

A DOI Ethics Telecast — Transcript from Wednesday, October 29, 2008

>> Oh, hold on.

Wait a minute.

>> I'm sorry.

>> You're supposed to tell me.

>> I liked that song, Ed.

I'm sorry.

>> What are we doing here in.

>> Ethics stuff.

>> Ethics training.

Okay.

Hello, everybody.

My name is Ed McDonnell and this is Donna Huston.

I am with the departmental ethics office and Donna is with the MMS ethics office.

We're here to give you your fall 2008 ethics training.

Two administrative matters before we get into the heart of it, and let me run through those.

First, everybody should know this will satisfy your annual ethics training requirement, if you are required to get annual training.

Some people, people that file financial disclosure reports, and then others that their agency has determined are required to do this annual training, all you have to do is view this broadcast and that will satisfy the requirement.

If you know people who need the training but are unable to watch this broadcast or hear on the audio bridge, they can still satisfy their training requirement by going to WWW.DOI.GOV/ethics and there is an ethics -- DOI ethics guide -- or ethics guide for DOI employees.

If they review that, then they can notify their servicing ethics counselor that they've done that and they can get credit for their annual training as well.

There's one other way.

We are -- this is being recorded today, even with all my mistakes, and they probably won't edit them out.

>> What's the problem with being live?

>> It's going to be recorded, and it will go up on BLM's knowledge resource center probably within the week, this week, maybe early next week, something like that, and folks could go to that website and do the ethics training and then they would get credit for having completed their annual ethics training for this year.

Now, the way -- to get credit for it, you have to certify you've done the training.

There are a few ways you can do that.

One, if you've registered on DOI Learn, then once you've watched this, you can just go back to DOI Learn and you answer a simple question, essentially certifying that you have completed -- that you've

viewed this broadcast and you will get credit after a couple of days.

DOI Learn will give you credit for having done it.

You could fax a sign-in sheet at the various downlink places.

We've got sign-in sheets.

You can fax those into the fax numbers we'll give you at the very end of the presentation.

I think it's our very last slide.

You could e-mail your servicing ethics counselor.

They will want something in writing indicating from you that you have done the training, but if you can locate your servicing ethics counselor, you could do that as well.

Another thing by like to mention is that DOI Learn is actually going to leave this course on their website for the remainder of the year.

So, let's say, for instance, you know somebody who can't watch it today, they need the training, you can tell them, say go to the BLM resource center, they can watch the recorded version of this, then -- and they can go in, register for the course on DOI Learn, and then when they've viewed the course, they can certify they have taken it.

DOI Learn will give them credit within the next couple of days after that and they can satisfy their requirement that way.

>> Yes, and with the subject of DOI Learn, please remember that if you are viewing the material today, this is the training course.

You do not need to go into DOI Learn and click on courses and actually complete a course.

This is the course material.

Or if you are looking at it at a later time and you go on the BLM website and you review the recording there, that is the course.

Then when you go into DOI Learn to certify your completion, go to the test tab.

Don't go in looking for course because there will not be a course in there to complete.

Go to the test tab.

There will be probably one question, two at the most.

Just certifying that you have, in fact, viewed the material, completed the course.

Probably just answer, yes, I watched on it such and such a date, and then that is your certification that you have completed the training.

>> You may be wondering if there are any handouts or something you could follow along with.

There is a participant's guide.

It's on the distance learning website.

I know -- there it is up on the screen right now.

It's also playing prior to the presentation.

You can go there.

You can download the copies of the slides and you could print those out.

Even if you haven't done it yet, you could take a few minutes and get that done or someone in your group get that done and bring in copies for folks to use.

If you have questions during today's broadcast, if it's a burning question, you really feel you need the answer right then, you can go ahead and call it in, fax it in, e-mail it in or you could use the handy dandy push-to-talk mic.

I don't know if you have ever used this before, but essentially it works kind of like a walkie-talkie.

A little button down here that says push to talk.

Go ahead and leave it on the desk and leave 12 inches of room between your mouth and the microphone itself.

Push down, then start to speak, stop speaking, take your hands off.

Let the button back up.

It's just like a walkie-talkie.

Remember that when you press down, you will not receive any audio.

You'll cut yourself off.

So go ahead, do that.

When you come in, let's say you have a question, say -- press the button, say, excuse me, Ed, this is Bill from billings, Montana, and I've got a question, and then let go of the button.

We'll hear you.

We'll knowledge you.

Then -- we'll say, go ahead with your question.

Click the button down, give us your question and we'll try and answer it.

>> We'll give it our best shot.

>> Yes.

If more than one person tries to click in at the same time, the studio explodes and you'll kill Donna and me.

So please don't do that.

No, what happens is it will just be chaos and it won't work out right.

So what we'll do is give you the time out if we're getting too many people in at once.

Everybody let go of your buttons, and then we will hopefully have heard who first tried to contact us and we'll ask them to go ahead with their question and then work our way through all those who want to ask a question.

We'll do it that way.

Okay?

I know we've put up the -- I said you can do it push-to-talk mic if you have one, fax, you can fax it to the number that was on the screen.

If you call, you call that number, you'll talk to the production folks, they'll hold your question, and then they'll actually bring it over the mic into our studio here so we can hear you live when you ask your question.

Then the last one was e-mail.

You send it to that e-mail address, again, the production folks will get that, and they'll bring it out us to so we can try and answer your question.

I think that covers all the admin stuff that we need to do cover.

Can you think of anything else?

>> No, that's pretty good.

I think so.

>> All righty.

Let's see.

What are we going to do today?

Donna, you want to tell folks where we're going.

>> I'll give you what the agenda looks like for today.

First of all, you will -- I'm sure you admire our seasonal slides there compliments of Ed McDonnell and company.

We hadn't commented on those before and we think those are cool.

We love our owls.

Very appropriate for an NCTC broadcast, I think.

So today we will be discussing core values, ethics core values.

We will be going over secretary Kempthorne's welcoming statement to new employees.

This is a memo that is provide to do all new employees when they come onboard.

Some very, very key points in that.

We will discuss executive order 12674.

This is the foundation for many of the ethics guidelines.

If you have been with DOI any amount of time I'm sure you've seen it before.

We will also discuss United States criminal code, violation of these guidelines, you know could, include criminal penalties, standards of conduct from 5 CFR, DOI supplemental recommendations also, many from 5 CFR.

From the 5 CFR 3625 section we intend to go into much greater detail into gifts, fund raising, seeking and -- Ed will cover first the core values for you.

>> When secretary Kempthorne first came onboard, he asked the DOI leadership to come up with a statement of the department's core values.

How should we look at our role in the government and what we're doing for the American people.

The leadership proposed to him, and he adopted this statement.

Stewardship for America with integrity and excellence.

The idea is that this is a concept we should keep before us.

This is the mind set we should have in doing our duties day to day.

In addition to that, the secretary signed a letter that is given now to all entering employees, and what he is doing is he's trying to get people to go beyond mere compliance with mere technical compliance with the ethics rules and statutes and say to yourself, don't ask yourself the question, can I do this, is there an exception, will it not violate the rules.

Go beyond that.

Say, even if I could do it under the rules, should I do it?

Will it somehow put the department in a bad light, put your own personal integrity in a bad light?

And he goes on to say, if there's any doubt, don't do it.

So that's the mind set that we should have when we approach our jobs each day.

We're going to go through -- let me just quickly say, Donna is going to talk about the executive order and the general principles contained in the executive order, but we're going to do this pretty quickly because we need to get through this and then we'll talk in more detail about gifts, fund raising, seeking employment and post-government employment.

But we do want to bring these up just to refresh your recollection that they exist, but remember, on DOI.gov/ethics website we do have the employees' guide and you can go to that and get more information on the executive order, you can get information on the statutes, the standards of conduct and the DOI supplemental regs.

So that stuff is available to you and if you have questions that go beyond that, you can always talk to your servicing ethics counselor and get more information.

Okay, with that, Donna, would you tell the folks about the executive order.

>> I'll hit the executive order.

Ed mentioned the ethics guide that's online.

The executive order is one of the first items in there.

It really is the foundation of so many other ethical guidelines.

First aspect, public service is a public trust.

The public has put their confidence and faith in us and we need to honor that.

We shall have no conflicting financial interests.

You shall have no financial interests that would conflict with your federal job, duties and responsibilities.

You shall make no financial transactions using nonpublic information.

