

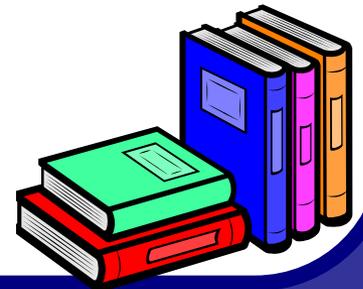


# GIFTS

**ETHICS COUNSELOR  
COURSE  
May 2016**

# SOURCES OF AUTHORITY

- Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635
- DoD Supplemental Regulation, 5 CFR Part 3601
- Joint Ethics Regulation (JER), DOD 5500.07-R
- 5 U.S.C. § 7342 (Foreign Gifts)
- 5 U.S.C. § 7353 (Federal Employees)
- 10 U.S.C. §2601/2608 (Gifts to Government)
- 31 U.S.C. § 1353 (Travel Payments)



# BEDROCK STANDARDS

- 5 CFR 2635.101(b)
- Relevant Principles:
  - (b)(1) – Public service is a public trust
  - (b)(4) – Employees shall not solicit or accept a gift from a person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency
  - (b)(7) – Employees shall not use public office for private gain
- When issue doesn't fall squarely within the rules, look to the principles for guidance

# Basic Thoughts For the EC

- Is it a gift?
- Why did they receive gift?
- Does an exclusion apply?
- Does an exception apply?
- Is there an appearance problem?
- Do we decline?
- How do we decline?



# GIFTS FROM OUTSIDE SOURCES



*"Let me get this, but keep in mind that you'll pay  
for it in other, more subtle ways later on."*

# Gifts From Outside Sources

- 5 C.F.R. 2635.202(a)
  - Employee shall not, directly or indirectly, **solicit or accept** a gift
  - From a **prohibited source** or
  - Given because of the employee's **official position**



# Gifts from Outside Sources

- “Prohibited Source” includes any person or entity that
  - Is seeking official action
  - Does or seeks to do business
  - Is regulated by, or
  - Has interests substantially affected by employee’s official duties
  - Organization whose majority is made up of one or more of the above



# Gifts from Outside Sources



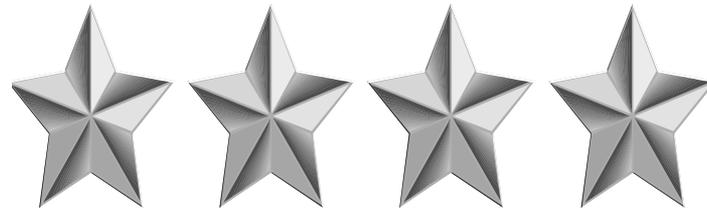
• Indirect gifts given to:

- Parent, spouse, sibling, child, dependent relative because of that person's relationship to the employee
- Any other person, including **charity**, on the basis of designation, direction or recommendation of the employee

# Gifts from Outside Sources

- “Official Position” Test

Gift would not have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his position



# Obama Ethics Pledge

- Executive Order 13490, Jan. 21, 2009
- OGE DAE Ogram DO-09-03
- **Applies to Political Appointees (PAS, NC-SES, and Schedule Cs)**
  - No gifts from registered lobbyists or lobbying organizations
  - Many of the usual gift exceptions do not apply

# Gifts From Outside Sources

- **Is it a Gift?**
  - Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or any other item having **monetary value**
  - It includes services
  - It includes gifts of training, transportation, travel, lodging, and meals

# Gift Exclusions

- *FOOD AND REFRESHMENTS*
- The coffee and donut rule
  - Modest items of food and refreshments, such as soft drinks, coffee and donuts, and light snacks
  - Not part of a meal



# Gift Exclusions

**GREETING CARDS** and items with *little intrinsic value* such as plaques, certificates, and trophies which are intended solely for presentation



# Gift Exclusions

- REWARDS AND PRIZES given to competitors in contests or events, including random drawings, that are
  - Open to the public
  - Entry not part of official duties

## Rewards and Prize Killers

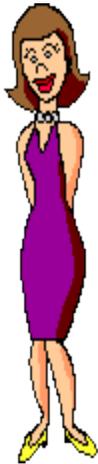
- Automatic registration in drawing for conference attendees
- Completing conference evaluation sheet enters participant into drawing
- Purchasing a specified amount of goods

