

# OFFICE OF THE STAFF JUDGE ADVOCATE



2012 Annual Ethics Training

Presented by

Jessica Delgado, 442-1091

(ETHICS COUNSELOR)

# COVERED TOPICS

- **OVERVIEW OF CORE ETHICS LAWS & IMPLEMENTING REGULATIONS**
- **TEACHING, SPEAKING & WRITING RULES**
- **FUNDRAISING RULES**
- **PARTISAN POLITICAL ACTIVITY RULES**
- **CONTRACTORS IN THE FEDERAL WORKPLACE**

# OVERVIEW OF ETHICS LAWS

*Criminal Ethics Laws* that govern Federal service in summary:

- Don't accept a bribe.
- Don't represent or accept money for representing another's interests before the U.S. Government.
- Don't take official action that will affect your personal financial interests as well as those of your spouse, children and prospective employer.
- Don't accept payment from a non federal entity for the performance of your Federal duties.

# SEEKING & POST-GOVERNMENT EMPLOYMENT LAWS



# SEEKING POST-GOVERNMENT EMPLOYMENT

**RULE:** Under the conflict of interest law, when seeking post-Federal employment outside of the Federal Government, you **MUST:**

- ***Disqualify*** yourself from official participation
- In any particular matter
- That has a direct and predictable effect on the financial interests
- Of entities with whom you are discussing future employment.

**VIOLATIONS CAN BE PROSECUTED.**

# POST-GOVERNMENT EMPLOYMENT REPRESENTATIONAL BARS

## 18 U.S.C. § 207

After leaving the Federal Government, former employees are subject to additional **CRIMINAL** restrictions that may limit their interactions with the Federal Government when **representing** the interests of another person or entity. Depending on your official responsibilities and actual involvement with a particular matter while employed with the Federal Government, you may be subject to either a lifetime or 2 year representational ban on that matter.

# BOTTOM LINE

These rules are *complicated*, **SO** if you:

- Start looking for future employment or
- Want to understand how you will be permitted to interact with the Federal Government after you leave:

**Please contact the** Administrative Law Division at  
**442-2703 for advice.**

# ADDITIONAL ETHICS RULES

## Overview

The Federal Standards of Conduct provide:

- *Conflicting Financial Interests*. Employees must **disqualify** themselves from an official matter if that matter will affect their financial interests, unless an exception or exemption applies (i.e. Waiver).
- *Impartiality*. (AKA, THE WASHINGTON POST TEST) Employees should **disqualify** themselves from taking action in an official matter if a reasonable person would have a basis to question their impartiality.

**TIP:** In both cases, disqualification should be in writing.

# ADDITIONAL ETHICS RULES

- *Misuse of Position*. Employees may not use Government resources, including their official position and the authority of their office, for private gain, whether by:
  - improper endorsement,
  - disclosure of non-public information, or
  - misuse of Government resources, including official time of themselves or subordinates.

# ADDITIONAL ETHICS RULES

- *Gifts from outside sources*. Employees may not solicit or accept gifts from outside sources given because of their official position or by a prohibited source, unless an exception or exclusion applies (i.e. gift given based on a personal relationship; value of gift does not exceed \$20 per occasion per source, and gift does not exceed \$50 per calendar year per source; etc.)
- *Gifts between Employees*. Superiors should not accept and employees should not give gifts to superiors, unless an exception applies (i.e. gifts given on an occasional basis such as birthdays and holidays, and gift does not exceed a market value of \$10; gifts given for infrequent occasions such as a gift to a departing superior/official) .
- *Group Gifts*. For departing officials: contributions must be strictly **voluntary**;
  - solicitations must be **nominal** (\$10); and
  - group gift may not exceed \$300 in value.

# ADDITIONAL ETHICS RULES

- **Prior Approval for certain employment**: Current financial disclosure filers must obtain prior written approval for off-duty non-Federal employment with a prohibited source (e.g., a defense contractor) before engaging in the outside activity.

# TAKE AWAY!

- ✓ The rules set a minimum standard of conduct
- ✓ The question you should be asking is, even if legal, is my proposed action the right thing to do?
- ✓ Ask whether your actions:
  - Are in the best interest of DoD;
  - Serve to enhance public confidence in DoD programs and operations; or
  - Will cause the public to question your integrity or impartiality.

