OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF THE ARMY
Ethics & Fiscal
“Do you think now that we’re doing fewer illegal things we can scale back the legal department?”
"The established rule is that the expenditure of public funds is proper only when authorized by Congress, NOT that public funds may be expended unless prohibited by Congress."

Comptroller General (GAO)

- Advance decisions on propriety
- DoD policy: resolve internally with legal advice from GC
- DoD can go to GAO only with prior approval of Service GC and DoD OGC
- DoD FMR, Vol. 5, Ch. 1, ¶ 0108
Appropriations

- Legally distinct
- “Pots” or “Colors”
- MPA, RPA, NGPA; APA, PWTCVA, PAA, OPA; RDTE, A; MILCON, AFH . . . and OMA, OMAR, OMANG
PURPOSE

TIME

AMOUNT
PURPOSE

• 31 U.S.C. 1301(a)

• Three-part test
  – Statutory purpose
    OR necessary and incident
  – Not prohibited by law
  – Not otherwise provided for, not in scope of another appropriation
**Food**

- **Personal Expense**
- **Exceptions**
  - TDY
  - Non-separable facility rental
  - Awards ceremonies (limited!)
  - Training (if nonseverable, Gov’t can sever)

- **Routine agency meetings**
  - Conditions
  - Generally NO
Food at Conferences

• Sponsored by NFEs
  – Yes, if nonseverable
  – Maybe, if severable

• Sponsored by agency
  – Same standards above
  – Matter of topical interest

• Sponsored by DoD
  – Yes, if all conditions met
  – No otherwise
Bottled Water

- Personal Expense
- Generally no
- Maybe, if unpotable or unavailable and really necessary
Entertainment

- Personal Expense
- Generally no
- Statutory authority
- EEE
Gifts

- Personal Expense
- Statutory authority
- EEE
Awards

• To military – 10 U.S.C. 1125

• To Gov’t civilian employees – Incentive Awards Act

• To contractors & others – NO
Commander’s Coins

• Widespread
• Awards to military (unique or excellence)
• In practice: gifts, tokens of appreciation, calling cards
Commander’s Coins

- DA Memo 600-70 (HQDA & FOAs)
- GO or SES principals
- SA, CSA, SMA can personalize
- No coins for contractors!
Emergency and Extraordinary Expense (EEE) Funds

• Subset of O&M
• 10 U.S.C. 127
  – "any purpose"
  – Notice and wait if > $500K
  – No other funds legal
  – Not prohibited by law
Official Representation Funds (ORFs)

- A type of EEE
- "0012" funds
- Hosting, representation, and official courtesies
- Alcohol, gifts, entertainment
Official Representation Funds (ORFs)

- Strict regulatory controls
- "Authorized guests"
- Required ratios
- Prohibitions
- Accounting
Official Representation Funds (ORFs)

• Avoid misuse!
  – Favor DoD personnel
  – Personal expenses
  – Augmentation
• 31 U.S.C. 1502(a) – Bona Fide Need Rule
• Period of availability
• Only for expenses properly incurred or to complete contracts properly made
TIME

• Supplies
  – Buy during year of use
  – Exceptions: Stock Level, Lead Time

• Services
  – Year of performance
  – Severable 10 U.S.C. 2410a
  – Nonseverable
AMOUNT

• Amounts legally available
• Administrative subdivisions
• Control rates of obligation and expenditure
The Intersection Between Ethics & Fiscal

• Transportation
  • Use of Non Tactical Vehicles (NTVs) – Space A
  • MILAIR – No Space A
    • Accompanying Spouses

• Gifts to Army
  • 10 U.S.C. 2601
  • 10 U.S.C. 2608
  • Augmentation of Appropriations
    • 31 U.S.C. 3302 – Miscellaneous Receipts Statute

• Conferences
DoD Conference Authority

• 10 U.S.C. 2262 - DoD conferences: collection of fees to cover DoD costs
  • Fiscal Authority
  • Exception to Augmentation Rule
  • DoD FMR, Volume 12, Chapter 32
Fiscal Restraints of 10 U.S.C. 2262

- Registration fees to offset costs of conference may be collected
  - by Government in house
  - by support contractor – cost or no-cost contract

- Fees collected are deposited to account funding conference – reimbursement

- Fees merge with and become part of appropriation account to which deposited
  - Fiscal Law applies -- PTA
Fiscal Restraints of 10 U.S.C. 2262

- Fees excess to costs of this conference – Miscellaneous Receipts
  - No “Profits”
  - Cannot carry forward to future conferences

- Fees cannot be used for any purpose not otherwise authorized
  - JER
  - DoD Travel Regulations
  - FAR
FISCAL CONTROLS

• PURPOSE
• TIME
• AMOUNT
FISCAL CONTROLS

- P
- T
- A
FISCAL CONTROLS

- COLOR
- YEAR
- ACCOUNT
FISCAL CONTROLS

• C
• Y
• A
Antideficiency Act (ADA)

- **31 U.S.C. 1341**
  - Make or authorize ob or exp in excess of amount legally available
  - Ob or exp in advance of

- **31 U.S.C. 1342**
  - Voluntary services
  - Personal services

- **31 U.S.C. 1517**
  - In excess of formal subdivision
  - In excess of amounts permitted by regulation
Antideficiency Act (ADA)

- Purpose, Time, and Amount violations
- Duty to correct
- If cannot correct, legal deficiency
Antideficiency Act (ADA) Violations

- Knowing and willful = criminal
- $5,000 fine + two years in prison
Antideficiency Act (ADA) Violations

• Other violators
  – Oral admonition
  – Written reprimand
  – Suspension
  – Withdraw warrant
  – Terminate employment
Early Detection / Early Correction!
“I’d like your honest, unbiased and possibly career-ending opinion on something.”
“This is what happens when ethical standards are set artificially high.”