
ETHICS IN GOVERNMENT



OFFICE OF INSPECTOR GENERAL
OFFICE OF EVALUATION AND INSPECTIONS

APRIL 1990

OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG) is to promote the efficiency, effectiveness and integrity of programs in the United States Department of Health and Human Services (HHS). It does this by developing methods to detect and prevent fraud, waste and abuse. Created by statute in 1976, the Inspector General keeps both the Secretary and the Congress fully and currently informed about programs or management problems and recommends corrective action. The OIG performs its mission by conducting audits, investigations and inspections with approximately 1,400 staff strategically located around the country.

OFFICE OF EVALUATION AND INSPECTIONS

This report was produced by the Office of Evaluation and Inspections (OEI), one of the three major offices within OIG. The other two are the Office of Audit Services and the Office of Investigations. The OEI conducts inspections which are typically short-term studies designed to determine program effectiveness, efficiency and vulnerability to fraud or abuse.

The report is entitled, "Ethics in Government." This inspection sought to assess how well professional employees of the Department understand the ethical standards of conduct.

This study was conducted under the direction of Thomas F. Tully, Regional Inspector General of Region II, Office of Evaluation and Inspections. Participating in this project were the following people:

Region II

Jack Molnar
Tracey Rennie
Jodi Nudelman

Headquarters

Tom Noplock
Scott Paterson
Ta Zitans

Support Regions

Barry McCoy I
Bob Katz III
Ron Kalil IV
Barbara Butz V
Perry Seaton VII
Ralph Tunnel VI
Kaye Kidwell IX
Paul Gottlober IX

ETHICS IN GOVERNMENT

**Richard P. Kusserow
INSPECTOR GENERAL**

EXECUTIVE SUMMARY

PURPOSE

To assess how well professional employees of the Department of Health and Human Services (HHS) understand the ethical standards of conduct.

BACKGROUND

The Inspector General conducted this inspection while the Department is implementing President Bush's Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," which mandates annual training to Presidential appointees, employees who must file financial disclosure reports and procurement officials. Other departmental ethics training consists of the Assistant Secretary for Management and Budget's implementation of the procurement integrity act, the Office of General Counsel's (OGC) orientation for all political appointees and Assistant Secretary for Personnel Administration's (ASPER) issuance of the "Standards of Conduct" to new employees.

Despite the Department's efforts, the Office of Government Ethics (OGE) found some weaknesses in ethics programs and in employees' understanding of the standards of ethical conduct. Also, the Office of Inspector General (OIG) continues to see cases of employee misconduct.

METHODOLOGY

The OIG mailed a questionnaire to a stratified random sample of 600 professional employees to assess their understanding of the ethical standards of conduct. Face-to-face interviews were also conducted, at both headquarters and in the regions, with a representative group of 56 HHS managers. These interviews supplemented the survey findings by identifying employees' perceptions and attitudes regarding the ethical standards and the process by which they are made aware of the standards.

FINDINGS

Employees Score 73 Percent On Ethics Survey; Training Is Key To Higher Scores.

The average score on the true/false survey was 16.8 correct out of 23 questions (73 percent). Scores vary with training; trained employees scored 17.5 while employees who have not had training scored 16.3. Scores also vary by pay plan and length of service. Senior Executive

Service (SES) employees scored 17.5 correct, while General Schedule (GS) employees scored 16.2 correct. Those with less than 5 years scored 15.3, while those who have worked 21 years or more scored 17.3. However, upon analysis, the variance by training was found to be the only factor that was statistically significant.

Employees Score Low On Hatch Act, Gifts And The Use Of Government Resources.

Questions regarding the Hatch Act, gifts and the use of government resources received the lowest scores. Respondents tended to answer questions over conservatively on accepting monetary awards and wearing partisan election buttons, i.e., believing that they could not do things that are, in fact, permitted.

Managers Believe Understanding Of Ethical Standards Is Adequate, But Want The Department To Do More.