# TEACHING, SPEAKING & WRITING (TSW)



# TSW GENERAL RULES

- Under law and implementing regulations, Federal personnel may, under certain conditions and with prior approval from a supervisor:
  - teach
  - engage in public speaking
  - and write scholarly articles



# THE MOST IMPORTANT QUESTIONS WHEN CONSIDERING TEACHING, SPEAKING, AND WRITING (TSW) OPPORTUNITIES

- Are you being offered compensation for your TSW?
- Is the TSW “related” to your Federal job?
- What prior approvals and clearances are required?

# TWS GOVERNING RULES

## Criminal Prohibitions:

**You MAY NOT accept compensation from any non-Federal source for performing your Federal duties (your job). 18 U.S.C. 209.**

**You MAY NOT take any official action that has a direct and predictable effect upon your financial interests (including the interests of an entity which has offered to compensate you for TSW). 18 U.S.C. 208.**

## Administrative Rule

**You MAY NOT accept compensation for TSW that relates to your Federal job. 5 C.F.R. 2635.807. A violation may result in disciplinary action including separation.**

# TSW RELATES TO YOUR DOD DUTIES IF:

- *It is undertaken as part of your duties;*
- It is *offered PRIMARILY because of your position*, not your subject matter expertise;
- The **offeror's interests** may be affected substantially by performance or nonperformance of your job;
- The *activity "draws substantially"* on ideas/data that are *nonpublic information*; or

# TSW RELATES TO YOUR DOD DUTIES IF:

- The TSW *subject matter deals "in significant part"* with:
  - Matters to which you're assigned, or were assigned during the previous year;
  - Ongoing or announced DoD policies, programs, or operations



# NEED FOR A DISCLAIMER

If you use your military or civilian grade, title, or position as one of several biographical details given to identify yourself in connection with TSW, you need to publish a disclaimer IF:

- The subject deals in significant part with any ongoing or announced policy, program or operation of your DoD Agency; and
- You have not been authorized by appropriate Agency authority to present that material as the Agency's position.
- An appropriate disclaimer states that these are the speaker's/author's personal views and not necessarily those of the Department or Federal Government.

# TEACHING CLASSES

- With *agency approval*, you are permitted to
- *Teach a course* (multiple presentations\*) and receive compensation if it is
- Offered *as part of either*:
  - The *regular curriculum* of qualifying institutions of higher learning, elementary schools, or secondary schools;
  - OR
  - Is a program of education/training sponsored and funded by the Federal Gov't or by a state/local gov't other than those above.

\* If multiple presentations are not involved, this should be viewed as a speaking engagement with payment viewed as honoraria.

# NON-CAREER SES EMPLOYEES

**To receive compensation for teaching you must:**

- **Submit a written request to the Designated Agency Ethics Official (DAEO) AND**
- **Receive specific authorization from the DAEO in advance.**

# TRAVEL AND MEAL EXPENSES PROVIDED IN CONNECTION WITH TSW



**Under certain situations, travel and meal expenses may be accepted. Consult your ethics official for advice in advance in those circumstances.**

# SECURITY REVIEW FOR RELEASE OF INFORMATION

A security review is generally required before releasing official information to the public consistent with DoD Instruction 5230.29.



# FUNDRAISING



# FUNDRAISING

## What do you need to know?

- Generally, *fundraising is prohibited* in the Federal workplace.
- The government must be neutral to retain the public's confidence, so we must ensure a level playing field for all non-Federal entities.

# FUNDRAISING

## What is fundraising?

- The raising of funds for a **nonprofit entity** through:
  - **Soliciting funds;**
  - **Selling items;** or
  - Employee official **participation in the conduct of an event** where any part of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.



## What is not fundraising?

- In-kind collection of items (non-cash), like food or toy drives.

