Ethics Counselor Fundamentals
History

- Emoluments Clause to the Constitution
- Conflicts (Civil War)
- Congress reactive
- Texas Gulf Sulphur
- Civil Service Commission authorized agencies to issue ethics regulations
- DoD origins 1961 but values back to 1800s
- Watergate
- Ethics in Government Act
- Iran Contra
- Office of Government Ethics
- Standards of Ethical Conduct
- 5 C.F.R. part 3601 and DoD 5500.07-R (JER) 1993
- Standards are in Chapter 2 of JER
REFERENCES (4 pillars)

• 18 U.S.C. 201-209
• 5 C.F.R. part 2635
• 5 C.F.R. part 3601
• DoD 5500.07-R - The Joint Ethics Regulation (JER)
Other Relevant References

• Ethics in Government Act of 1978

• Executive Order 12674
  – “Principles of Ethical Conduct for Government Officers and Employees,” April 12, 1989
Other Relevant References

• Principles of Federal Appropriation Law (GAO Redbook)
• Joint Travel Regulation (JTR)
The Practical Side

• Basic Ethics Counselor Workshop Deskbook
Helpful Links

• Office of Government Ethics
  – https://www2.oge.gov/

• DoD Standards of Conduct Office
Basic Obligations of Public Service
Under Executive Order 12674

- **Public Service is a Public Trust**
  - Employees have a duty to place loyalty to the Constitution, laws, and ethical principles above private gain. 5 C.F.R. 2635.101(a)

- **Impartiality**
  - Employees shall act impartially and not give preferential treatment to any private organization or individual. 5 C.F.R. 2635.101(b)(8)
Standards of Ethical Conduct for Employees of the Executive Branch
(5 C.F.R. Part 2635)

• Gifts
  – Outside
  – Subordinates
• Conflicts
• Appearance of Conflict
• Seeking Employment
• Misuse of Office or Personnel
• Teaching, Speaking, and Writing
• Disclaimer requirement in 5 C.F.R. 3601.108
• Outside Activities and Fundraising
DoD Supplemental Standards of Ethical Conduct for Employees of the Department of Defense
(5 C.F.R. part 3601)

• Seven parts
  – Designates 16 separate components for purposes of accepting gifts from outside sources and governing teaching, speaking, and writing.
  – Provides additional exceptions for gifts from outside sources such as an event sponsored by a state or local government or civic association (must be free attendance) or for scholarships received under certain criteria where the employee’s performance or lack of performance does not affect the sponsor.
DoD Supplemental (cont.)

– Adds gift limitations such as not being able to use the group gift if it exceeds $300 for an infrequent occasion and if the recipient knows the subordinate contributed; food, refreshment, and entertainment are not included in the $300 group gift; and if a subordinate offers a gift to more than one donating group, then both groups are considered one group for purposes of the $300 group gift rule.

– Limits solicitation of sales by superiors to subordinates.
DoD Supplemental (cont.)

– Standards for accomplishing disqualification
  • In writing
  • To Supervisor
DoD Supplemental (cont.)

– Prior approval for outside employment and business activities
  • Must be financial disclosure filer
  • Outside employer must be a defense contractor

– Disclaimer for Speeches and Writings Devoted to Agency Matters
Changing the Ethics Rules

• 5 C.F.R. part 3601, is the DoD supplemental regulation. Supplementation not permitted without approval by the Office of Government Ethics.
Joint Ethics Regulation

- Single, comprehensive source of guidance
- Cancels all inconsistent instructions
- Prohibits supplementation without approval from DoD General Counsel
- Bolded provisions are punitive
  - Violation of general order punishable under Art. 92, UCMJ
- Change is coming
Designated Agency Ethics Official (DAEO) and Alternate

- Functional Authority to coordinate and manage the ethics program
- General Counsel is DAEO
- TJAG or Principal Deputy General Counsel is often the ADAEO
Deputy DAEOs