Ninety-five percent of the managers interviewed believe their understanding of the ethics standards is adequate; 76 percent believe their staff has an adequate understanding. Yet, over half believe the Department is not doing an adequate job of making employees aware of the ethical standards of conduct, and another half believe that the standards of conduct are not uniformly enforced. Further, 82 percent say they would attend a hypothetical four-hour course on ethics; 87 percent say they would direct their staff to attend such a course. Specific areas where more training is requested include procurement, post-employment restrictions, conflict of interest and the recent changes in ethics regulations.

CONCLUSIONS AND RECOMMENDATIONS

The OGC, in consultation with ASPER, should: (1) develop an ethics education program for all professional employees, not only for those covered by the Executive Order, geared to the specific characteristics of the components' staffs and missions; (2) establish a system of newsletters or bulletins to provide information on problems, weak areas and changes in the current standards of conduct; and (3) distribute, for guidance purposes, a standard table of penalties to deal with common cases of ethical misconduct.

AGENCY COMMENTS

We received comments on the report from most HHS operating divisions and staff offices. Respondents were generally in favor of stronger educational programs. The General Counsel, Assistant Secretary for Health, and Assistant Secretary for Personnel Administration objected to the standard table of penalties. We modified our recommendation on the latter to call for its distribution for guidance purposes rather than making it mandatory.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

BACKGROUND 1

METHODOLOGY 2

FINDINGS..... 3

 Employees Score 73 Percent On Ethics Survey; Training Is Key To
 Higher Scores..... 3

 Employees Score Low On Hatch Act, Gifts And The Use Of
 Government Resources..... 4

 Managers Believe That Their Understanding Of Ethics Standards
 Is Adequate, But Want The Department To Do More..... 5

CONCLUSIONS AND RECOMMENDATIONS..... 7

AGENCY COMMENTS 8

APPENDIX..... 9

ETHICS IN GOVERNMENT

PURPOSE

To assess how well professional employees of the Department of Health and Human Services (HHS) understand the ethical standards of conduct.

BACKGROUND

This inspection was conducted by the Inspector General while the Department has been implementing President Bush's Executive Order (E.O.) 12674, "Principles of Ethical Conduct for Government Officers and Employees." In addition to clarifying many of the specific ethical standards, this executive order mandates *annual* training for everyone in the following categories: Presidential appointees; employees in the Executive Office of the President; employees who must file financial disclosure reports; and procurement officials.

The standards of ethical conduct for Federal employees are based on Presidential directives and criminal statutes. Prior to E.O. 12674, Presidents Eisenhower, Kennedy and Johnson each issued executive orders establishing or modifying ethical standards for Federal employees. Section 401 of President Johnson's E.O. 11222 required the filing of financial disclosure statements. Title 18, sections 202 through 209 of the United States Code, sets forth those conflict of interest statutes having criminal penalties.

The process of establishing and monitoring standards of ethical conduct for Federal employees involves a number of agencies. The Office of Government Ethics (OGE), originally established within the Office of Personnel Management, is responsible for auditing Executive Branch agencies' ethics programs. It reviews agency-specific standards of conduct and audits the filing of financial disclosure statements. The OGE also provides training for Designated Agency Ethics Officials (DAEO) and renders opinions on specific cases. With E.O. 12674, OGE is now an independent agency and has increased staff for auditing and training.

Each Federal agency is required to implement the standards of conduct, assign DAEOs, and obtain periodic filings of public and confidential financial disclosure statements by employees. Within each agency the DAEOs train and render opinions, much the same as OGE does on a broader level.

At HHS, the Assistant Secretary for Personnel Administration (ASPER) issues the Standards of Conduct to all new employees upon entering on duty. The Department also has published "Standards of Conduct...in Brief," *DHHS Ethics Guide*, and *An Ethics Handbook for Employees of the Department of Health and Human Services*. Additionally, all incoming political appointees receive an ethics briefing from the Office of General Counsel (OGC).

