

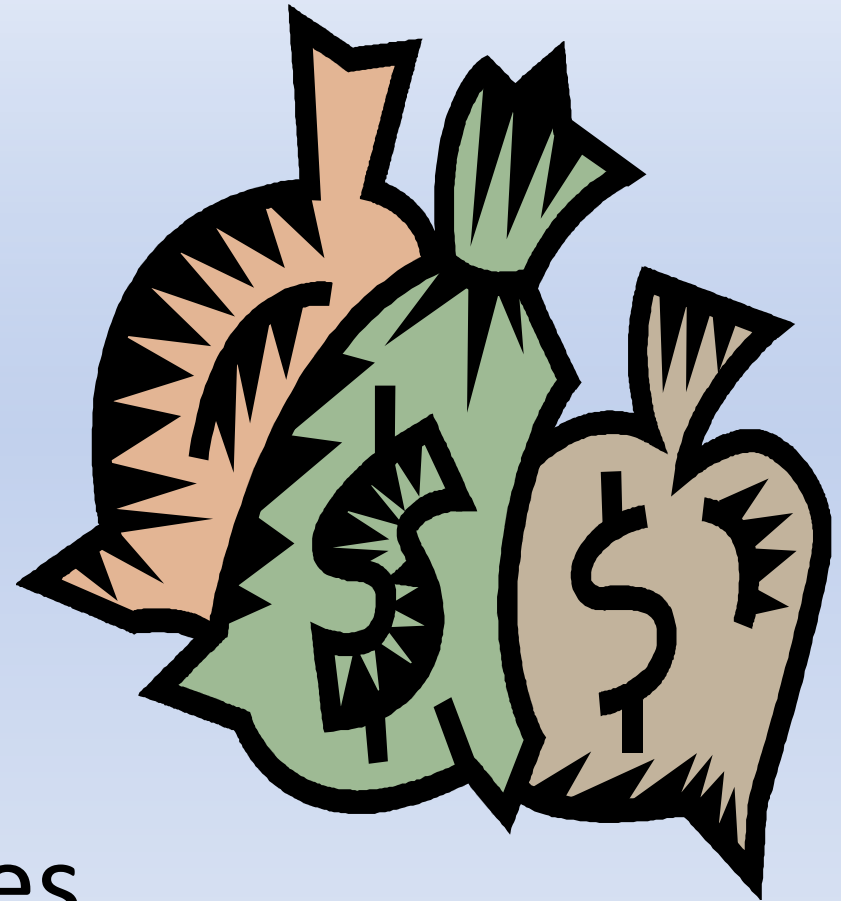
FUNDRAISING 2015

**Office of the Staff Judge Advocate to the
Commandant of the Marine Corps
October 2015**

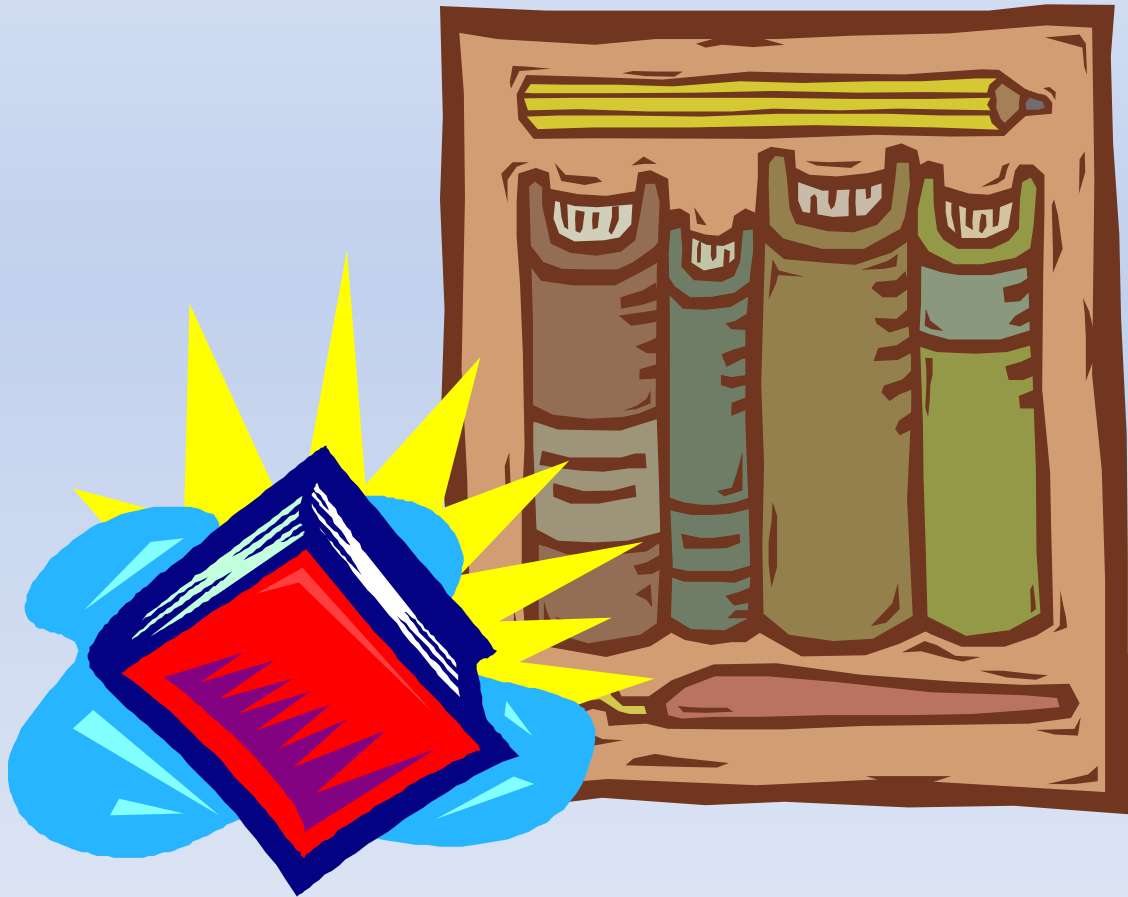


Overview

- References
- Principles
- Official
- Personal
- Other Concerns
- Specific Examples
- Problems