Any nonpublic information you may have as a result of your position is to be used for doing your own job and not to benefit you financially.

Next, no gifts from prohibited sources.

That is the rule and the moment we'll also discuss some exceptions to that.

Honest effort in the performance of duties.

Basically, honest day's work for an honest day's pay.

No unauthorized commitments or promises intending to bind the government.

Don't go beyond your level of responsibility or what your job includes.

Don't use public office for private gain.

This is not just your own private gain but the private gain of anyone else, for that matter.

Act impartially.

No preferential treatment to anyone for any purpose.

Protect and conserve government property.

When an item is issued to you, when you turn it in when you leave federal service, it should leave in the same condition it was in hopefully or darn close as it was when it was given to you.

No outside employment or activities that conflict with your government duties.

We will also cover that in the supplemental regs or some bureaus have specific guidelines in the supplemental regs when you do engage in outside employment or activity, a form may be required to be sent through your ethics office on that.

Our next item, disclose waste, fraud and abuse.

Waste, fraud, abuse and corruption to the appropriate authorities.

Now, appropriate authorities could be your first-line supervisor, someone higher in your chain of command.

It could be someone in your ethics office.

Someone in the departmental ethics office.

Or possibly someone even in the office of the inspector general.

You shall satisfy your lawful obligations.

Typically here we give the example of federal and state taxes.

Ed, I believe there was something in the news recently.

>> Just recently one of the magazines had an article about a federal employees who have failed to pay their parking tickets, and unfortunately, the Department of the Interior, in the Washington D.C. area, we made fifth on the list of top five for those agencies that -- whose employees haven't paid parking tickets, and it was something like over \$4,000 worth of outstanding parking tickets.

So that's just an example.

These parking tickets, though, these folks were using a government vehicle, the parking ticket itself, they parked it there, they're individually responsible for paying those tickets.

And some folks haven't been.

So that's an example of a lawful obligation that we're supposed to satisfy those lawful obligation under the executive order.

>> Right.

Not the kind of thing that the Department of the Interior likes.

We don't want to rank fifth in something like that.

Next item in the executive order, and here to -- adhere to EEO laws and regulations.

This comes back to acting impartially.

And the final item is avoid each the appearance of an ethics violation.

This brings us back around to secretary Kempthorne's memo saying, do not necessarily ask, can I, but should I?

Even if there is a provision that might allow you to take a certain action, if it would not look good, you may want to think twice.

Our next item is a U.S. criminal code and Ed is going to cover those for you.

>> Like I said earlier we're going to go over these briefly so that we can get to the meat of our training for today but 18 USC 201 is the bribery statute.

It prohibits federal employees from accepting of value in return for being influenced in the return of their duties.

18 USC 203 prohibits us from receiving compensation for representing somebody else, not ourselves, but somebody else before a federal court or agency.

18 USC 205 is similar to that but it prohibits a federal employee as acting as an agent or attorney for somebody else before a federal court or agency.

And 18 USC 205 is whether you're compensated or not.

You cannot be an agent or attorney for someone else before the federal government whether you're compensated or not.

Next is 18 USC 207, the post government employment statute.

We're going to deal with that in detail later so I'll skip over that now.

18 USC 208 prohibits federal employees from taking an official action that could affect their own financial interests or the financial interests of someone who is -- whose interests are imputed to them.

That would be like one's spouse.

An employ employee's spouse, their interests are imputed to you.

Your minor children.

If you're a member of a board of directors or you're an officer in an outside organization, under state law you generally have a fiduciary duty to that organization.

Therefore, the financial interests of that organization are imputed to you and so you can't take an official action would that impact that organization's financial interests.

Finally, 18USC209, that's prohibits us from accepting any compensation from anyone other than the federal government for performing our federal duties.

Now, that said, there are exceptions to 18USC209 and all of those statutes.

We just gave you the quick down and dirty on it but you can always talk to your ethics counselor and get more information on those.

Next we're going to -- dawn saw going to briefly just mention the standards of conduct, 5 CFR part 2635.

>> Ed covered for you the criminal code.

Now what I'm going to discuss now comes from 5 CFR 2635 and described in detail in the section of the CFR covers gifts, conflicts of interest, impartiality, seeking employment, which we will go into greater detail, misuse of position and outside activities.

Then we go onto to the more specific guidelines, more directly related to Department of the Interior employees.

This section is 5 CFR part 3501, and this addresses prohibited interests in federal lands and mining and also outside work and activities.

>> In addition to the 5 CFR part 3501 the Department of the Interior has another group of regulations at 43 CFR part 20 that govern the acceptance of travel related expenses which we're going to talk about more later, interests in federal lands and coal mining operations and disciplinary and remedial actions that are available should there be an ethics violation.

Now we're going to get to the meat of it.

We're going to start with gifts.

We've got two different types of gifts, gifts from outside sources and gifts between employees.

I'll start off talking about gifts from outside sources.

>> I'll keep you on the straight and narrow.

>> Thank you.

First off, the general rule, you may not directly or indirectly solicit or accept a gift either from a prohibited source or that is given to you because of your official position.

Remember, the rule applies whether you're on duty or off duty.

Let's unpack just a little bit and look more specifically at definitions of each of these elements.

Well, what is a gift, for starters?

OGE, Office of Government Ethics has defined gift very broadly.

It's any item having monetary value.

Some examples, a discount, cash, a gift certificate, entertainment, a loan, training, transportation, travel, lodging and meals.

That's not an exhaustive list.

Those are just some examples of items that have monetary value that would constitute a gift for the purpose of this prohibition.

Next, some things aren't a gift.

They're actually excluded from the definition of gift by the Office of Government Ethics.

Starters... snacks.

Let's say you go to a conference and a prohibited source has provided doughnuts and coffee in the morning session.

Well, so long as the snacks or refreshments aren't considered part of a meal, then you can accept those.

They're excluded from the gift definition.

Certificates, cards, trophies, plaques, these are items that are meant -- intended for presentation purposes.

Let's say I go out and I give a talk at some outside entity and they want to recognize me, give me a token of their appreciation.

They want to give me a little plaque or something.

Now, one thing to remember, these have to be items of little intrinsic value.

Meaning they have very little value in and of themselves.

They may have great emotional value to me, but it wouldn't mean too much to anybody else and so they don't have any real great intrinsic value.

So an example might be, let's say a plaque.

Now, it might even cost more than \$20 for them to put this plaque together.

But the plaque says "thank you, Ed McDonnell for visiting us on October 29th, 2008 and giving us this marvelous speech."

>> "for honoring us with your presence."

>> Yes.

That might mean a lot to me, but it probably doesn't mean a lot to somebody else.

So even though this plaque may have cost more than \$20, intrinsically it doesn't have a lot of value.

Now, I like -- I would really like when I go out to -- I'm not soliciting this now, but I'm just pond ring, if I were to go out -- if they want to scratch my name on a brick of gold and hand to that me and say, thanks, Ed, for showing up today, I might like that, and why would I like it?

Because beyond the emotional value, that brick of gold has intrinsic value.

Whether or not my name is on it or not, you can melt it down and turn into it something -- you can --

>> You could sell that online and make some big bucks.

>> Right.

The gold itself is worth a lot of money.

So that wouldn't work.

Just putting somebody's name on something, scratching my name on the door of a -- or having it nicely painted on the door of a Corvette, that doesn't take away the intrinsic value of that Corvette.

So that would not come under this gift exclusion.

Wait a second.

I think I went ahead of myself.

Now I've gone way ahead of myself.

Prizes and contests that are open to the general public.

This really means open to the general public.

If you were at a conference, let's say, and they were going to have a random drawing but it was only open to conference members, then that's not open to the general public.

So that prize would not come under this gift exclusion.

>> Comes up a lot.

I've got that question that times.

People have won things at conferences that the government paid for, very restricted as far as who could participate in the drawing, and we tell them, you know --

>> Might be another exception that might apply.

Maybe it's less worth less than \$20 or something like that, but it wouldn't come under this gift exclusion.

Next, commercial discounts available to the public or all federal employees.

When it says all federal employees, it means all federal employees.

We'll talk later on about an exception that might allow a smaller subset of federal employees to accept a gift, but, again, that's an exception, not one of these exclusions from the gift definition.

Now I'm going to move forward, I think at the right time.

Commercial loans, pensions and similar benefits, if they're available to outside -- the general public at the same perms, then they're not considered a gift.