Within the last year, there has been an ethics training initiative for Public Health Service and Social Security employees, and initial ethics training has been conducted for employees involved in procurement as part of the implementation of the "Office of Federal Procurement Policy Act Amendments of 1988" (P.L. 100-679). Ethics training, as mandated by E.O. 12674, is now being scheduled for all procurement officials and employees required to file financial disclosure statements.

Yet problems remain. Recent audits of HHS components by OGE found some weaknesses in ethics programs and also employee misunderstanding of the standards of ethical conduct. Also, the Office of Investigations continues to find cases of employee misconduct.

METHODOLOGY

The findings of this inspection are based on two distinct data collections. The first, a survey containing 24 true/false questions, developed with the assistance of OGC, was mailed to a stratified random sample of 600 professional employees. Two hundred employees were selected from each of three strata: Stratum 1 - Senior Executive Service (SES); Stratum 2 - General Management (GM) and General Schedule (GS) 13 to 16, Commissioned Officer (CO) 4 to 6; Stratum 3 - GS 10 to 12, CO 1 to 3. The total universe of professional employees was 44,500. An overall response rate of 77 percent was obtained, 2 percent of which was not useable for various reasons. Broken down by stratum, 1 had a 75 percent response rate, 2 was 79 percent, and 3 was 69 percent. Although the survey originally contained 24 questions, a question regarding the use of franked envelopes was dropped as the Department's policy was being reviewed at the time of the survey.

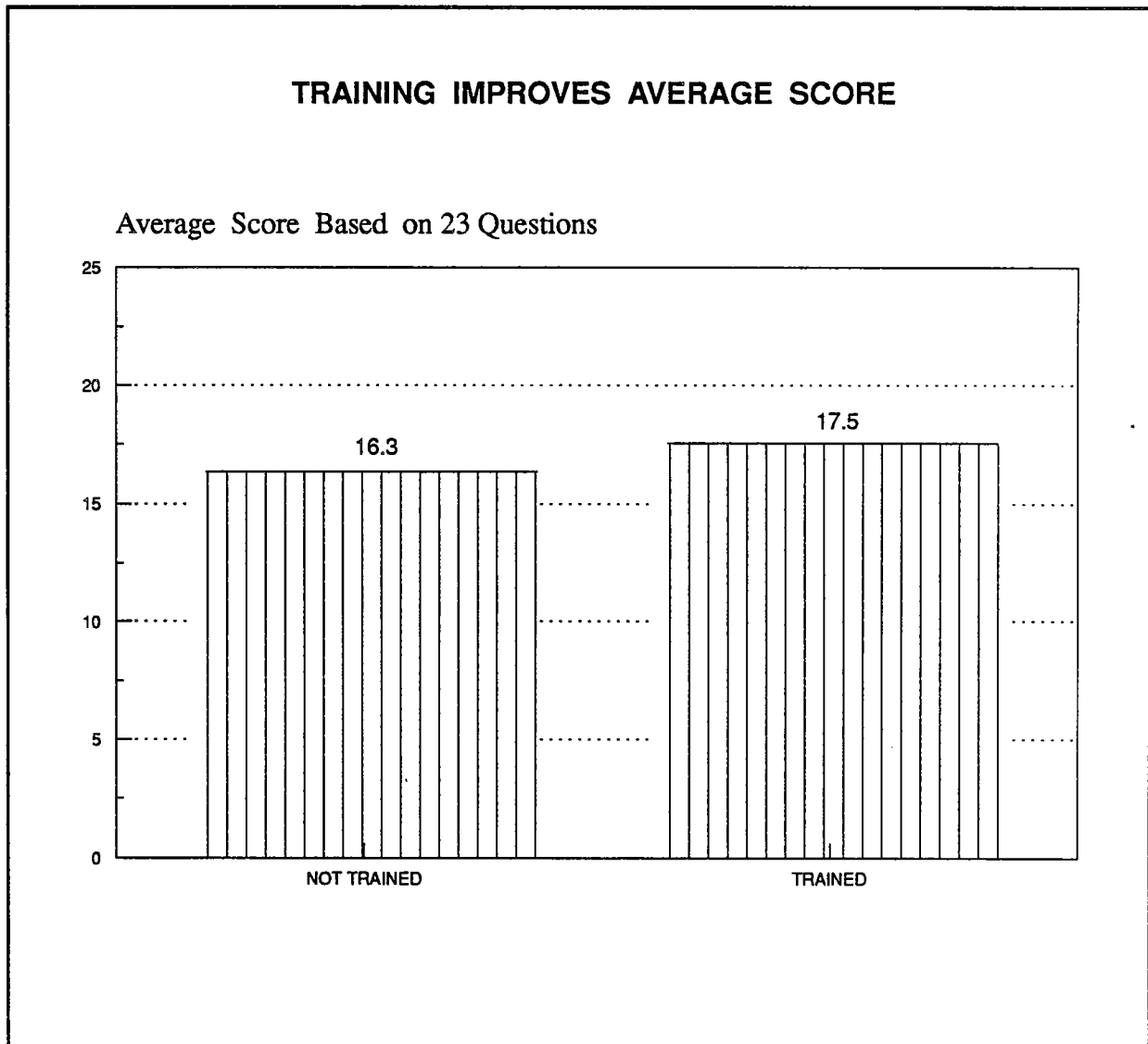
The second data collection consisted of 56 face-to-face interviews with a representative group of HHS managers required to complete financial disclosure statements. These interviews supplemented the survey findings by identifying employees' perceptions, attitudes and concerns regarding both the standards of ethical conduct and the process by which employees are made aware of them. These interviews took place both at headquarters and in the regions.