References



- The Constitution
- Executive Orders
- Standards of Ethical Conduct for Employees of the Executive Branch
- Joint Ethics Regulation
- Agency Regulations
- Policy Guidance
- Internet Resources



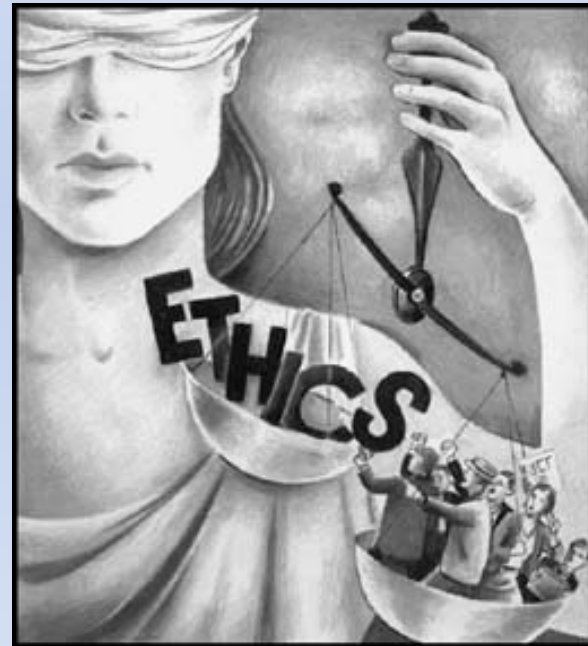
What Ethical Principles Should You Consider?



Ethics Principles

Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

Is it a tilting scale?



Ethics Principles

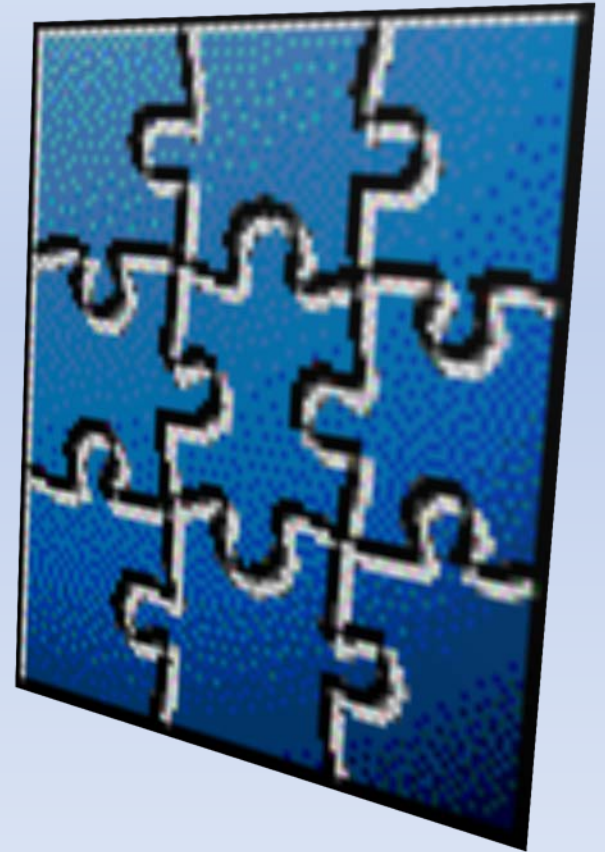
- Public Trust (#1, #7)
- Misuse of Resources (#9)
- Misuse of Position (#7)
- Preferential Treatment (#8)
- Conflicts of Financial Interest (#2)
- Effective Workforce (*See EO 12353*)



Why is Fundraising Difficult?

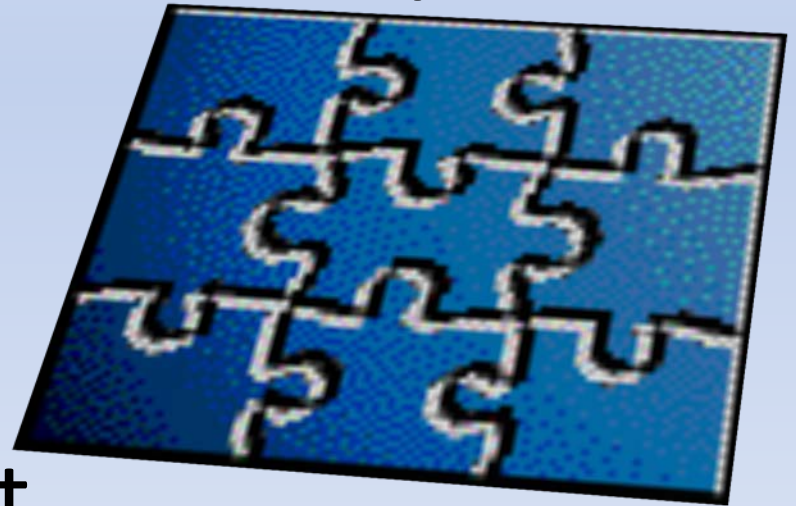
The 5Ws and an H

- **WHO** – is fundraising?
- **WHAT** – is the legal authority?
 - is being solicited?
- **WHEN** – is solicitation?
- **WHERE** – is the fundraising?
- **WHY** – is soliciting?
- **HOW** – How are we supporting?
 - People
 - Equipment
 - Time
 - Endorsements



Pieces of the Puzzle

- Money or goods
- In or outside the Federal workplace
- US or someone else
- Official or personal
- Any logistical support



Complicated and Often Appears Contradictory

No comprehensive guidance

- Executive Orders
- Government-wide regulations
- Agency regulations
- Site Regulations
- Policy



WHAT is Fundraising?