# **3 EXCEPTIONS TO THE FUNDRAISING BAN IN THE WORKPLACE**

- **Combined Federal Campaign**
- **When the Director of the Office of Personnel Management authorizes a solicitation for emergencies or disasters**
- **Among the members for the benefit of the members**

# DISASTER OR EMERGENCY RELIEF

- **Defined: hurricanes, tornadoes, storms, floods or other catastrophes**
- **Only the Office of Personnel Management Director may grant permission for solicitations of Federal personnel in the Federal workplace outside of the CFC in support of victims of emergencies and disasters**
- **Recent examples include the Japanese tsunami in 2011 and the Haitian earthquake in 2010**

# **FUNDRAISING IS ONLY PERMITTED AMONG THE MEMBERS FOR THE BENEFIT OF THE MEMBERS**

- **organizations composed primarily of DoD personnel and their dependents (i.e. informal funds, FRGs, etc.)**
- **when fundraising among their own members for the benefit of welfare funds for their own members or their dependents**
- **when approved by the head of the DoD component command or organization**
- **after consultation with an ethics official (This includes Morale, Welfare and Recreation Programs).**

# ATTENDING A FUNDRAISER

## General Rules

The Federal Standards of Conduct prohibit you, in your official capacity from “actively and visibly participating in the promotion, production, or presentation of the event.” This includes:

- Requesting or encouraging the **giving of donations**;
- Serving as **honorary chairperson**;
- Sitting at the **head table**;
- Standing in a **reception line**; or
- Serving as **master of ceremonies**.



# TEST YOUR KNOWLEDGE

You are invited in your official capacity to attend a nonprofit organization's national fundraising gala and serve as the master of ceremonies. The nonprofit organization supports military families across the country. May you attend and serve as master of ceremonies? **You may attend but not act as master of ceremonies because that would be considered active and visible participation.**

# FUNDRAISING

- **May Federal Personnel participate in fundraising in their personal capacity?**

Yes, provided fundraising activities are conducted outside the Federal workplace and on personal time.

**So be careful not to:**

- Use DoD resources, including email and photocopiers
- Participate in your official capacity (do not allow use of your title or other DoD affiliation)
- Solicit subordinates, DoD contractors, or other prohibited sources

# HATCH ACT



Restrictions on Partisan Political Activities of Civilians

# HATCH ACT

## Restrictions on Partisan Political Activities of Civilians

**RULE: The Hatch Act restricts partisan political activities of civilian DoD employees.**

- **DoD policy further restricts the partisan political activities of certain political appointees.**

**Military Personnel: Have similar rules which are described in DoD Directive 1344.10, Political Activities by Members of the Armed Forces**

# HATCH ACT

## Restrictions on Partisan Political Activities of Civilians

General Policy Highlights: At DoD there are two categories of civilian employees - “further” and “less” restricted.

- Further Restricted: Presidential appointees confirmed by the Senate; non-career and career Senior Executive Service employees; Members of the Contract Appeals Board; and employees of NSA, DIA, NGA (e.g., strictly limited).
- Less Restricted. All others. Generally, most DoD civilians (GS, WG, Schedule C, etc.) may engage in partisan political activity, *but only* during **non-duty** hours & **outside the Federal workplace** (this includes Schedule C political appointees).

# What is Political Activity?

***Political Activity*** is an activity directed toward the success or failure of:

- a political party;
- a candidate for partisan political office (beginning with fundraising or declaration of candidacy); OR
- a partisan political group

***Non-Partisan.*** Any activity not associated with the success of a political party or candidate for partisan political office.

# What is Political Activity?

## Examples of Political Activity:

- Serving as a delegate to a political party convention
- Wearing a partisan political button in the office
- Working for a political party at the polls on election day
- Using office email to forward campaign information
- Soliciting contributions for a candidate for partisan office

# What is Not Political Activity?

***Not Partisan.*** Activity of a non-partisan nature, including:

- Participating in non-partisan activities of a civic, community, social, labor, or professional organization, such as nonpartisan voter registration efforts
- Campaigning for or against non-partisan issues, such as referendum questions, constitutional amendments, or municipal reforms
- Taking an active part, as a candidate or in support of a candidate, in a non-partisan election (e.g., referendum questions, municipal ordinance)
- Serving as an election official or clerk, or in a similar position, performing non-partisan duties as prescribed by state or local law

# All DoD Civilians ...

## MAY:

- Vote
- Make a financial contribution to a campaign
- Express personal opinions about candidates and issues
- Sign nominating petitions
- Attend political rallies and conventions
- Participate in nonpartisan activities

# All DoD Civilians ...

## MAY NOT

- Run for partisan office
- Engage in political activity **ON DUTY** or **IN THE FEDERAL WORKPLACE** (do not use DoD email account!)
- Solicit, accept, or receive political contributions
- Misuse official authority to affect an election

# TEST YOUR KNOWLEDGE

Brad receives a hilarious email that spoofs the current candidates for President on his DoD email account while at work. **Has Brad violated the Hatch Act?**

- No, simply receiving a partisan political e-mail while at work, does not constitute prohibited political activity as defined under the Hatch Act. However, Brad must not send or forward the e-mail to others.