FINDINGS

Employees Score 73 Percent On Ethics Survey; Training Is Key To Higher Scores.

The average score for professional employees who took the true/false survey was 16.8 correct out of 23 questions (73 percent). Because of the characteristics of the sample, overall and pay plan findings can be generalized to the respective population.

Training was found to have a positive relationship with scores. Those employees who had training scored 17.5, while those who did not scored 16.3. The impact of training on scores was also found to be statistically significant, based on an analysis of variance and application of tests to various groupings of data.



Scores also increase with length of service and pay plan. Upon analysis, however, these relationships were not found to be statistically significant as was training. Those with less than 5 years had an average score of 15.3; the average score rose to 17.3 for those who have worked 21 years or more. SES employees scored the highest, averaging 17.5 correct, and GS employees scored the lowest with 16.2 correct.

Employees Score Low On Hatch Act, Gifts And Use Of Government Resources.

Problem areas were identified in the survey by low scores on certain questions. As shown in the chart below, employees scored lowest on questions regarding the Hatch Act, gifts and use of government resources.

SUBJECT AREA SUMMARY

SUBJECT AREA	(# of responses)	% CORRECT	% WRONG	% N/A
Reporting	(447)	99%	1%	0%
Post-employment	(1,341)	89	10	1
Gambling	(447)	87	12	1
Travel	(894)	84	14	2
Conflict of Interest	(1,788)	75	23	2
Outside Activity	(447)	69	30	1
Use of Gov't Resources	(1,788)	65	34	1
Gifts	(2,682)	64	35*	1
Hatch Act	(894)	57	42*	1

** 3/4 of the wrong answers on gifts, and 2/3 on Hatch Act reflect overly conservative interpretations.*

N/A = not answered

With regard to questions on Hatch Act and gifts, respondents tended to answer conservatively, believing that allowable activities are prohibited. For example, over half the respondents believe accepting monetary awards for a meritorious public contribution and wearing partisan election buttons are not allowed when, in fact, both are permitted. They also think that supervisors may not give nominal gifts to employees, although there are no such prohibitions. They believe, erroneously, that they cannot accept unsolicited material such as pens, cups and calendars. As one senior manager noted, "I never studied the standards. In general, I think I know them. I am conservative about the standards." (See Appendix 1 for scores and answers to each question)

With regard to use of government resources, half the respondents believe that they are allowed to use government time to prepare for such outside activities as writing for a professional journal or teaching a course if the subject matter relates to their official duties, although it is not allowed. Additionally, nearly half are unaware of the mandatory suspension for using a GSA vehicle for personal purposes. Employees also did not know that they are required to obtain prior approval for an outside activity even when they are not compensated for that activity. Interestingly, this area shows the greatest variance by pay plan, with managers answering correctly 72 percent of the time and GS employees only 53 percent of the time.