- 5 C.F.R. § 2635.808(a)(1)
- **Definitions.** For purposes of this section: Fundraising means the **raising of funds** for a **nonprofit organization**, other than a political organization as defined in 26 U.S.C. 527(e), through:
 - (i) **Solicitation of funds or sale of items; Or**
 - (ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a **charitable tax deduction** by a person incurring that cost

WHAT is Fundraising?



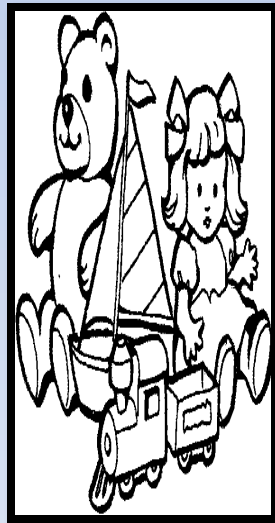
- **Fund-raising Event**. An event or activity with the purpose of soliciting money or materiel for charitable, civic, or educational organizations, organizational operations, or similar purposes, by any means, beyond that necessary to cover the reasonable costs of the event (DoDI 5410.19, paragraph E2.1.26.)
- **NOT “Commercial Activities”** that involve conduct of business to make a **PROFIT**.

What is Fundraising?

- All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations, vending merchandise of all kinds, displaying or distributing commercial advertising, or collecting private debts, except for— . . . (41 C.F.R. § 102-74.410)

But, see 5 C.F.R. § 950.102(b) does not apply to the collection of gifts-in-kind, such as food, clothing, and toys, or to solicitation of Federal employees outside of the Federal workplace as defined by the Agency Head consistent with GSA regulations

But, see [Service Regulations](#) which allow for placement of collection boxes in public use areas of Federal buildings or installations for the voluntary donation of foods or goods for charitable causes.



Official Capacity



Official Capacity

Fundraising in an “official capacity” requires authorization pursuant to statute, Executive Order, regulation, or other authority making such activity part of an employee's official duties. [See 5 C.F.R. § 2635.808\(b\)](#).



Statutory



NDAAs for FY2008, Pub. L. 110-181, § 593(b),
Jan. 28, 2008,

**GIFT ACCEPTANCE AUTHORITY. Amendments to
10 U.S.C. § 2601**

LIMITATION ON SOLICITATION OF GIFTS.—“The Secretary of Defense shall prescribe regulations implementing [10 U.S.C. § 2601 and 2608], that **prohibit the solicitation** of any gift under such sections by any employee of the Department of Defense if the nature or circumstances of such solicitation would compromise the integrity or the appearance of integrity of any program of the Department of Defense or of any individual involved in such program.”

Financial Management Regulation, Vol. 12, Chap. 30

“[P]ersonnel **shall not** solicit, **fundraise for**, or otherwise request or encourage the offer of a gift.”

Regulatory

- Executive Orders 12353 and 12404, Charitable Fund-Raising
- 5 C.F.R. Part 950, Solicitation of Federal Civilian & Uniformed Service Personnel for Contributions to Private Voluntary Organizations
- 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch
- DoD 5500.07-R, Joint Ethics Regulation
- Service Regulations
- GSA Regulations



WHO

- United States (US)
- Non-Federal Entities



Where?

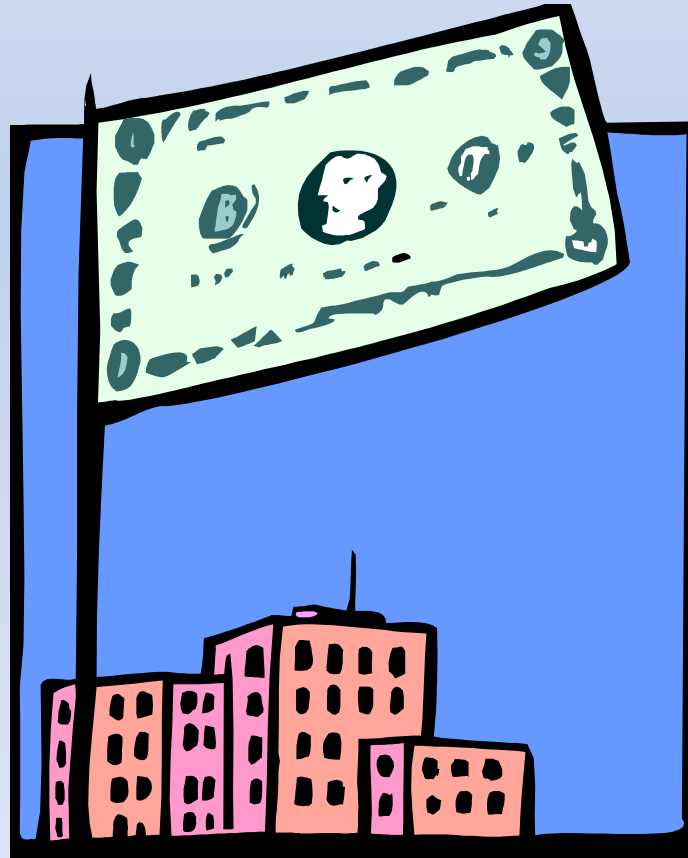
- In the Federal workplace



- Outside the Federal workplace



Official Support In the Workplace



History of Charitable Fundraising Within the Federal Service



Early Years

“An uncontrolled free-for-all”