Anything for which I would pay fair market value, well, that makes a lot of sense, it's not really much of a gift if I paid the value of it.

So it's not in the definition of gift.

>> But might want to clarify fair market value.

OGE's definition of fair market value.

Oh, I get to clarify?

Fine.

In classes I've taken at OGE, they make the point that what if someone offers you a ticket to an event, a concert, maybe, that's really in demand and is sold out and when these tickets were originally issued, they went out for like \$50 each.

Well, the concert has been sold out for months and now they're selling on the street for like \$500.

If someone offers you one of these tickets, and in order to pay fair market value, you give them the face value of the ticket, which is the \$50, the Office of Government Ethics considers you to have paid fair market value for that item, and it is not considered a gift.

>> Thanks, Donna.

The next exclusion, anything paid for by the government would not be considered a gift to you.

Or anything accepted by the government under its statutory authority, and an example there would be travel -- payment of travel expenses by a nonfederal entity under 31 US C-section 1353.

We'll go into that specific staff use the in a few minutes in more detail.

More definitions.

What's a prohibited source for the purposes of these rules?

Well, it's any person, organization, corporation, NGO, anything that seeks official action by your agency, does or seeks to do business with your agency, is regulated by your agency, or has interests that may be substantially affected by the performance or nonperformance of your duties.

You may, though, in the final one there, an organization, a majority of whose members are described above.

So, for instance, you might have, say, a trade organization where it is made up of, let's say, oil and gas industry oil and gas companies may belong to some trade group and the trade group itself may not seek to do business with your agency or have official action before your agency, but if a majority of its members are a prohibited source v one of those things going o then that trade group within considered a prohibited source for the purpose of this rule.

Okay?

Then you might ask, well, what's my agency for purposes of this rule?

In 5 CFR part 3501 we learn that if you're in a named bureau, or the office of special trustee, or the national Indian gaming commission, then you look at your organization only for the purposes of a prohibited source definition.

With respect to BIA and BIE, they are considered one, BIA, for the purposes of this rule.

Now, that rule may change over time.

We might update it when we can get to that.

But for the purposes of this now, BIE and BIA are considered together.

So an example might be, let's say that there's an outside entity that is regulated by BLM.

Okay?

And that outside entity wants to give a gift to a BLM employee.

Well, that -- since that outside entity is regulated by --

>> You said regulated by BLM.

>> Does business with, any of those things -- so let's say it's regulated by BLM.

That's a prohibited source for a BLM employee.

Now, if that same outside entity wants to give a gift to a Park Service employee, let's say, and they don't do any business with the Park Service, they're not regulated by the Park Service, they don't have any official action before the Park Service, none of those other things apply, well, then, the Park Service employee -- to the Park Service employee, that entity is not a prohibited source.

So when your named bureau is NST, OIGC, your agency is your bureau only.

Now, there are others like if you're not in a named bureau or OST or NIGC, like me, I'm in the SOL, solicitor's office, or with the office of secretary general, or one of the assistant secretary's office, then you look at the entire department.

If that outside entity is doing business with, seeking to do business with, or seeks official action from, is regulated by, any part of DOI, then it's a prohibited source with respect to me.

So that last example, that organization is regulated by BLM, that would be a prohibited source to me.

That's how we break that down.

Next, what does "because of your official position" mean?

You have to ask yourself the question: would this gift have been solicited or offered or given if I were not a federal employee?

If the answer to that question is no, then it's given to you because of your official position.

All right?

Next is what's an indirect gift?

Remember you can't accept directly or indirectly?

A gift given from a prohibited source or because of your official position.

It's anything given with your knowledge and acquiescence or consent to your parent, a brother or sister, a spouse, child or dependent relative because of their relationship to you.

In other words, they're giving a discount to the families of, let's say, members of the solicitor's office or something like that, or members of some organization, like MMS or some other bureau that, let's say, they're regulated by.

That would be an indirect gift.

If I know they're giving it to one of my family members and I acquiesce or consent to that.

It also includes a gift given to anybody else, including a charity if it's based on my designation or my recommendation.

So say, for instance, you know, somebody wants to give me something that I can't accept and I go, you know, ethics rules don't allow that, but my favorite charity is XYZ, why don't you give it to them, well, that would be an indirect gift to me, still prohibited, because I've recommended that they give it to that charity.

Now, note, on the slide, if you can see that, it says except for perishable items.

We'll see later on that you can actually -- you can be allowed to if it's impracticable to return a perishable item, you may be able to give to that a charity.

So that's a slight exception to this rule.

There are a number of exceptions.

Donna, I think you're going to touch on those.

>> I'll hit the exceptions for you, still on the subject of gifts from outside sources.

As I stated, there are exceptions.

However, even exercising one of your exceptions, you must never accept a gift in return for being influenced in the performance of an official act.

This comes back to our bribery standard.

Next, you may never solicit a gift.

There are provisions that allow you to accept but you may never request.

Next, you may never accept gifts so frequently that a reasonable person would believe you're using your public office for private gain.

Next on our exceptions, you must remember, it is never inappropriate and frequently prudent to decline a gift even if an exception applies.

This brings us back to the secretary's statement where we don't necessarily ask, can I, but should I?

Even if there is an exception that would allow the acceptance of the gift, it still may not be in your best interests or best interests of the interior to do so.

Other exceptions, gifts valued at \$20 or less per occasion, \$50 in the calendar year.

Please note that this is \$20 and not \$25.

For some reason or another the number 25 wants to stick in the head of our employees.

And this \$20 is a total of \$20.

A lot of times this most frequently comes up with an employee will be attending a function and they will be having a meal with a prohibited source, breakfast, lunch, dinner.

\$20 isn't what it used to be.

You can probably easily purchase a breakfast or a lunch for \$20, dinner gets a little bit more difficult.

Please keep in mind that the Office of Government Ethics has stated this \$20 is in total.

It includes tax and tip.

So if you pick something off the menu that's \$19.95, chances are you're not going to get out that restaurant paying less than \$20 for that meal.

Also, you may not pick up the additional portion of the tab to keep yourself within the \$20 guideline.

If the meal costs \$23.50, you may not allow the prohibited source to pay the \$20 and you pay the additional \$3.50.

That's not acceptable.

Next item, gifts based on a personal relationship are an exception if it has nothing to do with your federal job or your relationship at work.

Discounts and similar benefits, such as group whose membership is unrelated to government employment, if this is a gift as a result of some outside activity that you have, that would be an exception.

And if the gift is from a non-prohibited source with no discrimination based on type of official duty or favoring higher pay.

The example that Ed and I have talked about with this is if a gift is given to an entire bureau and it is given to the entire bureau without regard to rank, it's not given to anyone GS-13 and above, in that case, if it's from a non-prohibited source, there is an exception for that.

>> I would like to just mention on that, notice the distinction between this and the exclusion we talked about before for all government employees, and I mentioned that we'll look at an exception later where it might be some small or sub set of federal employees.

It could be members of the MMS or smaller than that.

It could be Park Service or some -- maybe even a park.

It could be a smaller subset of federal employees, but you have to have a non-prohibited source and there can be none of this discrimination based on type of official responsibility.

So I think Park Service is a good example.

Let's say they're going to give it not to just Park Service employees but only to law enforcement personnel in Park Service.

Well, then they are discriminating on type of official responsibility.

You could not use this exception.

Or as Donna stated, if they were only allowing -- only allowing this discount to folks that were GS-11 and higher, or in any way favoring those of higher pay, that would be problematic.

You couldn't use this exception for that.

>> Okay.

Other exceptions include awards and honorary degrees.

This should also be run through your ethics office.

There may be some approval required depending upon the nature of the award.

Based upon outside business or employment relationships.

Like I say, this is taken away from your federal position.

Based upon permissible political activity.

Speaking engagements.

Ed will cover that more later.

Free attendance at a "widely attended gathering."

Ed will also discuss that more later but please keep in mind that attendance at this gathering must be in the best interests of DOI or your bureau, not just something you would like to attend.

Or accepted under specific statutory authority, and I believe Ed is going to cover some of those for you also.

>> I would like specifically to mention that one there 5USC4111.

That's the authority that permits a federal employee to accept a gift of travel related expenses to go to training or a meeting or something like that, a conference.

Where it's limited.

It has to be a nonprofit that is offering the gift.