Managers Believe That Their Understanding Of Ethics Standards Is Adequate, But Want The Department To Do More.

The managers consider on-the-job ethical decisions a common event. Over half say that they are faced with making an ethical decision at least weekly, and are comfortable when faced with those decisions.

Ninety-five percent of the managers interviewed believe their understanding of the ethical standards of conduct for Federal employees is adequate. Further, 76 percent believe their staff also has an adequate understanding.

Managers report that their ethical decision-making process is based primarily on personal values and secondarily on government standards. When asked how they know an ethical decision they had made was correct, nearly two-thirds report they follow their instincts, relying heavily on years of service and their moral beliefs. Almost two-thirds also say they would call OGC with an ethics question since OGC is the designated ethics office and the experts in this area. This shows, as one respondent commented "...that people know where to go to for help and that's the important thing."

Managers face a wide variety of ethical decisions. One manager recalled when he had to refuse a contribution by a State agency for a meeting his office was holding because his office has oversight responsibility of the agency. Another manager attended a conference hosted by a State, but had to refuse the meals and lodging. Some smaller day-to-day ethics problems mentioned included: use of telephone for personal reasons; time and attendance disputes; and employees wanting to work outside the office on a part-time basis.

In general, senior managers do not have problems with the current ethical standards. Ninety-one percent consider the ethical standards of conduct realistic; 79 percent find them easy to understand. Most also think the standards are generally fair, equitable and self-evident. Further, over 60 percent would not make any specific changes to the ethical standards if given the opportunity. However, when asked which standards were unrealistic they mentioned: accepting lunches and travel reimbursement from non-Federal agencies; frequent flier regulations; post-employment restrictions; and FTS rules. When asked specifically about post employment, most managers say they understand the restrictions and find the restrictions both necessary and fair.

One respondent said, "*Understanding the standards is not the problem; rather, implementing them is the difficult part.*" Nearly half of those interviewed believe that the ethics standards of conduct are not enforced uniformly throughout the Department.

Over half the managers interviewed also believe the Department is not doing an adequate job of making employees aware of the ethical standards of conduct. Many believe efforts are improving, but feel more can be done. Several cite a general lack of emphasis and concern about ethics, and a need for the Department to set an appropriate tone.

Projecting from the survey, over half of the professional staff of the Department have not had any formal ethics training. Yet, most managers would like additional training for themselves and their staff. Eighty-two percent of the interviewed managers would attend a hypothetical four-hour course on ethics; 87 percent would direct their staff to attend such a course. One manager, however, stated that he would "...want to review the course beforehand to make sure it is worthwhile and effective." Additionally, another manager believed the training should be "geared toward our particular workload. Even then, I would only send those employees who had not recently been trained." Many managers also recommended that training should include workshops and case studies relevant to ethical problems in everyday situations.

When asked if there are specific standards they would like to know more about, senior managers mentioned procurement, post-employment restrictions, conflict of interest situations and recent changes in ethics regulations. When questioned about their awareness of the procurement integrity act and President Bush's E. O. 12674 on Ethical Conduct for Government Officers, the managers report a general lack of understanding of their potential effects.

CONCLUSION AND RECOMMENDATIONS

Our basic recommendations are to strengthen training and enforcement. As noted in the findings, half the professional staff have had no formal ethics training, training helps improve test scores, lower-graded employees get lower scores, and scores improve with length of service. Both the mail survey and interviews identify subject areas where training is needed or sought.

The Department's current ethics training agenda consists of the OGC orientation for political appointees, the ASPER issuance of the "Standards of Conduct" to new employees, and the training mandated by E.O. 12674 for procurement officials and employees who must file financial disclosure statements.