# Gift Exclusions

- DISCOUNTS AND BENEFITS, including favorable rates available to -
  - General public
  - Class of all Government employees
  - All military personnelWhether or not restricted by geography



# What is not considered a gift?



- Paid by the US Government or secured under contract
- Paid by the employee
- Accepted by the US Government under statute



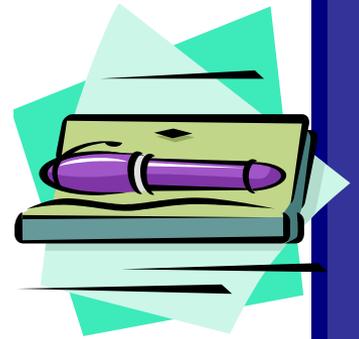
# AGENCY GIFT STATUTES

- Army Specific Gift Statutes:
  - Gifts to United States Military Academy – 10 U.S.C. § 4356.
- Navy Specific Gift Statutes:
  - Gifts to the Naval Academy – 10 U.S.C. §§ 6973 and 6974.
  - Gifts to Vessels – 10 U.S.C. § 7221.
  - Gifts for Welfare of Enlisted Members – 10 U.S.C. § 7220.



# Exception – “The 20/50 Rule”

- \$20 per source, per occasion
- \$50 max per source, per year
- FMV is retail value of the gift
- No cash or investment instruments
- Can decline items to keep it at \$20 or under but may not pay differential over \$20



# Gifts Based On Personal Relationship Or Family Friendship

- Circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee.
- Factors include history of the relationship and whether the family member or friend personally pays for the gift.



# Discount or Similar Benefits

- Reduced membership fees offered by professional organizations to all government/military personnel
- Benefits to members of a group in which membership is unrelated to government employment
- Benefits offered to members of a group where membership is related to government employment if same benefit offered to large segments of the public
- Benefits offered from other than prohibited source and class is not based on position, rank or rate of pay



- Awards

- Meritorious public service or achievement
- Grantor not impacted by recipient's performance of duties
- Higher standards for cash and awards > \$200

- Honorary Degrees

- Institution of higher education
- Examine timing of award



# *Widely Attended Gatherings and Other Events*

- Participating as speaker – attendance free for day of event
- Widely attended gathering -
  - Agency interest determination
  - Gift from other than event sponsor
    - >100 people
    - FMV less than \$375
- Free attendance
  - Includes waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event.
  - Does not include travel expenses



# Gift Exceptions ... More and More

- Gifts based on personal business relationships
- Social invitations from other than prohibited sources
- Meals, refreshments and entertainment in foreign areas
- JER: ComRel events, scholarships

# Gifts to Enlisted (E-6 and Below)

- SECDEF Memo of May 16, 2013
- Waives JER gift prohibition for E-6 and below
- Gift (other than cash) from tax-exempt charitable and veterans service organizations
- Cannot accept if gift is attempt to influence or improper supplementation of salary



# Use Gift Exceptions Wisely

- If a gift falls within one of the exceptions, will the acceptance of the gift violate any basic obligation of public service, including the obligation to avoid creating the appearance of an ethical violation (5 C.F.R. 2635.204)
- May still be appropriate to decline a gift

**Over in Mt. Pilot they do things their own way.  
Here in Mayberry, Federal employees may not:**



- Solicit or coerce the offering of a gift
- Accept a gift in return for being influenced
- Accept a gift in violation of statute
- Accept gifts from the same or different sources so frequently that a reasonable person would question integrity
- Accept Vendor Promotional Training

- Refuse gift if possible
- Tangible items - return gift or pay FMV
- Intangible items - pay FMV
- Perishable items - after consulting with supervisor or ethics counselor:
  - Donate to charity
  - Share within office
  - Destroy

All of this because of a  
“free” gift.