And this is considered a gift to the individual and not the agency, which is different from what we'll talk about in a few minutes, the gifts of travel related expenses under 31USC1353.

Then we'll just jump right in now into speaking engagements.

This is an exception in and of itself.

Let's say, for instance, I was asked to be a speaker, a panel participant or somehow otherwise present information on behalf of DOI at maybe a conference, at some training session, something like that.

I could accept free attendance at the event on the day I present if the gift of free attendance is

provided by the sponsor of the event.

Notice, it's on the day that I present.

If it's a five-day conference and I give my presentation or I'm on my panel on day two, I couldn't accept under this exception for daze days, one, three, four and five.

There might be an exception I could use, might be a widely attended gathering, I might be able to stay those other days, except the free attendance.

Remember, speaking engagement exception only allows you to accept free attendance.

It includes waiver of fees, meals served to all participants.

That kind of thing.

Could be training materials given to all participants.

But it doesn't include transportation or lodging.

Let's say I'm asked to go present out in Denver.

Well, I could accept free attendance at the event on the day I'm there.

They could waive the fee for that day.

I could eat the lunch that everybody has in the conference area, that kind of thing.

But I couldn't accept -- under this rule I could not accept the plane ticket to get there or hotel I will stay in that night, anything like that.

There may be another exception that would permit it or maybe I could accept it I wouldn't accept it but the agency would accept it 31USC1353.

Remember, ethics approval is required on this kind of gift.

In DOI we use the DI1958.

That's available on the DOI.gov/ethics website.

Click on the forms link.

It will take you to a number of forms.

Pick this one.

That's the one you fill out.

You submit to that your supervisor.

It goes to your ethics official for final approval.

Next let's talk about widely attended gatherings.

Widely attended gathering would -- has to be an event that occurs outside normal working hours.

Now, that doesn't mean that it would have to occur at night.

You just have to be outside of your duty status.

So it could be during the day, and you're on excused absence or you possibly could be on leave, something like that.

But it's outside of your normal duties.

The event's purpose has to be related to your official position.

The attendance at this event must benefit the government.

As Donna said earlier, it's not just something I would like to attend.

That wouldn't cut the mustard, so to speak.

There has to be a large number of people attending.

There has to be a diversity of views represented.

Let's look at this for a second.

Let's say I was invited to go and attend some event where there were three federal employees and the other 150 people were all employees of a single corporation.

That would not be considered to be -- it might be a large number, but it's not considered to be a diversity of views because the views -- that are represented are all of that one corporation.

On the other hand, oftentimes around D.C. we'll have -- someone will be invited to an event where there will be people from Congress.

There will be people from throughout a given industry.

There'll be folks, NGOs, other nonprofits, friends groups, any number of different backgrounds, occupations, things like that, interests represented.

That would be a diversity of views.

You would still need a large number.

Is there a rule of thumb for large number?

Not really.

Depends on the circumstances.

I've often heard kicked about if that you're around 20 or more, you can start feeling comfortable.

If you're down -- one thing I can tell you, if it's a dinner party with four couples or something, that is not a large number of persons under the rule.

>> That's an excellent example.

Very good.

What.

>> What does free attendance mean in this case, like the speaking engagement, waiver of any fees, it could be meals, training materials, things presented to all the attendees.

But it doesn't cover transportation or lodging.

Okay?

So, again, there might be some other way that we could accept the transportation or lodging, but you couldn't accept it under widely attended gatherings.

And like speaking engagements, ethics office approval is required.

Again we use the DI-1958.

One thing to remember is if someone other than the sponsor invites you and pays the costs of your attendance, you can only accept if more than 100 guests are expected to attend and the cost is \$335 or less.

An example, let's say I'm invited to a big fund-raiser, and the sponsor is let's say the American petroleum institute.

They sponsor an event.

It's a fund-raiser.

And it's a corporation, let's say an oil or gas corporation, something like that buys a table at this event.

\$10,000 table.

10 people can sit at the table.

Each seat is worth a thousand dollars.

Now, if I am not invited by the API, and the API -- then let's say I'm invited by the oil company and the oil company has paid for my seat, I couldn't attend that under the widely attended gathering exception.

Why?

Even if there is more than 100 people attending, it cost more than \$335.

It cost a thousand dollars for that seat.

So I couldn't accept it under the widely attended gathering exception.

Next we'll look at 31USC1353, travel.

This is where we can accept payment.

The government accepts payment of travel related expenses to a meeting or similar function.

It's from a nonfederal source.

For the government to accept under this rule, you have to be on official travel orders.

This is not for local events.

So the -- and the travel has to be related to your official duties.

And it has to be, as I said before, to a meeting or similar function, like a conference training session or some presentation.

That would be okay.

But you can't use this -- the government can't use this authority to accept a gift for me to go out and do something that is required by my governmental duties, you know, by the regulations or statutes, like conducting an audit or an inspection or an investigation.

So let's say an MMS audit team goes out somewhere.

They could not accept the -- the government couldn't accept payment of their travel related expenses while they're on that audit because that's part of their regulatory function.

>> It's not that we're picking on MMS.

Ed just seems to look at me and come up with MMS examples for some reason.

>> Maybe it's because she works there.

>> Maybe, yeah.

>> Now, if this statute applies, if all the elements are satisfied, then you have to use this statute to accept these travel related expenses.

You can't use something else.

One important thing there is that this DI-2000, which I'll mention in a little bit here, that form that you fill out, your ethics official keeps on that record, and if the gift of travel related expenses either exceeds 250 or is 250 or greater, then we have to report those gifts semi annually to the Office of Government Ethics.

So, again, if it fits the statute, then you have to use the statute and we'll keep a record of it and we

may have to report the gift.

There's -- that doesn't mean there's anything wrong with it.

It's just a congressional requirement that these gifts be reported semiannually.

How can you accept payment of travel related expenses?

Well, it can be reimbursement?

In other words, I go out and travel and the government pays my expenses because I'm on official orders and then this nonfederal source reimburses the government for those expenses.

Now, the check would need to be made out to DOI or the bureau, not to Ed McDonnell, or the government could accept an in-kind donation.

That doesn't mean like a nice donation.

It means that it's like -- I get the plane ticket, or I get the E-gov -- the E ticket so I just show up.

The nonfederal source paid for my ticket, I show up at the airport and I walk on the plane.

I go to the hotel and I leave without paying a bill.

The government never gets billed.

They've provided that service in kind.

>> That's something very important to clarify.

We throw away -- throw around certain terms all the time, and in-kind happens to be one of them, but I've had people in the past week ask me what in-kind meant.

It's not part of their vocabulary.

We strongly prefer to take gifts such as this in-kind because it's just much cleaner, makes your finance people happier, because there's less paper work and maneuvering funds.

So if at all possible, it's better if you can have the organization purchase the airplane ticket for you or make your hotel reservation and rather than writing check to the government later, it makes things much easier.

>> Remember, as I said before, it's a gift to the agency, not you.

This is not something that you would have to report on your financial disclosure report at the end of the year.

As I mentioned, this form DI-2000, again available on our website, DOI.gov/ethics.

That has to be filled out and approved by your ethics official prior to your travel.

There's very limb exception there.

If you're already on travel and someone offers to pay a portion of your travel while you're already on travel, then I think you have up to a week to get that approved retrospectively, if that's the correct word.

>> That sounded good.

>> That's a good word.

>> That's a good word.

>> Generally speaking, you need to have this approved prior to travel.

It's not something you can just go and do when you get back.

Okay?

We've talked about the prohibition.

We've talked about the definitions of what is a gift.

What's excluded from the gift definition.

Then we talked about exceptions, what may otherwise violate the rule but there's an exception that allows you to accept the gift.

But if no exception applies, if there's no way that you can accept this gift and it is, in fact, a prohibited gift, what can you do with it?

Well, you can return it or you could pay market value to the donor.

As Donna said, remember, fair market value in the case of a ticket is the face value of the ticket.

If it's perishable and it's not practicable to return it, you know, it's gone -- the person who brought it to your office has left and they're back in Saskatchewan or something --

>> You can't catch the little UPS guy and get it back to him.

>> Then if your supervisor allows it or ethics counselor allows it, you could share it with the office, you could give it to a charity or even destroy it.

Remember I said earlier that there was this exception for -- it's not an indirect gift if it's a perishable item and you are authorized to give it to charity.

That wouldn't be an indirect gift in this case.