Specifically, it is recommended that OGC, in consultation with ASPER:

- develop an ethics education program for all professional employees, not only those covered by the executive order, and an ethics component for new employee orientation. They should be geared to the characteristics of each components' staff and mission;
- establish a system of newsletters or bulletins to provide employees with information on misunderstood areas (Hatch Act, gifts and use of government resources), as well as changes in the ethical standards of conduct; and
- distribute within the Department, for guidance purposes, the Federal Personnel Manual Letter 751-3, "Suggested Table of Actions for Correcting Employee Misconduct." This table, developed by the Presidents' Council on Integrity and Efficiency (PCIE) and adopted by the Office of Personnel Management, is being used by most other Federal agencies.

AGENCY COMMENTS

We received comments on the draft report from ASPER, OGC, the Assistant Secretary for Management and Budget (ASMB), the Assistant Secretary for Planning and Evaluation (ASPE), the Office for Civil Rights (OCR), the Public Health Service (PHS), the Health Care Financing Administration (HCFA), and the Office of Human Development Services (OHDS).

Almost all agreed with the recommendations for training and a system of newsletters. However, some believed that more study or evaluation should be done before ethics training is significantly expanded. Nevertheless, the OGC, which has the responsibility for monitoring and guiding departmental implementation of ethics policies, identified a number of Department-wide training initiatives it was leading and noted that it is developing an ethics newsletter.

With regard to the recommendation to adopt OPM's "Suggested Table of Actions for Correction Employee Misconduct," OHDS, ASMB, OCR, and HCFA concurred. The HCFA observed that Department-wide implementation might be difficult due to the number of bargaining units. The ASPE recommended that the recommendation be modified to say "consider" the Table. The OGC, ASPER, and PHS did not concur with this recommendation, feeling that the table would limit managerial discretion.

We believe that OPM and PCIE's intent in issuing the Table was to provide guidance to managers and not to limit their discretion. We have, therefore, modified this recommendation to call for its distribution within the Department. This distribution, for guidance purposes, would help address the finding that half of the managers contacted believed that the ethical standards of conduct were not being enforced uniformly.

APPENDIX

OIG GOVERNMENT ETHICS SURVEY

% CORRECT	QUESTION AND ANSWER
97%	<p>1. Failure to report instances of fraud, abuse, waste and corruption to appropriate authorities is a violation of the standards of conduct.</p> <p>TRUE - Executive Order 12674 (4/12/89), Section 101(k) states that employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.</p>
77%	<p>2. Even the appearance of a conflict of interest is a violation of ethics rules.</p> <p>TRUE - 45 CFR 73.735-802 and Section 101(n) of the Executive order cover appearance of a conflict of interest. Employees are encouraged to use the "Newspaper Rule." If the situation were reported on the front page of a newspaper would it <i>appear</i> to be a conflict of interest.</p>
82%	<p>3. If an organization you are monitoring asks whether you are interested in working for them, you can give them your resume without telling your supervisor.</p> <p>FALSE - You must inform your supervisor you may be seeking employment with an agency you are monitoring so that you may be taken off the assignment. Such a situation creates a financial conflict of interest in violation of 18 USC 208. Post employment rules should also be discussed.</p>

- 66% 4. You may represent a neighbor who is having a problem with SSA, if you do so on your own time.
- FALSE - 18 USC 203 & 205 prohibit a Federal employee from representing anyone except a parent, spouse, child or a person with whom there is a formal relationship, such as guardian, before any Federal agency.
- 60% 5. You may accept unsolicited promotional material, such as pens, cups and calendars.
- TRUE - You may accept such unsolicited promotional material. It has been deemed more costly to return than it is worth.
- 63% 6. You may accept food or refreshments of nominal value on an infrequent basis in the course of a working lunch.
- TRUE - You may accept food during a working lunch if there is no established way to pay and the event is infrequent. However, if the lunch is in a restaurant the Federal employee would be expected to pay his or her fair share.
- 56% 7. You may give your supervisor a birthday present of nominal value.
- FALSE - 18 USC 7351 & 45 CFR 73.735-504 prohibit giving gifts to supervisors, except on special non-recurring occasions.
- 67% 8. Your supervisor may give you a birthday present of nominal value.
- TRUE - There are no prohibitions on supervisors giving gifts to staff.