# FOREIGN GIFTS





# FOREIGN GIFTS

- U.S. Constitution (Art I, Sec. 9, Cl. 8) prohibits acceptance of any “present, Emolument, Office or Title from a King, Prince or foreign state” without the consent of Congress
- Congress consented to acceptance of gifts from Foreign Governments in 5 USC § 7342

# FOREIGN GIFTS

- Implemented by DODD 1005.13
- No solicitation of gift
- Individual may accept gift of “minimal value” (retail value in U.S. at time of acceptance of \$375 or less)
- Must aggregate:
  - Multiple gifts from donor at single presentation
  - Gifts to spouse



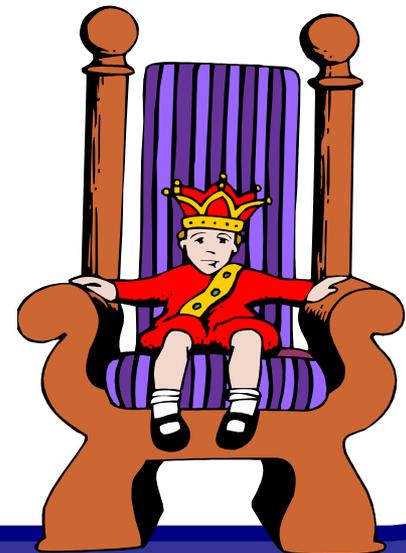
# FOREIGN GIFTS

- Gifts in excess of “minimal value”
  - attempt to refuse (explain law)
  - may accept if refusal would result in embarrassment or affect foreign relations
- Accept as Gift to the United States
- Gift must be reported to and deposited with the approval authority within 30 days



# FOREIGN GIFTS

- Gift in excess of “minimal value” will be:
  - Returned to donor (at U.S. expense)
  - Retained for use within DOD Component
  - Forwarded to GSA for utilization decision or disposal (sale)
  - Recipient may purchase
    - Negotiated sale at FMV



# GIFTS BETWEEN EMPLOYEES



# Gifts Between Employees

- 5 C.F.R. 2635.302(a)
- An employee may not:
  - Directly or indirectly, give a gift or make a donation toward a gift for an official superior
  - Solicit a contribution from another employee for a gift to either his own or the other employee's official superior

# Gifts Between Employees

- 5 C.F.R. 2635.302 (b)
- An employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:
  - No superior-subordinate relationship; and
  - There is a personal relationship that would justify the gift

# Gifts Between Employees

- 5 C.F.R. 2635.304(a)
- On an **occasional basis**, including traditional gift giving situations
  - Items with value of \$10 or less (no cash)
  - Food and refreshments shared in the office
  - Personal hospitality in superior's home
  - Host/hostess gifts



# Gifts Between Employees

- 5 C.F.R. 2635.304(b)
- On **special infrequent occasions**, a gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or employee receiving less pay
  - Occasion of personal significance
  - Occasion that terminates superior-subordinate relationship



# Gifts Between Employees

- Solicitations -
- Authorized for special infrequent occasions
  - Voluntary contributions
  - Nominal amounts (\$10), although employees are free to donate more
  - JER 2-203.b



# Gifts Between Employees

- Appropriate to the occasion
- \$300 per donating group (JER 2-203)
  - Aggregate gifts if employee is in more than one donating groups
  - Gifts to spouses
  - Exclude food and entertainment at event marking departure
  - Pieces of a larger gift



# Gifts Between Employees

- Helpful Hints:
  - Be proactive - be part of the planning process
  - Keep the number of donating groups to a reasonable number (no competition)
  - Ensure donation is voluntary
  - Remember purpose is to honor departing superior not to embarrass



# TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES



# Travel Payment from Non-Federal Sources

- Rule: Agencies may accept payment from a non-Federal source for travel, subsistence, and related expenses in connection with an employee's attendance at a meeting or similar function relating to his official duties
- 31 U.S.C. § 1353
- 41 C.F.R. Chapter 304
- JER Section 4-101

# Conditions for Acceptance

- Attendance at a meeting or similar function that is related to employee's official duties
- Function takes place away from duty station (employee must be in a travel status)
- Employee attends in an official capacity
- Acceptance would not bring into question the integrity of DOD programs (conflict analysis)
- Acceptance generally approved in advance
- No solicitation



# Meeting or Similar Function

- **Includes:** conferences, seminars, speaking engagements, symposia, training courses, awards programs, or other similar event sponsored or co-sponsored by a non-Federal source
- **Excludes:**
  - Meetings or events required to carry out an agency's mission
  - Promotional Vendor Training or other meetings held for the primary purpose of marketing product/services