>> Even if there is a provision such as a perishable item like a fruit basket or food basket that's given to the office and there is this exception that would allow you to keep it, it still -- you should make every effort to return it if at all possible.

Like I say, short of chasing the little UPS guy down the street.

If not, if it's not possible to return it at that time, you should definitely make the donor aware that it is a gift that you really shouldn't take.

Please do so in a courteous manner.

Say, thank you, we know your heart was in the right place, however we have these tough ethics people in Washington D.C. that won't let us take stuff like this.

Therefore, we've made adjustments for it this time, but in the future, just send us a nice card or whatever to say thank you and not a gift of that nature or magnitude.

>> Okay.

That finishes up gifts from outside sources.

Next we're going to talk about gifts between employees and Donna is going to run you through that.

>> Gifts between employees.

First of all, the rules, what you may not do.

You may not give a gift to a person above you in your supervisory chain of command.

You may not solicit donations -- now, let me clarify, too.

We're giving you the rules and we'll give you some exceptions.

So don't worry yet.

You may not solicit donations to buy a gift for a supervisor.

You may not accept a gift from someone who receives less pay than yourself unless there's no subordinate official superior relationship and a personal relationship justifies the gift between the two

of you.

Our next item is -- here we go.

Our exceptions.

We govern you the rule and then we give you the exceptions.

You may exchange a gift valued at \$10 or less per occasion.

No cash.

Now, Ed gives you the regulations here and then gives you some definitions and the definitions are always important.

What constitutes cash?

These days it's very common to give someone a gift card, and sometimes gift cards are considered to be cash and sometimes they're not.

The Office of Government Ethics says, if it is a card that's more narrowly usable, if it's for a specific store, then it is not considered to equate to cash.

However, if it's a gift card that may be used throughout an entire mall or certain credit cards give you gift cards that you can use anywhere, then basically that equates to cash and that would not be permissible.

>> And I've talked to the Office of Government Ethics.

There are some gift cards for certain stores, like -- I believe Macy's comes to mind, for instance, where it's good at Macy's and then some other stores that are somehow under the umbrella of this parent company or something like that.

>> I've gotten something similar like that from a bookstore.

There's at least two bookstores that are linked and any coupon good at one is good at the other.

>> If there is some finite number, some small number of establishments that you could use this at, in that case it wouldn't constitute cash either.

But, yeah, if it's as good as cash, then you have to consider it cash.

>> Another exception, items to be shared within the office.

This typically, you know, is like food, if you have a wonderful recipe you want to share, if you want to bring in goodies at holiday time, this is permissible.

Personal hospitality, you would customarily provide at your home, meaning if you're having an event at your house and you would like to invite coworkers, this would be acceptable.

And the -- to go along with that a gift customarily given in recognition of personal hospitality, if someone invites you to their home, it is perfectly acceptable for you to bring a gift to the host or hostess that is customarily what you would give to somebody else.

You shouldn't buy an exceptionally nice gift for your supervisor if you wouldn't bring that to your next door neighbor if you were to bring a gift there.

The leave transfer program, but not leave donated to your immediate supervisor.

If you have questions on this, you would be well advised to speak to someone in your human resources office.

Also exceptions, special and infrequently occurring occasions.

We have some examples here for you such as sickness, marriage, birth or adoption of a child.

If someone transfers, resigns or retires, then this is an acceptable time to provide a gift.

However, in doing so, you may collect contributions throughout the office, however, they must be voluntary, you should not dictate a specific amount that is to be donated or even require that everyone contribute.

You can't say, we'd like to get John a new set of golf clubs, \$500, that means everybody in the office has to give X amount.

That's not appropriate.

You may solicit the donations, but the contributing should be voluntary and no dollar amount should be suggested as far as donation toward the gift.

Something to keep in mind, what often sums up, is events such as maybe a significant birthday, maybe even someone's 50th birthday, boss' day.

Even though you only suppose have 50th birthday in your lifetime, unlike age 39, which comes around more than once --

>> Recurring.

>> Even something special like that or boss' day, since these are something -- or events that come up every year, we like to think that birthdays don't, but they do, because they recur every year they are not considered infrequent and they do not fall under the exception.

Sorry about that.

>> That's all right, Donna.

We won't hold it against you.

>> Thank you.

>> Much.

>> Much.

Okay.

>> That's gifts from outside sources, gifts between employees.

Next we're going to turn to fund raising.

Fund raising, we'll start off with CFC.

The CFC season, and you have to know that CFC is the only authorized solicitation of federal employees in the federal workplace on behalf of charitable organizations.

Keep in mind, though, the restriction doesn't apply to collection of, there it is again, gifts in kind.

So food, clothing, toys, those kind of things, as opposed to asking for gifts of cash.

There are some other rules you should remember with the CFC.

Giving again must be voluntary.

There can be no coercion.

And some of the ways that the Code of Federal Regulations states to help you avoid coercive environments, there should be no solicitation of those below you in your supervisory chain.

And no supervisor should ask about who has given or how much people have given.

And there should be no setting of 100% participation goals.

It's one thing to say everybody should be given the opportunity to participate in the CFC, maybe make sure they all get the donation paper work, get the booklet that explains the program and tells them the

available charities but it should not be, and I want everybody to participate, I want everybody to donate.

That would be coercive and you can't do it.

Nor should the organization be making up personal dollar goals or quotas.

It's one thing for -- you'll often see an agency will have their big board with a thermometer or something else indicating whether or not they've set a goal and they're indicating how close they're getting to it.

That's one thing for the agency to set a goal.

It is not okay, though, for you to set personal donation goals.

You shouldn't keep any lists of noncontributors.

And any contributors list should be used only for collection and forwarding of donations and for the allotment paper work.

And the organization's CFC results may not be a factor in a supervisor's performance appraisal.

Again, that would be coercive.

Additional CFC guidelines to keep in mind, there will no solicitation of prizes for special events like auctions, raffles and any raffle prizes should be modest in nature and value.

You're best off with if you stick with things like lunches with an agency official, agency parking space, things like that, as opposed to trying to give away a refrigerator or something that's real expensive.

You can't have gambling.

In other words, you can't require someone to donate for a chance to win.

When you have -- when you have payment of something of value for a chance to win in some contest, well, then that's gambling, and that's prohibited on federal property and of all federal employees while they're on duty.

So no gambling during the CFC.

You can have a situation, though, for instance, where you might have a raffle, but you can get a ticket without donating.

And that would be okay.

Now, you can also have the situation, and this is not gambling, where you can set a minimum price.

Let's say, for instance, you have a luncheon.

You're going to have lunch to try and get donations for CFC, and let's say you -- you know, you have a barbecue brought in and it costs \$5 per head for this barbecue.

That's what you're going to have to pay to get it delivered.

Well, you can have say that there's a minimum \$5 charge for this.

But then folks are free to donate above and beyond that, whatever they want, or to give nothing more at all.

But then you're not gambling.

What's happening there is this person is simply paying the \$5 that it costs to purchase that meal, and then any other above and beyond that that they give, that would be considered --

>> Gravy.

>> Hmm, barbecue sauce.

>> Barbecue, gravy, yeah.

>> Would go as a donation towards the CFC.

One last thing, remember, you can't use a whole bunch of appropriated funds for CFC activities.

Only a nominal amount of appropriated funds can be used for CFC activities.

CFC is fund raising inside the federal workplace.

Next we're going to talk about fund raising outside of the federal workplace, and that includes us in our official capacities or us as federal employees who want to go out and do fund raising in our personal capacities.

In your official capacity you're not allow to do activity or visibly participate in a fund raising event.

That would include being an honorary chairperson at an event, sitting at the head table, standing in a reception line, and that's not an exhaustive list.

Those are just examples of active invisible participation.

Now, mere attendance at a fund raising event in your official capacity would be okay unless it's used to promote eat vent, use your name, your position to draw people to the fund raising event.

Generally you couldn't do any public speaking at one of these events.

Why?

That would be active and visible participation.

You could, however, give an official speech, something where you talk about your own duties, or the programs or operations of your agency, but if you give one of these official speeches, that's fine, but you can't request donations.

You can't at any point during your talk suggest that -- or recommend that people give donations in this fund raising event.

That's official capacity fund raising outside workplace.

Personal capacity fund raising.

I want to do something totally outside my official job.

Well, that's generally permitted, but I can't solicit funds or support for the fund raiser from a subordinate or from anybody than I know is a prohibited source.