# Less Restricted Civilians...

## MAY:

- Join and be active members of a political party or club (organize political meetings or rallies, distribute campaign literature, serve as officer or delegate of a political party or campaign, volunteer at candidate's campaign office)
- Help organize political fundraising events (but NO soliciting, accepting, or receiving of political contributions)

# Further Restricted Civilians ...

## MAY NOT:

- Take an active role in partisan political management or political campaigns
- Distribute campaign literature for a candidate for partisan office
- Organize a political rally or fundraiser for a political party
- Hold political party office or be a delegate to a party convention
- Host a fundraiser for a candidate for partisan office

# Hatch Act Penalty

The Office of Special Counsel (OSC) has exclusive jurisdiction over investigation and enforcement of the Hatch Act rules.

**BEWARE!** DoD civilians must scrupulously comply with the Hatch Act restrictions.

## PENALTY:

- Political Appointees. OSC will make a recommendation for discipline to the White House.
- All Others. **Removal**. For most employees, the Hatch Act imposes a presumptive penalty of removal from Federal service for a knowing violation. The minimum penalty for a Hatch Act violation is a 30-day suspension without pay.

# NOW, A QUICK WORD ON POLITICAL FUNDRAISING



# **DON'T ENGAGE IN POLITICAL FUNDRAISING**

**Authority to do so is very limited.  
Seek ethics guidance first. PLEASE!!**

# POLITICAL FUNDRAISING

Generally, DoD personnel may NOT solicit, accept, or receive political contributions in either an official or personal capacity, *except* under a narrow exception for Federal unions.

Employees are prohibited 24 hours a day, 7 days a week (except for the limitation noted above) from soliciting, accepting, or receiving political contributions.

# CONTRACTORS IN THE FEDERAL WORKPLACE

# CONTRACTORS IN THE WORKPLACE

- Contractor employees are not government personnel and are not subject to the same laws and regulations.
- Relationship is defined by contract. Government personnel may not exercise the following over contract employees:
  - Supervise or Direct
  - Approve leave or other absences
  - Train or approve training
  - Conduct performance appraisals or other evaluations
  - Provide/approve awards or recognition
  - Tell or suggest to a contractor whom to hire and fire
  - Discipline contractor employees

# Contractors and Gifts

- Gifts from contractor employees constitute gifts from outside sources. All DoD contractors and their employees are prohibited sources. Government personnel cannot solicit or accept a gift from a contractor unless there is an exception. (i.e. Modest food and refreshments, greeting cards, \$20/\$50 rule, personal relationship, etc.)
- Contractors may not contribute to a group gift for a government personnel.

# Contractors and Gifts

- There is no government prohibition on government personnel collecting amongst themselves for a group gift to a contractor employee, but should check with contractor officer or contractor supervisor first.
- Parties and Gift Exchanges that include contractor personnel:
  - \$20/\$50 rule applies.
  - Contractor may pay their share of the fee to cover party costs and/or may bring food to share. This is not considered a gift.

# Contractor and Time Management

- Government personnel may not ask contractor employees to work outside the scope or limitations of the contract. May not:
  - Authorize compensatory time for contract employees.
  - Invite contractors away from their workplace or to attend activities unrelated to the performance of their contract. (i.e. sports day, org. day).
  - Grant early release (59 Minute Rule).
  - Ask contractor to volunteer personnel time to help with office events.

# Contractors and Switching Sides

- Contractor Employee Moving to the Government.
  - A former contractor employee is disqualified for two years from working on particular matters in which his former employer is or represents a party if he received an extraordinary payment. (i.e. cash or investment interest exceeding \$10,000)
  - May also have a conflict of interest if the employee retains a financial interest in the former employer. (i.e. retirement or pension plans, stock, re-employment options, etc.)
  - May still have impartiality issues.