# 1353 Payments - Miscellaneous

- Travel on Commercial Air
- Gift to Spouses
- Payments in excess of Per Diem Limits
- Payment in Kind or Reimbursement
- Reporting Requirements



# Gifts of Travel From Foreign Governments

- Rule: An employee may accept gifts of travel or expenses from a foreign government for travel taking place entirely outside the U.S. of more than minimal value if acceptance is consistent with the interests of the U.S.
- 5 U.S.C. § 7342(c)(1)(B)(ii)

# Gifts of Travel From Foreign Governments

- More than “Minimal Value” then acceptance must be in the interest of U.S. Government
- Travel Entirely Outside U.S.
- Solicitation is prohibited
- Approval Authorities
- Reporting Requirements

# GIFTS TO THE GOVERNMENT



# 10 USC 2601(a)

- Authorizes Secretary concerned to “...accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or the department.”
- Gifts of cash/proceeds from sale of property shall be deposited into the Treasury of the U.S. in a General Gift Fund for each department.
- Funds deposited into General Gift Fund will be distributed for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.

# 10 USC 2601(b)

- Authority for government to accept gifts to benefit members, dependents and civilian employees who incur a wound, injury or illness in the line of duty
- Types of gifts include real property, personal property, money or services
- Implementing regulations in DoD Financial Management Regulation (FMR)

# 10 USC 1588

- Authorizes the Secretary to accept voluntary services
- Medical, dental, nursing, or healthcare
- Museums
- Family Support
- Child Development
- Library and Education
- Religious
- Housing
- Employment Assistance to Spouses
- MWR
- Funeral Detail
- ESGR

# Voluntary Services

- Limitations
  - Supervising to the same extent as a compensated employee
  - Ensure that volunteer is licensed in accordance with applicable law
  - No policy making or managerial responsibilities
  - No compensation, except for incidental expenses

# Gifts to Wounded Soldiers and Families



# Wounded Warrior Gift Statute

- 10 U.S.C. 2601a  
Codified Sec. 8127 of the FY 2006 Defense Appropriations Act (previously implemented in JER Chapter 3, Section 4, Sections 3-400 to 3-406)
- Implemented by DTM 14-004, April 17, 2014 w/ Change 2 (Mar. 24, 2016)
- Added civilian employees, family members, and survivors

# Wounded Warrior Statute

- Survivors added to cover individuals that are also Federal personnel and subject to the gift rules.
- Added “other circumstances” warranting analogous treatment, as determined by Secretary concerned to address situations such as the Ft. Hood and Washington Navy Yard shootings.

# Wounded Warrior Statute

- Applies to covered members (active duty, full-time National Guard duty, or inactive duty training) and covered employees (DoD civilian) and their family members and survivors.
- For injury or illness to covered member or civilian under certain conditions
- On or after September 11, 2001

# Wounded Warrior Statute

- Applies to injury or illness incurred:
  - As a direct result of armed conflict; while engaged in hazardous service; in the performance of conditions simulating war; or through an instrumentality of war;
  - In an operation or area designated as a combat operation or zone by SECDEF; or
  - Under “other circumstances” warranting similar treatment

# Wounded Warrior Statute

- Secretary concerned makes “other circumstances” determination
- Secretary concerned:
  - Service Secretary having jurisdiction over military reservation, installation, ship, aircraft, or facility where event occurs
  - SECDEF where event does not occur at a location under the jurisdiction of a Service Secretary

# Wounded Warrior Statute

- Does not apply to gifts that are:
  - From a foreign government or international organization
  - Accepted in return for being influenced in the performance of official act
  - Solicited or coerced
  - Accepted in violation of any law
  - Reflect adversely on DoD

# Wounded Warrior Statute

- Ethics counselor must review and approve gift prior to acceptance
  - gift doesn't discriminate on basis of official responsibility, rank or pay
  - donor doesn't have interests affected by performance of employee's duties
  - acceptance would not raise concerns about integrity of DoD programs/operations

# SUMMARY

- Know the rules
- Use common sense
- Be proactive
- Make the call!