1940s and 1950s



- Charitable solicitation in Federal workplace was on an ad hoc basis.
- Federal managers received requests from dozens of organizations seeking endorsements and the right to solicit employees at their worksites.
- Quotas (for agencies & individuals) were established and supervisors pressured employees.
- Fundraising frequently consisted of passing an empty coffee can from employee to employee.
- Even so, total receipts were minor.
- Often, employees donated their pocket change.

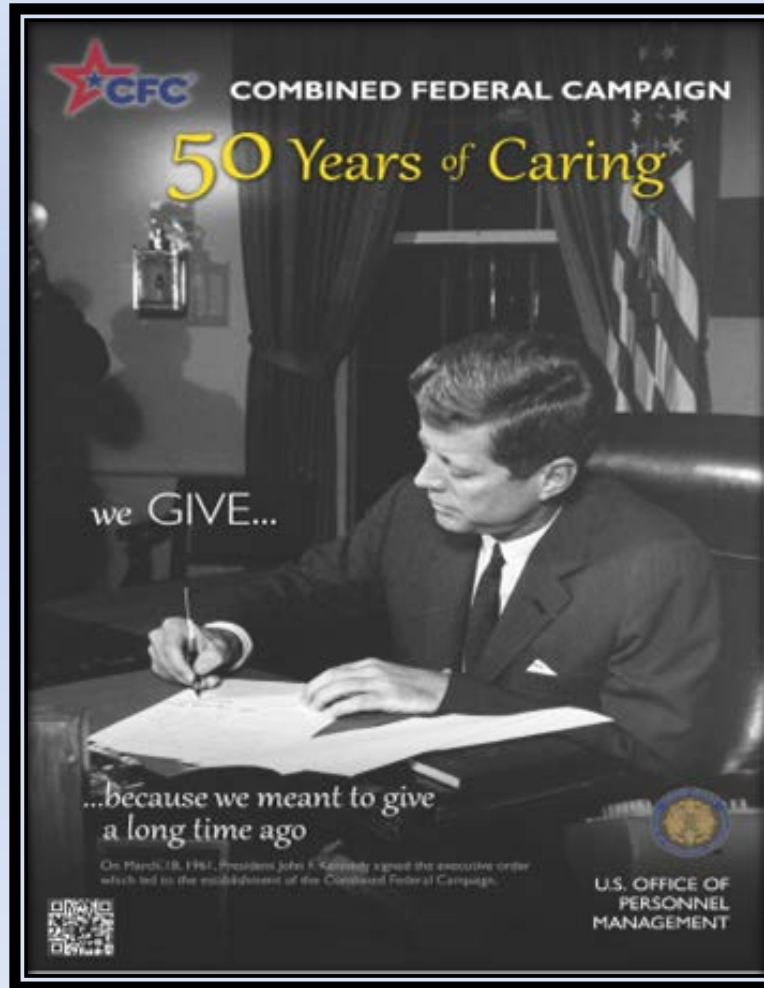
Executive Order 10728

President's Committee on Fundraising



Executive Order 10927

Combined Federal Campaign



Executive Orders 12353 and 12404 Charitable Fund-Raising



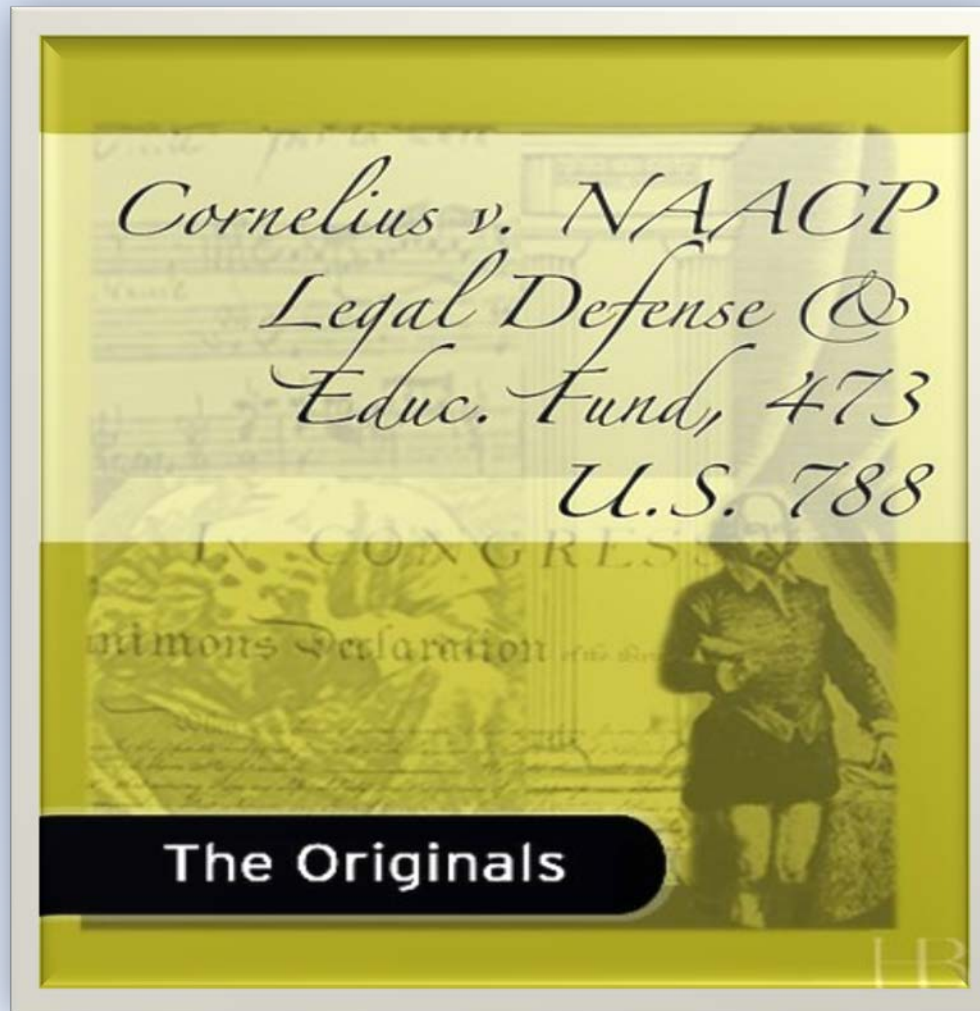
Official Support in the Workplace

Executive Orders 12353/12404

- Authorizes the Combined Federal Campaign
- Retained original limitation to “national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate”
- Specifically excluded those “agencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves”

U.S. Supreme Court Litigation

