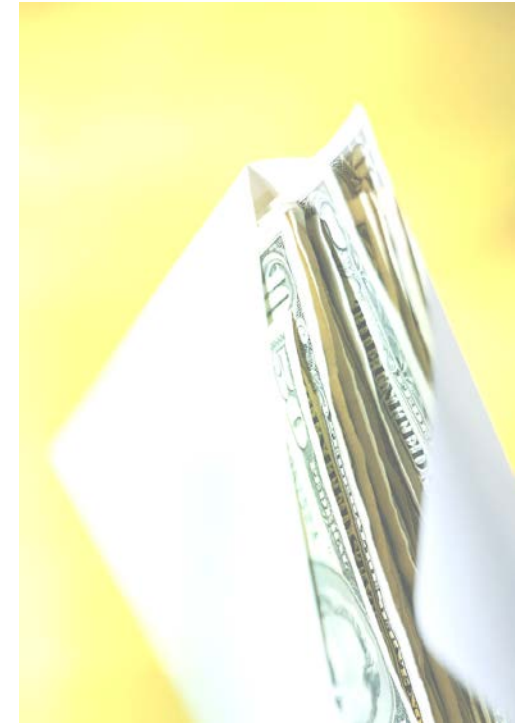
- Examples of prohibited representational-type activities:
 - (1) signing agreements with any Federal agency;
 - (2) signing reports, memoranda, grant or other applications, letters, or other materials intended for submission to any Federal agency;
 - (3) signing tax returns for submission to the Internal 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, including at meetings.



Salary Supplementation



- **18 U.S.C. § 209** prohibits you from accepting compensation for performing your official duties from any source other than the Government.
- You may not accept salary or bonuses from the private entity.





Bribery/Illegal Gratuities

- **18 U.S.C. § 201** – Prohibits Public Officials

From:

- Seeking, receiving or agreeing to accept
- Anything of value
- For themselves or others
- ** in return for being
 - influenced to aid in any fraud on the US, or
 - induced to do (or omit to do) any act in violation of official duty



** This element is not required proof of an Illegal Gratuities

Maximum penalty: fine of \$250,000 or not more than three times the monetary equivalent of the thing of value, whichever is greater, fifteen years in prison, and disqualification from holding any office of honor, trust, or profit under the United States



Misuse of Position



- Use of Public Office for Private Gain: You may not use your government position or title to endorse any product, service or enterprise. You may refer to your position or title in biographical materials. 5 C.F.R. 2635.702
- Your presence at the private company or participation in a particular project may not be used to imply Government endorsement or sanction of the company or project.



Misuse of Position

- You may not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further your own private interest or that of someone else. 5 C.F.R. 2635.703
 - Nonpublic information includes classified information, information not releasable under FOIA, advance procurement information/ requirements, and source selection data
 - Proprietary Info/Trade Secrets
- Private entity may require a nondisclosure agreement as well.



Misuse of Position



Know Who you are Dealing With:

- 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.



Political Activities



- DoDD 1344.10 – Political Activities by Members of the Armed Forces on Active Duty
- You may register, vote; make monetary contributions to a political organization; attend partisan or nonpartisan political meetings when not in uniform.
- You may not use official authority or influence for interfering with an election; be a candidate for civil office except as authorized; participate in partisan political management, campaigns or conventions; make campaign contributions to another member of the Armed Forces or an employee of the Federal Government.





Contact OGC E&F

Phone: 703-695-4296

E-Mail: usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil



John Kent (Ethics & Conferences)

- Support to Non-Federal Entities
- Fundraising & CFC
- Outside Activities
(Teaching, Speaking, Writing)
- Official Speaking
- Conferences
- AUSA

Dani Irvine (Ethics)

- Training
- STOCK Act
- Transition
- Conflicts of Interest
- Financial Disclosure
- CASA Program
- Seeking/Post Employment

Susan Sutherland (Ethics & Fiscal)

- Travel
- GO Nominations
- Contractor Issues
- FACA s (ASB & ANCAC)
- Political Activities
- Gifts & Free Event Attendance
- Gifts to the Army
- Foreign Governments

Kim Hintz (Financial Disclosure Mgmt System)

- Electronic filing of SF 278 and OGE 450

OTJAG

Art Kaff and MAJ Colin Cusack (OTJAG Ethics)

- All ethics matters for HQDA ARSTAF
- Call 571-256-2907