

# INTRODUCTION

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“To educate a person in the mind but not in morals  
is to educate a menace to society.”

—Theodore Roosevelt

The federal government’s ethics rules are promulgated through a variety of laws, criminal and civil; regulations, government-wide and agency-specific; executive orders; and interpretations from both the courts and the regulatory bodies. They are all enforced almost exclusively at the agency level.

This is significant because federal management at all levels bears the primary responsibility for learning, communicating, training, and enforcing these rules. In carrying out this responsibility, federal supervisors have two main concerns.

The first, and most important, is to protect yourself as a manager. The government has warehouses full of rules all of which the government considers sinful to violate, but these sins are in real life both venial and mortal. You violate some rules, and you’re a hero; violate ethics rules and you’re sleazy.

The second concern is to protect your employees. Far too many employees who get in trouble for ethics violations were not dishonorable people, but crossed lines that they did not know existed or were misled by their agency’s acquiescence.

My purpose in writing is not to make you an expert on ethics rules. Many of the rules on ethics, especially those dealing with money and gifts, present convoluted and dependent questions requiring an algorithmic structure to answer. What saves us is that the government already has an outstanding resource on ethics. The Office of Government Ethics (OGE) not only writes most of the government’s ethics regulations, but also gives us excellent advisory, interpretive, and training materials on its website ([www.oge.gov](http://www.oge.gov)). There, you can instantly find an answer to most issues covered by ethics regulations.

### ***Sample Scenario***

Imagine you are presented with the following scenario. You're going to a conference sponsored by a government contractor (generally legal in itself), and part of the conference is a golf tournament. Can you go? Can you go on government time? Do you have to reimburse the contractor? Do you have to bring your own clubs? Easy. Type the word "golf" into the website's search box, and you'll get a dispositive answer quoting chapter and verse, as well as likely guidance on what club to use on the par three fifteenth hole. So learn the basics I'll teach you, and research the rest.

I do not want you to try to make you an expert because I want to force you when confronted with an ethics issue, especially one that personally affects you, to ask for help. All agencies are required to have ethics officers and advisors tasked with handling and resolving ethics issues with employees and supervisors. To be sure, their quality varies dramatically. In some agencies, these advisors are attorneys with extensive knowledge of and experience on ethical issues. In others, they are often personnel specialists that the agency doesn't know what to do with so it assigns them the duty of giving supervisors bad advice.

Regardless of the quality of the advice, the simple significance of seeking guidance is that once you do, you are completely protected from any agency action. The ethics regulations state unequivocally:

Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances....

5 CFR 2635.107(b).

Technically, this protection only prohibits administrative disciplinary actions by the agency. If the ethical issue is covered by criminal statutes, like the laws against bribery or financial conflicts, there is no automatic "get out of jail free card." The authorities are only required to consider the advice given as a factor in deciding whether to prosecute. I cannot imagine, though, the Department of Justice ever pursuing a criminal case against an employee who disclosed

all the facts and then relied in good faith on agency ethics advice. I have never heard of such a case.

Since the Carter Administration, my publisher, a D.C. lawyer, has been representing federal supervisors and employees charged with ethical violations, among other misdeeds, and he calls this provision a “get out of jail free card.” If you come clean to your ethics advisor, you’re safe from unfavorable agency actions no matter how erroneous the advice. If, in the above case of the golf tournament sponsored by a government contractor, the first prize was not a tin trophy from Ed’s Trophy Shop but a solid gold putter worth \$10,000 and your ethics person told you “no problem,” you’re clear even though the advice is erroneous. This is true even though you’re only supposed to accept prizes of nominal value, like those at Ed’s Trophy Shop.

I want to give you enough of the basics about ethics rules so you can handle virtually all the straightforward ethical issues you’ll face. I also want you to know which issues are sufficiently complex to require expert help. When you finish this book, you should be able to handle almost any issue about the use of government property and equipment or gifts. When you get into financial conflicts, though, you should always get help.

I want to teach you how to best communicate ethical rules to your employees. Last, I’ll show you how to properly enforce the rules to protect both you and your employees. In the [first chapter](#), we’ll look at the sources of ethics rules. The [second chapter](#) covers the rules themselves. The [final chapter](#) looks at enforcement of the ethics rules.