Charitable Fund-Raising and Free Speech



Cornelius v. NAACP Legal Defense & Educational Fund, Inc. (1985)

- Legal defense funds brought suit alleging that Executive Order unconstitutionally excluded them from participation in charity drive aimed at federal employees and military personnel
- Key Points:
 - Charitable solicitation of funds has been recognized as Free Speech
 - Federal workplace as “nonpublic forum”
 - CFC defined as “nonpublic forum”

Cornelius v. NAACP Legal Defense & Educational Fund, Inc. (1985)

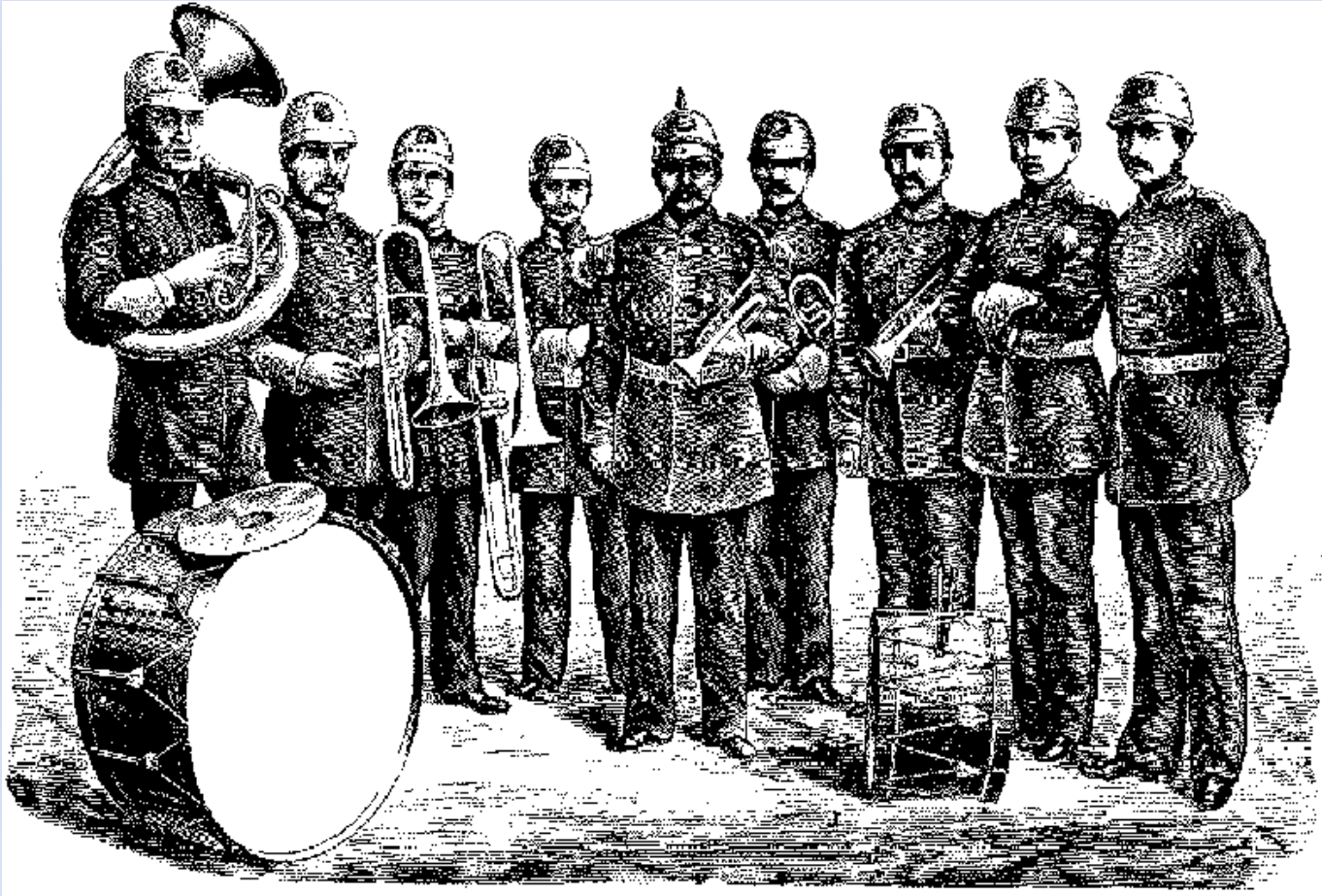
- Control over access to “nonpublic forum” may be based on subject matter and speaker identity as long as distinctions drawn are “reasonable.”
- **Held:** Federal Government did not violate First Amendment when it limits participation in charity drive aimed at federal employees, which is nonpublic forum, in order to minimize disruption of the federal workplace, to ensure the success of the fundraising effort or to avoid the appearance of political favoritism without regard to viewpoint of the excluded groups. 30