Even if I'm doing a fund-raiser for my church, I could not knowingly solicit anything, donations, from someone that I know is a prohibited source.

Nor can I use personally myself or permit someone else to use my official title, position or authority to further this fund-raising effort.

And at no time can you use government time or property for this personal fund raising event.

I can't type up fliers on the office computer and print them off and make copies on the office copying machine.

I can't do this during my working hours when I'm expected to be at work, that kind of thing.

That is fund raising.

Next we're going to talk about seeking employment and we'll follow that up, finally, by our post-government employment rules.

>> I will cover seeking employment for you, first of all.

Seeking employment, the guidelines concerning seeking employment maybe more restrictive than

most employees realize but the bottom line, if you take no other point away from this section of the presentation, the bottom line is, do not take any official action affecting someone with whom you are seeking employment.

Just put that in the back of your mind.

Criminal penalties may result if you have progressed to the stage where you are actually negotiating for employment.

That's serious stuff.

Now, what does seeking employment mean?

Seeking employment is making an unsolicited communication to a person or their intermediary regarding possible employment.

It includes sending in a resume or other employment proposal.

It does not include requesting a job application.

You're not considered to be seeking employment until you've actually forwarded and submitted the application.

Then you're seeking employment.

You are seeking employment if you make any response other than an unconditional rejection to anyone who, unsolicited, contacts you about employment.

As Ed and I had said before, only no means no.

So, therefore, you must say no.

A response deferring discussions for the foreseeable future is not an unconditional rejection.

>> On that, Donna, I've seen people with this situation where they know that they've got, say, a permit application or something in front of them from a prospective employer, someone they would like to seek employment with.

Well, let's say they get -- they're contacted by somebody whose work they have on their desk, and they're expected to take some official action.

You know, if that happens to me, I can't call up that prospective employer and say, hey, look the ethics rules prohibit me from taking any action, official action, that could affect you while I'm seeking employment with you.

Tell you what, let's wait until I'm done with this, your permit application, and they will we' talk.

That is not an unconditional rejection.

That's simply putting it off for the foreseeable future.

Even if I make that statement, I may think I'm no longer seeking employment, but, in fact, I am, for the purposes of this rule.

>> And sometimes also where it comes up is if you're dealing with someone as a part of your job and maybe you're concluding a dealing with them and you think, wow, these were really nice people, and I like them, and I'm going to retire and -- in five months and six days and three hours, and when I do, I might like to work with them.

And you're walking out of the room and you happen to mention that to someone, hey, well, he would like to consider that.

Why don't you stop by my office and we'll talk.

Guess what?

You're seeking employment with them at that time.

So -- and if they expressed an interest, like, yes, we enjoyed working with you, too, and let's talk about that, let's get together and talk, you're seeking employment and you should have nothing to do with them from that point on.

>> In fact, at that point, when things have gone beyond, say, an unsolicited contact from either party, you know, unsolicited, I send a resume to a prospective employer or I'm sitting in my office and I get an unsolicited phone contact from maybe a friend who is working for -- for someone, maybe a prohibited source or something and they contact me about potential employment, those unsolicited contacts, those are -- that's one form of seeking employment, but what Donna was just talking about where you start to have discussions, now -- two parts, two parties, then you're talking about negotiation, which is our next definition under seeking employment.

>> Right.

Negotiating for employment, which means any discussion or communication mutually conducted, as Ed was just describing, back and forth, mutually conducted with a view toward reaching an employment agreement.

As Ed pointed out, it's not just one-sided.

Things aren't unsolicited anymore.

It's not limited to discussions of specific terms and conditions regarding a specific position.

This is where your criminal penalties may begin.

So this is where it gets more serious.

>> And writ talks about not being limited to discussion of specific terms about a specific position, what they're getting at there is don't believe that you're not negotiating simply because you're not talking about how much pay will I make or where will my office be, will I get a corner office?

You're actually negotiating before that.

As soon as you start having these mutual discussions, regardless of how specific they are, if there is a few towards potential employment, you're in the negotiation phase.

That's when 18 USC 208, the criminal statute kicks in.

That's where the criminal penalties may begin.

>> You are no longer seeking employment when either side rejects the possibility of employment and employment discussions have ceased.

Or, two months have passed since you sent in an unsolicited resume or employment proposal.

So long as you have received no indication of interest in employment from the prospective employer.

Now, if you maybe received a simple acknowledgment of your application where they say, thank you, we will place your application on file, you don't know if it was actually placed in a file that will have your name on it or the circular file.

So you're not really considered -- that's not really a response.

If that's all you get, then you don't have to worry about the two-month criteria there.

Where are we up to now?

>> Now we're looking at what would you do if you would like to seek employment with somebody whose interest you would affect in your normal course of duties.

>> This comes up quite a bit.

What do you do if you want to seek employment with someone whose interests you would affect.

First of all, disqualify yourself from any official action that would affect them.

We call this recusal.

It's better -- there's a provision for recusals to be made orally, however, it is in your best interest and for your protection for them to be made in writing.

You should notify your supervisor, your peers, your subordinates and your supervisor.

Recusal should be made known far and wide.

Everyone should be made known in the office.

You might think this is a little invasion of privacy, you might not want everyone to know exactly what you're doing, but it's very, very important for your protection so it doesn't get you in trouble.

Make sure everyone knows that they are not to come to you with any matter pertaining to this organization for your protection.

>> And remember, though, that if it's a situation where -- we're talking about a situation where your Poe -- where you could affect the interests of your potential employer.

If this is some organization or company that you have -- you don't affect in your day-to-day duties at all and you have no expectation of ever affecting them in your day-to-day duties, then there is no reason to disqualify yourself.

There is no reason for you to broadcast you're seeking employment with these people.

It's when there's a potential issue of you taking official action that could affect this prospective employer, and as Donna points out, it's to protect you so you don't inadvertently get hand add project could that get you in trouble, and if you're in the negotiation phase, you know, you're talking about a potential criminal statute violation.

All right?

One last thing -- one thing I would like to talk about on this is the procurement integrity act.

41:USC 423 has an independent reporting requirement in the seeking employment area where if you're involved in a procurement that's greater than \$100,000, and you're contacted by a bidder or offeror in that procurement, regarding potential employment, you have to notify your supervisor and your servicing ethics counselor of the contact.

So that is it kind of protects the sanctity of the procurement process.

They want this kind of information known so that there aren't these potentials for behind the scenes dealings with a potential employer.

Now, if you make the report to your supervisor and your ethics counselor, if you would like to seek employment with that offeror or bidder, then what you would have to do would be to disqualify yourself from taking any further actions in the procurement so that you don't violate the regulation or statute.

One other thing on seeking employment, let's say there's a prohibited source that you would like to seek employment with and you've disqualified yourself, so you don't have that concern, but they want to, say, fly you out to San Diego and interview you to see if you would be a good fit in their office out there or something, they're going to put you up in a hotel, pay your airlines, your airline costs, your meals, things like that, well, I said it was a prohibited source that wants to do this.

Can you accept?

Yes.

This is one of the gift exceptions -- gift acceptance exceptions for the outside business relationship.

If it's bona fide employment negotiations and the prospective employer customarily pays such expenses for employees, prospective employees like you, for that type of position or something like that, then you can accept it.

You can't accept -- if they treat you much better than they would normally treat somebody who they're hiring into a position like that, that could be a problem and wouldn't fall under this exception.

>> This does come up quite a bit.

I've received several phone calls where employees were offered a plane ticket, especially maybe not for the first interview, but definitely for the second or third when they were really in final contention for a job, this does come up, and I guess being federal employees a lot of times the government doesn't fly -- fly us around for interviews.

People have been very concerned about accepting.

So it is something that definitely comes up.

>> For financial disclosure filers, that would be considered a personal gift that, if it meets their reporting threshold, you would have to put on your financial disclosure report.

One other thing, and remember, if you are going to seek employment with these folks that you do have to disqualify yourself, if necessary.

Okay?

Next we'll go onto post-government employment.

There are a couple statutes can that restrict your post-government employment.

First is 18 USC 207, the switching sides statute.

This one won't prohibit you from working for any particular employer but it could restrict what you may be able to do for them.

The procurement integrity act is like a 900 pound gorilla.

That would could prohibit your employment with a particular employer for up to year.

We will go through each of these so you'll know what we're talking about.