• Designated by the General Counsel (DAEO)
Ethics Counselors

- Defined at JER 1-212
- Shall be an attorney
- Communications received in EC capacity NOT protected by attorney-client privilege
Deputy DAEO v. Ethics Counselor

• Deputy runs program, and EC assists
  – Provide ethics guidance
  – Training
  – Ensure Financial Disclosure Reports are filed

• NOTE: (1-202 of the JER) BOTH DDAEOs and ECs are “Agency Designees” for 0-7+ in command

• Practically, no difference but check the delegation of authority:
  – Certifying OGE Form 278?
  – Granting waivers of $200 late filing fee?
Agency Designee

• First Supervisor above a GS-11
• Works with Ethics Counselor
• Agency interest in attending WAG
• Outside Activity Approval
DoD Employees (JER 1-209)

• Civilian officer or employee (including NAFI)
• Active Duty (AD) regular or reserve officers including warrants
• Active Duty enlisted
• Reserve member (AD, Title 10 status, or performing any reserve function)
• Student of any DoD academy, college, university, or school
• Foreign nationals working for DoD when consistent with agreements
Application of Ethics Rules to Enlisted and UCMJ

Application to Enlisted

JER 1-300(b), 5-301, 5-404

• Criminal conflict of interest statutes do not apply to enlisted, except for bribery
  (18 U.S.C. 201)

• Application of ethics rules for enlisted is through JER
Applicability of 208 and 209 to Enlisted

Conflicts of Interest

• Applies financial interest and supplementation of salary conflict laws to enlisted (18 U.S.C. 208 and 209) (JER 5-301 and 5-404)
• Solicitation prohibitions (superior to subordinate) 5 C.F.R. 3601.106 (JER 5-409)
Training

(5 C.F.R. part 2638)

• Annual Ethics Training
Enforcement

• What violations are reportable
  – See DoD Directive 5505.06, Investigations of Allegations Against Senior Officials of the Department of Defense

• When a violation is reportable

• How to report violations to the Inspector General (Chapter 10 of the JER)
Miscellaneous

- Presidential Executive Order authorizing Standards (JER, Chapter 12)
- DoD Employee Ethical Value Goals (JER, Chapter 12)
- Ethical Values and Decision-Making (JER, Chapter 12)
The Committee on Standards of Conduct

- Created to provide interpretive guidance to resolve conflicting ethics provisions, define vague terms, and identify and remedy inconsistencies in the application across the Military Services
OGE Tips

• Procedures (JER)
  • Delegations
  • Agency Organization Chart
  • Agency Mission
  • Public and Confidential Financial Disclosure Program Tracking System
  • Training
  • Counseling
  • Advisory Committees
  • 208 waivers
  • 1353 travel
  • Relationship with OIG
  • Job Offer and Supervisor ethics letter requirements
What We Will Cover
Gifts

- Gifts From Outside Sources
- Gifts Between Employees
- Gifts From Foreign Governments
- Gifts to the Department
- Gifts of Travel
Non-Federal Entities

• Endorsing
• Supporting
• Fundraising
• Official and personal participation
Outside Activities

• Outside Employment
• Teaching, Speaking, and Writing
Travel

• Government Vehicles
• Rental Cars
• Commercial Air
Conflicts of Interest

• 18 U.S.C. 208
  – Regulatory and individual waivers
• Impartiality Standards
  – Authorizations
• Bribery, Representation, and Supplementation of Salary
Financial Disclosure

• Public Financial Disclosure
  – OGE Form 278 e

• Confidential Financial Disclosure
  – OGE Form 450
Post-Government Employment

• Seeking Employment
• Procurement Integrity Act
• Representation Statutes
  – 18 U.S.C. 207(a), (b), (c), and (f)
• Terminal Leave Issues
• Foreign Employment
Fundraising

- Fundraising in the workplace
- By your own, for your own
- Gambling
- Official support of fundraising
- Personal fundraising
Enjoy