Official Support in the Workplace

Executive Orders 12353/12404

- Does not apply to “solicitations conducted **BY** organizations composed of civilian employees or members of the uniformed services **AMONG** their own members for organizational support or **FOR** the benefit of welfare funds for their members.”
- Dates back to 1957 -- see § 7 of EO 10728 (1957); § 3 of EO 10927 (1961); § 7 of EO 12353 (1982)

Effective Workforce



Combined Federal Campaign (CFC)

- **Objectives** -- E.O. No. 12404 (Feb. 10, 1983):
 - Lessen the burdens of government and of local communities in meeting needs of human health and welfare;
 - To provide a convenient channel through which Federal public servants may contribute to these efforts;
 - To minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail.



Combined Federal Campaign

- Permissible:
 - Duty hours
 - Use of official title position and authority
 - Endorsement of CFC (not individual charities)
 - Limited appropriated fund support
 - Campaign kick-off events
 - Victory events
 - Award ceremonies
 - Non-solicitation events to build support
 - Limited use of appropriated funds



Combined Federal Campaign

- Impermissible activities:
 - Cannot receive something of value in exchange for contribution
 - Cannot endorse a specific charity
 - May not solicit outside of the Government
 - Coercive
 - Solicitation by chain of command
 - Establishing personal \$ goals
 - Lists of non-contributors
 - Improper use of contributor lists



Combined Federal Campaign

- *OPM Issues Final Rule to Amend CFC Regs – 79 Fed. Reg. 21,581 (Apr. 17, 2014) Effective date 1 Jan 2016*

- Designed in response to recommendations of CFC-50 Commission (issued July 2012)
- Solicitation Period – OPM Director may set campaign period from September 1st to January 15th
- Immediate eligibility to allow new employees to pledge
- Disaster Relief Program – OPM Director authorized to create program to be available to donors within hours after disaster
- Electronic Giving and Processing – Cash contributions are eliminated; checks can be accepted and processed electronically
- Improvements in CFC infrastructure, standards of accountability, and transparency



Combined Federal Campaign

Special CFC Fundraising Events

- *Raffles, lotteries, auctions, bake sales, carnivals, athletic events or other activities if:*
 - Approved by appropriate agency head or government official
 - Consistent with agency ethics regulations
 - In the spirit of generating interest in CFC – open to all individuals without regard to whether employee participates in CFC
 - Chance to win must be disassociated from amount of contribution
 - Raffle prizes should be modest in nature and value
 - Examples of appropriate raffle prizes may include opportunities for lunch with Agency Officials, agency parking spaces for specific time period, and gifts of minimal financial value
 - Any special CFC fundraising event and prize or gift should be approved in advance by Agency's ethics official.

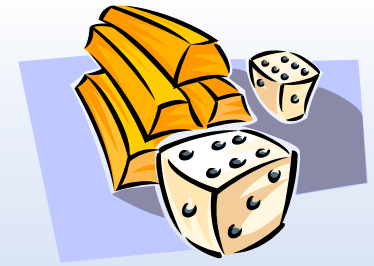
Combined Federal Campaign

Recurring Questions

- *Can we hold fundraising event for specific charity?*
 - No, funds raised must go to either CFC General Fund or whatever charity the donor identifies
- *Can we have a “civilian clothes day” whereby employees may make a donation for the privilege of wearing of civilian clothes to work?*
 - No, military service uniform regulations cannot be suspended or changed in exchange for a CFC donation.

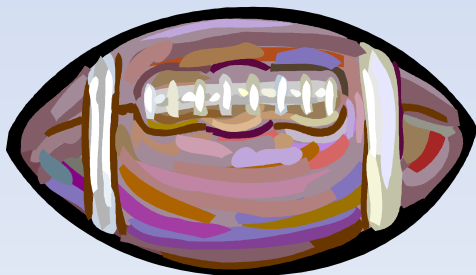


A Word on Gambling



General Rule: Gambling is prohibited on Government-owned or leased property and/or while on official duty

- OPM at 5 C.F.R. § 735.201 prohibits civilian employees from gambling unless necessitated by employee's official duties or unless an agency approved activity. **(Be aware of local and state law that may prohibit such activity.)**
- JER 2-302 prohibits DoD personnel from gambling -- several exceptions exist for "by our own, for our own" when approved by head of DoD Component after consultation with DAEO and ***subject to the limitations of local law or regulations***



Gambling Defined

1. Consideration (betting something of value)
2. A game of chance, **and**
3. An offering of a reward or prize

See U.S. v. DiCristina, 886 F.Supp.2d 164 (EDNY 2012), reversed, 726 F.3d 92 (2d Cir. 2013), cert. denied, 134 S.Ct. 1281 (2014)



Fantasy Football is Gambling

- DoD employee operating “fantasy football league” in his workplace
 - Participants each paid \$20 to participate
 - Funds used for luncheon at end of season and trophies purchased for the winners.
 - General Counsel ruled as gambling in the workplace
- Air National Guard running “fantasy football” league on Government computers
 - Each league member contributed \$10 to play
 - Winner to buy pizza for all participants at end of season
 - Game conducted on break and lunch times
 - JER prohibits gambling while on duty or while on Federal property
 - Misuse of government resources to conduct such activity on Government computers.