# **PART ONE**

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## **SOURCES OF ETHICS RULES**



# CHAPTER 1

## SOURCES OF ETHICS RULES

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The basic ethics rules that bind federal employees come from four major sources: laws passed by Congress, government-wide regulations by several agencies, internal agency regulations, and executive orders from the President. Interpretation and guidance comes in the form of advisory opinions from the Office of Government Ethics and your own agency counselors, as well as precedential decisions from federal courts and appellate authorities.

### LAWS

Importantly, federal ethics laws are not found in one central location. “Ethics laws” are scattered throughout different laws contained in various titles of the United States Code (USC), both civil and criminal. The US Code is a compilation of federal laws passed by Congress and signed by the President.

Most of the civil ethics laws are contained in 78 sections of seven different titles of the USC. Most laws governing federal employment are contained in Title 5 (Government Organization and Employees), laws on EEO are in Title 29 (Labor), and the criminal laws are mostly in Title 18 (Crimes and Criminal Procedure). These laws are further broken down into parts, subparts, chapters, and sections unique to the legal system. These laws are typically cited by title then section. The part of Title 5 law governing suspensions is cited as 5 USC 7503, the part on gifts to supervisors is in 5 USC 7353. Most ethics rules are in Title 5 (Government Organization and Employees), but many others are contained in other Titles, some of which overlap. For example, the ethics provisions in Title 5 contain the prohibition on misuse of government property, but Title 31 contains the specific prohibition on wilful misuse of a government vehicle.

It’s also important to remember that many ethics requirements are also in Title 18, the federal criminal codes. For example, 18 USC 201 allows up to two years in federal prison for anybody who gives or accepts a bribe to a government official.

### GOVERNMENT-WIDE REGULATIONS

When Congress passes laws that require a federal agency to provide further guidance, it will give a specific federal agency the authority to write more detailed regulations. When promulgated, these regulations are contained in what is called the Code of Federal Regulations, which is broken into “Titles”

with numbers corresponding to those in the US Codes. Title 5 of the Code of Federal Regulations (Administrative Personnel) has the regulations authorized by Title 5 of the US Code.

Most of what we know as ethics regulations are issued by the Office of Government Ethics (OGE). For example, 5 CFR 2635 contains the basic ethics regulations for all government employees, but Title 5 also has ethics regulations specific to most federal agencies. Part 3501 contains ethics regulations specifically for employees of the Department of the Interior such as 5 CFR 3501.105(2), which prohibits employees of the Bureau of Land Management from holding an active real estate license. Part 3201 contains ethics regulations governing the FDIC, such as 5 CFR 3201.102(b) (1) (prohibiting employees from auditing, reviewing, or evaluating banks that have loaned them money).

## **INTERNAL AGENCY REGULATIONS**

Individual agencies write their own internal regulations about ethical issues. For example, I mentioned above that the government-wide code of regulations has ethical requirements unique to the Department of the Interior. The Department of the Interior also issues internal regulations that contain, for example, guidance on the use of government property, allowing *de minimis* use of the internet for personal use.

For our purposes, at the operating level of the federal supervisory/employee relationship, the difference between a government-wide ethics regulation and an agency-specific ethics regulation is meaningless. Whether an activity is prohibited government-wide or internally does not matter—the requirement, regardless of its source, is binding on employees and may be enforced through the disciplinary process. For example, the internal Department of the Interior ethics rules mentioned above allowing *de minimis* use of the internet specifically prohibits using the internet for stock trades.

If you were to discipline a Department of the Interior employee for making stock trades on a government computer, it does not matter to an appellate authority whether this was prohibited by law, government-wide regulation, or an agency regulation. In addition to proof of the offense and justification of the penalty, appeals authorities are concerned primarily with whether the act was prohibited, and in cases involving intent, as we shall discuss in detail later, that the employee knew it was prohibited.

## **LEGAL INTERPRETATIONS**

Laws and regulations are mostly empty words until somebody with authority interprets them and explains how that interpretation applies to specific situations and to the people who have to apply them. What, for example,