>> OGE is very proud of this one.

It was recently updated.

>> It's been updated in the last year or so.

And then the CFR provisions implementing 18 USC 207, it's now 5 CFR, and that was this summer updated by OGE.

Your ethics counselor should be aware of that and I will say, post government employment is a dangerous area and you should at least talk to your ethics counselor before you leave government service.

It may be that you will only need just a cursory discussion.

You may really, when you tell them, let's say you're going to work for someone that has -- no impact in your daily duties on this outside entity and you're not going to be doing anything -- working on anything you ever worked on while in government service, they might say, you have very few concerns.

But they could provide you information could that keep you out trouble.

>> Probably general guidelines could be provided initially, and to answer really specific questions,

you would have to know who they were going to go to work for and what they were going to do to give sound advice.

>> Later on, even after you leave government service, you're entitled to post-government service employment advice from DOI or from MMS, whatever bureau you have left.

Your first job out of the gate, there may not be any issues, but your second job or third, you may all of a sudden, hmm, I seem to remember something about this from that fall 2008 ethics training.

I'm wondering if this is going to be a problem.

I've actually advised people, one, I think, 15 years he had retired, 15 years before from the Marine Corps, and I advised him on post-government employment.

You're always entitled to come back to the agency you left for post-government employment advice.

Now, for 18 USC 207, remember this, one won't restrict you for going to work for a particular employer but does it include a lifetime ban, which makes it illegal to represent another, not yourself, but another to a federal department, agency or court with the intent to influence that department, agency or court on a specific party matter that you participated in personally and substantially while in government service.

This prohibition lasts for the lifetime of the matter.

A specific party matter is a matter where parties are identified.

Common cam pulls would be a contract, a claim, a permit, an application a grant, any of those things where specific parties are involved, United States and the individual requesting the application are entering into the contract, that kind of thing.

Now, I said you can't represent another.

You can represent yourself, but you can get interesting situations.

Let say after you're in government service you decide to become a sole proprietor or independent contractor, maybe a consultant, and you want to go to work for the government, that's different than if you incorporate.

If you incorporate, then you actually created a separate legal identity.

That corporation has a legal identity that's separate from you, and so if you're an independent contractor, and you could go back and represent -- excuse me -- represent yourself to the government, that would not violate the statute.

But if you go back and represent the corporation, then you could violate the statute.

And it applies to any federal department, agency or court.

It's not limited to representations that you might make just to DOI.

Any federal agency or court.

But an intent to influence is required for you to violate this statute.

If you just call or write to request or provide factual information, that is not a communication made with the intent to influence.

That would not violate the statute.

But, remember, even a mere appearance could violate the law.

Could have an intent to influence.

Let me give you an example.

Let's say I was involved in some kind of a grant application while I was in government service.

I get out of government service and I go to work for city university that gets that grant.

-- say, the university that gets the grant.

I was very influential in the grant process when I was in government service.

I then attend a meeting between the university and the government after I've left service and I attend this meeting, walk in with my new university co employees and we sit down, I don't say a word.

I sit at the back of the room.

But everybody knows --

>> Ooh, that's Ed McDonnell.

>> All government employees in that room know that I was instrumental in the original grant application.

I may have -- my mere presence may constitute an intent to influence, and that could lead to a violation of this law.

You have to have the same specific party matter.

When you're in the government and now that you're out of the government.

However, at this time there may be different parties.

Maybe the contract was made with a general contractor and you've gone to work with a subcontractor that was ant part of the original agreement.

But if you're contacting back to the government on that same matter then 18 USC 207 is in play.

You have to have acted personally or directing another.

You have to directed another for it to be personal involvement.

And your involvement must have been substantial.

It has to have been significant to the matter.

Simply pushing paper work from desk to desk without making any recommend egg or giving any advice or anything like that is not substantial.

-- recommendations or giving advice or anything like that is not substantial.

This applies to the lifetime of the matter, not your lifetime.

One thing to remember with all this, remember, you can't make representations to the government, however, you can work behind the scenes.

You could tell the people in your new organization what they need to talk to the government about.

You could tell them what they need to say.

You could tell them who they should talk to.

But you cannot make the representation yourself.

>> I think we -- we'll need to take about a two-minute break here and then we can come back for some questions.

So if that's okay with everyone, we'll be back in two minutes.

>> We're back.

We'd like to now open up.

We have some more material, not whole lot more, to finish up, but we've been covering a lot of information really fast, and we realize we may not have been giving you the opportunity to jot down a

question, to call us or e-mail something in.

That's why we took that short break.

If anyone would like to send a question to us now or -- you get to use the push-to-talk mic, please feel free to do that.

We will give you a little bit here.

Then once we get through the rest of our material, we'll also give you a little time, then, for you to ask some questions.

Okay?

But right now, we're standing ready to accept questions from the field.

>> All of our technicians here, in this area and the back, they're ready to hear from you.

We gave you the various avenues where you can contact us, fax them, the little handy dandy microphone, and as Ed said, we've gone through most of our material.

Post employment is pretty much our last topic but we have several more slides to cover on that.

Looks like we're up to about an hour and 25 minutes.

So maybe you're starting to get a little uncomfortable where you are.

>> Caller: I've got a question.

>> Looks like we have a question, Ed.

>> Go right ahead.

>> Caller: I'm here in Albuquerque, New Mexico, but I was wondering, where does the concept of sky miles from airlines on government tickets fit into the equation?

>> Well, the bottom line is that you can accept those now.

Used to be that you were not allowed to accept personally these frequent flyer miles or any other of those travel benefits that came from your government travel.

That was changed in the national defense authorization act for fiscal year 2001, I believe, and --

>> He's an attorney.

He just rattles that stuff right off.

>> You can now accept those.

You can keep those and use them for your personal travel.

Does that answer your question?

>> Caller: Yes, it does.

Thank you.

>> You're welcome.

>> Great.

Let's --

>> Caller: I have a question, Mary at NCPTT.

>> Yes, ma'am.

>> What about things like when you have family members of employees, say, selling Girl Scout cookies or cookie dough, ice cream fund-raiser type things.

How is that influenced?

>> Basically, that is soliciting in the workplace, and as a general rule, it's not prohibited.

I'm sorry, it is prohibited.

It's not permitted.

>> Yes, CFC is supposed to be the only solicitation of federal employees in the federal workplace for these charitable organizations.

So if these are Girl Scout cookies and things like that that are for a school, you're not supposed to do that.

>> Anything else?

>> Okay.

Then we'll carry on with the rest of the post-government employment and if you do have any questions, jot them down.

We do have -- we're at an hour and 28 minutes, but we have -- we do have up to two hours of satellite time, so if people have questions when we get through this, we will have time to take these questions.

Next under 18 USC 207, there is a two-year ban to represent another -- it's illegal to present another to a federal department, agency or court with the intent to influence on a specific party matter, but now this is a matter that was under your official responsibility during your last year of government service and the prohibition only lasts for two years after you've left the government.

So this generally applies to supervisors and managers, and it applies to any matters that their subordinates, not just their immediate subordinates, have participated in or assigned to participate in during that last year of the supervisor's government service.

Even if you disqualified yourself from the matter while you were in government service, that does not relieve you of this restriction.

Okay?

So, I think -- I'd like to say that behind the scenes assistance is okay.

You can, again, tell the organization who to contact, what to say, that kind of thing.

You just can't make the representations yourself.

But, the difference here is, if it was something that was under your official responsibility as opposed to something that you were personally and substantially involved in.

So you may not have ever taken any specific action with respect to this matter.

It was just something that your subordinates took care of.

It was still under your official responsibility.

A good illustration is anything that happens in the Department of the Interior is under the official responsibility of the secretary.

So you can kind of take that and cascade it down.

Anything that happens in assistant secretary's bureaus that he or she is responsible for, that would be under his or her official responsibility.

Anything that any of your subordinates whether immediate or lower down the chain participate in or are assigned to participate in, those are under your official responsibility.

So if it was matter that occurred during your last year of government service, then you have to stay away from that matter for two years after you leave government service.

How can this be different from the lifetime ban?

Well, aside from the fact that it doesn't require personal and substantial involvement, the other aspect is many things, many specific party matters, have a definite lifetime.

So you may have a contract that's five years long that was -- it was under your official responsibility during your last year of service, and then you get out of government service.

Two years goes by.

Well, that contract is still in place for at least another two years, right?