Special Solicitations During Emergencies and Disasters

- **Exception to CFC Regulation:** Organizations **cannot** conduct other charitable fundraising in the Federal workplace unless Director OPM grants permission for special solicitations of Federal employees in support of victims in cases of emergencies and disaster
 - Hurricane Sandy – Special Solicitation Authorized
 - Japan Earthquake & Tsunami
 - Special Solicitation Authorized
 - Haiti Earthquake
 - Special Solicitation Authorized
- Inapplicable to the collection of gifts-in-kind
- Inapplicable to fundraising outside the workplace



Official Support in the Workplace

- Military Relief Societies
 - Army Emergency Relief
 - Navy-Marine Corps Relief Society
 - Air Force Assistance Fund
- “By our own, For our own”
 - Family Readiness Groups



Caveat: Can support only when soliciting beneficiaries for its funds. If soliciting among the general public or if another non-Federal entity fundraises on its behalf, no official support or endorsement.

“By Our Own For Our Own”

JER 3-210.a(6)



- Recognized in Executive Orders 10728, 10927, & 12353
- “Organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members of their dependents when approved by the head of the DoD Component command or organization after consultation with the DAEO or designee.”

Navy Command Investigation of Golf Tournament Fundraiser

STARS  AND STRIPES®

*“Commander relieved after Sub Ball
fundraising includes adult businesses”*

CAPT Heatherington relieved and received non-judicial punishment because of command-sponsored, off duty event:

- Fundraising team included active-duty sailors, civilians and contractors
- Failed to prevent his command from wrongfully soliciting & accepting items of monetary value from company doing business with DoD
- Wrongfully affiliated the U.S. Navy with “businesses that are not representative” of the Navy and DoD high standards



Remember - Voluntary



- **Cannot** enter fact of participation or nonparticipation into an individual's performance appraisal or evaluation report.
- **No** lists of non-contributors.
- **No** granting of special favors, privileges, or entitlements, such as special passes or leave privileges which are an inducement to contribute.
- **Cannot** be an express or implied requirement to give as a condition to the granting of normal privileges and entitlements, violates both the letter and spirit of this regulation.

Official Support in the Workplace

- Military Balls
 - Subject to the same rules
 - Who is sponsoring the military ball?
 - Do not analogize with the Army Birthday Ball or the Commandant's Marine Corps Birthday Ball



Official Support Outside the Workplace

Attending A Fundraiser

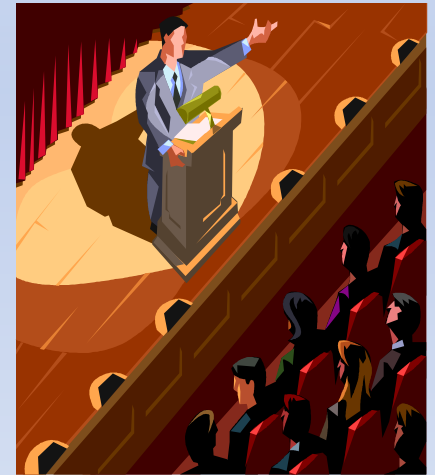
- Prohibition against “actively and visibly participating” in the promotion, production, or presentation of the event. **See 5 C.F.R. § 2635.808(a)(2)**. This includes:
 - Requesting or encouraging the giving of donations;
 - Serving as honorary chairperson;
 - Sitting at the head table;
 - Standing in a reception line; or
 - Serving as master of ceremonies



Official Support Outside the Workplace

Attending A Fundraiser

- “Active and visible participation” does NOT include mere attendance at an event.
- Wear of uniform determined by individual Service uniform regulations.
- Exception for Official Speeches.
See 5 C.F.R. § 2635.808(a)(3):
 - Official speech means a speech given by an employee in his official capacity on a subject matter that relates to this duties
 - Agency determination that the event is an appropriate forum



Requests for DoD Bands

Active & Visible Participation?

- A military band or choral group is NOT “logistical support” and is not generally available to support NFE events per DoD public affairs policy (DoDD 5410.18, para. 4.2.4.2)
- A military band in uniform conveys “strong visual appearance” of DoD endorsement of the NFE
- When in DoD interest, may be provided for ceremonial support of NFE events that are ***NOT FUNDRAISERS***



Requests for DoD Color Guards

Incidental Logistical Support?