- 79% 9. You may participate in frequent flier clubs in the course of official travel but the benefits must be turned over to the Government.
- TRUE - Current policy, based upon guidance from the Comptroller General, is that Federal employees may collect frequent flyer miles as long as those benefits accrue to the Government.
- 89% 10. You are free to combine personal travel with official Government travel without making any special justification to your supervisor.
- FALSE - Extreme caution must be used when combining official and personal travel to avoid the appearance of misuse of funds. Such trips may not occur under a blanket travel order and as such require justification.
- N/A 11. You may use Government envelopes to reimburse Diners Club for travel charges.
- As interpreted under 18 USC 1719, you may not use Government envelopes for any personal matter such as mailing payroll checks to banks. It is unclear whether this applies to payments to Diners Club.
- 90% 12. You may not sell commercial products on Government property during your lunch period.
- TRUE - 45 CFR 73.735-305 prohibits the selling of commercial products on Government time or in a Government building.
- 87% 13. You may participate in a football pool or lottery being run in your office.
- FALSE - 5 CFR 735.305 prohibits Federal employees from participating in gambling, betting, or lottery activities while on Government time or property.

- 50% 14. You may use Government time to prepare for such activities as writing for a professional journal or teaching a course if the subject matter relates to your official duties.
- FALSE - 45 CFR 74.735-705 & 706 preclude the use of Government time, supplies, equipment or staff to prepare for such outside activities as teaching or writing.
- 92% 15. You may accept honoraria from private sources when you give speeches or perform other activities on behalf of the Government.
- FALSE - Federal employees are prohibited by 18 USC 209 from receiving any salary or compensation for Government services from any source other than the United States Government.
- 45% 16. You may accept monetary awards for meritorious public service from civic or professional groups.
- TRUE - Under 45 CFR 73.735-505 Federal employees may accept monetary awards for public contributions as long as there is no conflict of interest.
- 91% 17. For two years after you leave the government, you may not represent others to the Federal government on contractual matters your staff worked on during your last year of service.
- TRUE - 18 USC 207(b)(i) places a two-year ban on all former employees. You cannot represent anyone in any particular matter involving specific parties, such as a contract, that was pending under your official responsibility during your last year of service.
- 46% 18. You may wear or display partisan election buttons badges or stickers.
- TRUE - You may wear or display buttons, badges or stickers, but you may not distribute campaign material in partisan elections.

- 68% 19. You may circulate nominating petitions in a partisan political election if you do so outside the office.
- FALSE - You may sign a nominating petition, but you may not circulate one.
- 69% 20. You do not have to get prior approval for an outside activity if you are not compensated for that activity.
- FALSE - Under 45 CFR 73.735-708 you must obtain prior approval for some outside activities even if you are not compensated.
- 84% 21. As a designated "senior employee," you may not attempt for one year to influence your former agency on any matter, even if it arose after you left.
- TRUE - 18 USC 207(c) places a one year ban on representation on any matter for certain high level officials.
- 54% 22. If you are found to have used a GSA vehicle for personal purposes, you must be suspended or removed from service.
- TRUE - 31 USC 1349 establishes mandatory penalties of suspension for at least one month or removal for the personal use of a Government vehicle.
- 94% 23. You may not work on a contract on behalf of a private contractor if you participated on behalf of the Government in the procurement of that contract in the past two years.
- TRUE - Effective July 16,1989, under 41 USC 423 there is a two-year ban on "switching sides" on any contract. However, on 11/30/89 this provision was suspended for one year.
- 79% 24. You may own stock in a company that you regulate, as long as the value of that stock is less than \$500.
- FALSE - Under 18 USC 208 you may not hold any stock in any company you regulate.