Well, you could contact the government back regarding that contract once your two-year period has lapsed.

So that's different from the lifetime ban.

On the lifetime ban, anything -- anything at any time that you were involved in your government service personally and substantially, you can never go back to that matter.

Okay?

Now -- so in the case of a contract, you could never go back to that same contract.

If it's an extension or a modification of the contract, those analyses can become a little bit difficult.

So you definitely want to talk to an ethics counselor about those to see what they would recommend in a case like that.

Okay?

But, again, behind the scenes assistance is permitted in this two-year ban as well.

The next one I would like to talk about is trade or treaty negotiations, and if -- for one year after you leave government service you can't aid or advise anyone other than the U.S. concerning an ongoing trade or treaty negotiation that you participated personally and substantially in during your last year of government service.

So, again, you're looking at that period, the last year that you were in service where you personally and substantially involved -- were you personally and substantially involved in it?

Did you personally take action or did you direct the actions of a subordinate?

And was it something significant to the matter or were you just part of the administrative change, just moving paper work from one December to another.

And the prohibition lasts for one year after you leave government service.

Notice, that this says aid or advise.

It doesn't have anything to do -- it's not limited to representation.

So here, even behind the scenes assistance is prohibited.

That's unlike the lifetime and the two-year ban.

Here behind the scenes assistance is prohibited.

Now we're going to look at certain types of employees.

Senior employees and very senior employees.

If you're a senior employee, that means you're on the executive schedule or any employee paid equal to or greater than 86.5% of the level II of the executive schedule, if you fall into that category, then there is a one-year ban on you communicating with your former agency.

That means, you can't communicate to or appear before any department or agency that you served in

during your last year prior to termination from senior service.

Notice I didn't say prior to termination from government service.

They may be the same.

You may leave government when you leave your senior position.

However, it might be a situation where you actually leave your senior position but you remain in government for some amount of time, and so you may be burning that clock actually prior to leaving government service.

Okay?

We're talking here about any department or agency in which you served during your last year prior to termination from your senior service.

So if you came into the Department of the Interior since months prior to leaving senior service, well, there is another six months, if you were at, say, USDA for the six months prior to that, you couldn't communicate with either of those, all right?

Again, you need an intent to influence here.

Merely requesting factual information or something like that wouldn't Trigg they are prohibition.

And it lasts for one year after you leave that senior position.

What constitutes your agency in this case for this one-year cooling off period?

That depends on your position, whether you're part of the executive schedule, whether you're an SES.

You need to talk to your ethics counselor to find out how it would apply to you.

Then -- then there's a prohibition that applies only to former very senior employees, and this actually only applies to level I of the executive schedule and it's only the Secretary of the Interior in our case.

Just to point out, though, there is actually a two-year cooling off period for cabinet-level positions.

>> I think newspapers.

That was changed.

>> That was changed.

It used to be one year.

That was one of the changes made to 18 USC 207.

It's now a two-year ban.

They can't speak to any executive level employee or any employee of a department or agency in which served during their last year of government service in this case.

For former and senior employees, for one year after that service ends, they can't represent a foreign government or a foreign political party before any officer or employee of any agency or department of the U.S.

Or aid or advise, that's that different language again, that entity with the intent to influence the decision of the officer or employee.

Isth one since there's the aid or advise, this prohibits behind the scenes assistance as well.

For 18 USC 207 there are a number of exceptions for the various prohibitions.

What you really need to do is to talk to your ethics counselor and find out whether or not 18 USC 207 is going to affect you, and if so, how.

The procurement integrity act, we mentioned it before with the reporting requirement that it has if you're contacted by a bidder or offeror in a procurement in excess of \$100,000.

This is the 900 pound gorilla provision that says if you serve in one of seven specified positions, that would include, but not limited to, procuring, contracting officer, program manager, source selection authority, or four other names positions, or you make one of seven specified types of decisions, to include awarding contract, establishing overhead rates or approving the issuance of payments or, again, some four other named decisions, on a contract over \$10 million, it's limited to contracts over \$10 million, then you may not accept compensation from the contractor for one year either after you served -- leave that position or you make that type of position -- or that type of decision.

So, for instance, if you were on a source selection board and it's a year before you leave -- you get off the source selection board and there's still another year of government service, by the time you leave government service, you're outside of the one-year prohibition of the procurement integrity act, but if you in the source selection board right up to the day you leave government service, then you've got a year after your government service terminates before you could accept compensation from that contractor.

Donna, we've gone through a lot today.

We've done, what -- we went over briefly introductory stuff on the core values, on the secretary's statement, the executive order, standards of conduct, the criminal code provisions and the supplemental agency regs.

Fund raising.

Seeking employment and post government employment.

That's a lot of material.

There are other ethics resources available to these folks.

>> But before we go over those, do we want to give another invitation for questions?

>> Certainly folks can be generating questions now.

I would say let's bang through this last thing and we'll put up -- we're also going to get up the numbers, the fax numbers that you can use, but as soon as we're done, we'll be open to question.

>> Okay.

Now, as far as ethics resources, as Ed was speaking of, first of all, your servicing ethics official, ethics officer for your bureau, should be your first point of contact.

Also, bureau ethics website.

Most bureaus and the department certainly does, but most bureaus have on their intranet a page or several pages or documents dedicated to covering topics related to ethics.

The department certainly does have an ethics website, WWW.DOI.gov/ethics.

And, of course, we have our handy dandy ethics guide for DOI employees.

You should have one on the top of your desk if at all possible.

I reach for it frequently and often.

>> That's the one we showed you.

It's on the screen right now.

But also, I think I mentioned, but if I failed to, let me mention it now, that a Microsoft word version of that is on the DOI.gov/ethics website.

You could go there and read or download that and have it available.

You could print that off and keep on it your desk even if you don't have the handy dandy version.

>> Of course, this version is nice because it has the tabs with the topics, but as you said, a resource is a resource.

And also the final item is the Office of Government Ethics website.

Everything you could possibly want to know about ethics is available on OGE's website.

They have recently updated it.

There is a search engine where you can indicate a topic that you want to research.

Something that we should give you a little forewarning about, it can be little confusing when you go in and punch in a topic you want to review, when it comes up, there will be a listing of items down the far left third, quarter of the page, and then what's directly in front of you taking up about three-fourths of your screen will be blank, and that can be a little confusing.

You're thinking I just searched for such and such and it looks like what I did before I searched.

Please scroll down.

It's a little off the page.

We're not sure why it works that way.

But does it.

Just make sure you scroll down after entering anything you want to look for on OGE's website.

To get credit for the course today, Ed went into some detail when we first started, but as he said earlier, you can log into DOI Learn.

Please go to the test tab, not to the course tab, and answer just a question or two there, probably just ask you, did you watch it, did you watch the program, on what day, and that will give you credit in DOI Learn for completion.

Or you may fax in a sign-in sheet, and we have a slide here that has the fax numbers for you.

We have all the bureaus covered there.

If for some reason you should not have access to DOI Learn to get credit.

Our clock indicates you have been sitting there for an hour and 42 minutes.

You should certainly want to get credit for that.

So that much time has passed.

We've covered a lot of material.

We'll give you another opportunity here to ask any questions, anything we haven't covered.

Also, we're being reminded that as far as getting credit for the course in DOI Learn, you should allow approximately two days for the credit to actually show up in the system.

I gather there's some type of technical delay.

So even if you go in and complete the test today, today is, what, Wednesday, you might not see credit for it until Friday.

So we'll give the I.T. folks a break and maybe not go looking to print out a certificate or any documentation until Monday because we're told there may be a two-day lag period before the -- it's actually documented in the DOI Learn system.

>> If you have questions with DOI, give them a call or contact DOI, one, if you've never registered with them, or when you get to the website and you have trouble certifying, contact DOI Learn and

they should be able to give you a hand with that.

>> Right.

So we'll just wait and see if you have any other questions coming in.

Our partners here are listening up to see if we have anything coming in.

So we're done.

All right.

We're told that you guys have been fully enlightened now about what we've provided to you.

There are no further questions.

Those are all topics that we have for you.

So we appreciate you joining us.

We enjoyed doing this.

We hope it was helpful for you.

And if you should think of any questions from this point forward, please do not hesitate to contact your ethics specialist for your bureau.

Ed?

>> Thanks very much for joining us, and we'll see you at our next broadcast.

>> Thank you very much.