- **IT DEPENDS!**
- See DoD PA guidance on if it's "incidental logistical support," i.e., adds minimal if any programmatic value or improvement to perceived quality, audience draw, or other aspect of the event
- Key example: providing a Joint-Service Color Guard as ceremonial opening to a conference or annual awards banquet
- **See DODI 5410.19, para. 4.2.5.1 and E2.1.59**



Personal Capacity



Personal Capacity

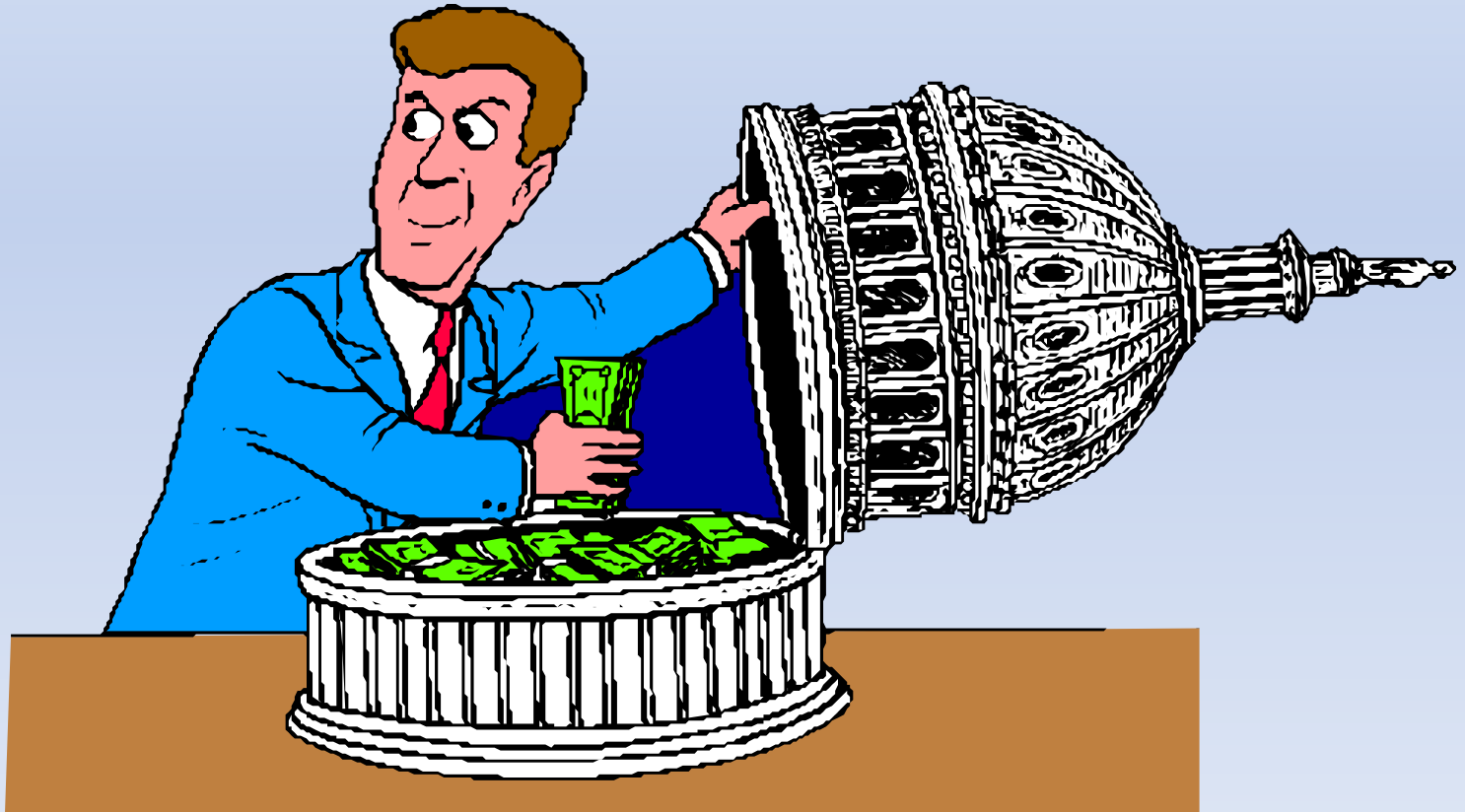
- **JER, § 3-300**
 - Purely personal, unofficial volunteer efforts to support fundraising outside the Federal Government workplace are not prohibited.
 - Efforts **cannot** imply DoD endorsement.
 - *Did you ever think of 18 U.S.C. § 205?*

But!

No Personal Fundraising in the Workplace



Misuse of Government Resources



Email



ALL,

My son's Boy Scout of America Troop is sponsoring a drive to raise funds to support the National Boy Scouts of America Organization.

If anybody is interested in ordering snacks to support Boy Scouts of America. I have placed a yellow folder with brochure/order form to place your orders in the SMA area. I will deliver any orders straight to this office when they come in.

Letter

Dear LTG Hardcharger:

We would like to extend to you an invitation to attend our Law Enforcement, US Armed Forces, Fire/Rescue 2nd Annual Basketball Tournament.

...

If you have questions please contact: Ms. Jane Doe, Jane.Doe@us.army.mil.

Sincerely,

Jane Doe



Misuse of Subordinate's Time

DOD IG Investigation of LTG Huntoon

RULE: An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation. - 5 C.F.R. 2635.705(b)

DOD IG concluded that LTG Huntoon

- Misused his position, government resources and personnel
- Repaid affected workers \$1,815 based upon prevailing labor rates



“Hiring Out” Marines to Work for Private Organization During Duty Hours

- USMC CO directed subordinates to use official time to perform manual labor and other activities in support of PO to fundraise for USMC Ball
- Marines worked in exchange for money and command endorsement earning > \$48,600 from outside organization
- **NOT PERMITTED**
 - Government employees must use official time in honest effort to perform official duties
 - Marines are already being paid for work; “hiring out” constitutes unauthorized double pay



See DoD SOCO Encyclopedia of Ethical Failure

No No's



- **Email** - No unofficial advertising, soliciting or selling (JER 2-301)
- **Subordinates** - No solicitation of personnel junior in rank or grade to purchase items (such as tickets) in connection with an unofficial fundraising event or effort (JER 2-205 & 5-409)
- **Contractors** – No solicitation of contractors

