

# OFFICE OF ETHICS NEWSLETTER



OCTOBER'S EDITION

## The DIRECTOR'S CORNER



Here's a Blinding Flash of the Obvious (BFO): Not everyone who works in ethics enjoys it. As "Click & Clack: The Tappett Brothers" on NPR's "Car Talk" would say in unison, "Duh!" Here, however, is a non-BFO: A fairly high percentage of those of us who work in this program find that we enjoy it - even love it. Why do we love this program?

It can't be due to the glitz and glamour. Ethics is never used in the same sentence as "glory work." Yet, this, I think, is what it is: It is an area of Federal practice where, on a day-to-day basis, you can truly serve the public at-large, and, perhaps more importantly, serve real-live, honest-to-goodness, human beings, individually.

Surely, on the lofty side, ethics deals with how we, the Federal government, do the public's business. In everything we do, we deal in "good government." The trust of the American public in the integrity (fairness and objectivity) of American governmental processes is our business.

Yet, at the same time, we deal with real people who need real answers in order to help them do their jobs, live their lives amidst their Federal jobs, or move on from the Federal government. Now think of the fact that we deal with some of the most arcane and counter-intuitive laws and rules conceived by mankind (or at least by Congress).<sup>\*</sup> As you start to understand the rules, you can easily find yourself becoming a virtual Oracle of Delphi to your agency - the reader of the ethical "tea leaves." In that context, even your best guess often is appreciated and can evoke many a sincere "thank you." I've been a Federal employee for

26 years, most of it as an attorney. Of all the duties that I've performed and of all of the types of issues that I've been assigned, none has ever rivaled this silly, often-unintelligible area, for providing me with a reason to walk home at night saying tangibly that I made a difference.

You make a difference.

<sup>\*</sup>Remember that, while torturously confusing at times, government ethics is not "rocket science." "Rocket science" may be a whole lot easier.

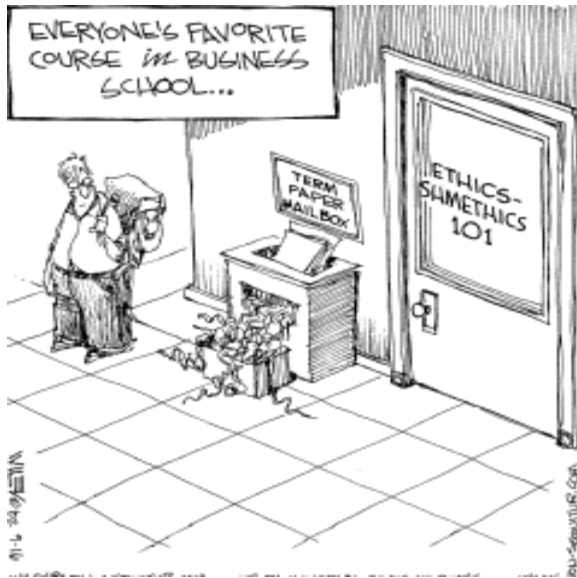


## 2002 Annual Ethics Retreat

Ethics Advisors at USDA held their 2002 retreat September 17-18 at the Beltsville Area Research Center of the Agricultural Research Service (ARS). Cheryl Kane-Piasecki, Office of Government Ethics, keynoted the retreat and urged Ethics Advisors to take the "high road." According to Kane-Piasecki, Ethics Advisors should move beyond mere compliance with statutes and regulations to encourage a broader attention to values in ethics.

In the spirit of broadening the efficacy of the ethics program, Pat Tippet, Office of Ethics (OE), led an open forum dialogue for sharing information, best practices, and innovative solutions to improve, and market the program. The discussion among Ethics Advisors highlighted:

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## N.Y. Times Reports Mayor Bloomberg to Divest

In an August 30, 2002, New York Times copyrighted story, "Panel Advises Bloomberg to Sell Stock," writer Michael Cooper reports that New York City Mayor Michael R. Bloomberg would sell all his stocks within 90 days. The article illustrates not only the importance of financial disclosure by an employee in a most sensitive position, but also the most appropriate response of the employee to the recommendations of the ethics officials. We heartily recommend the article. We were unable to obtain permission to reprint the article, but you may access it on-line at:

<http://www.nytimes.com/2002/08/30/nyregion/30CONF.html?ex=1031705701&ei=1&en=258e1032f9236c26>

## Officials Meet to Discuss "Adjunct Professors"

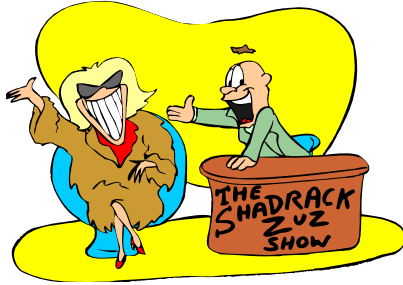
Scientists and ethics personnel met October 8-9, 2002, at the Carver Center in Beltsville, MD, to discuss university designations of Agricultural Research Service (ARS) scientists as "adjunct professors."

In an audit of the ethics program concluded in 2002, the Office of Government Ethics (OGE) raised questions about what functions "adjunct professors" perform for the universities. The meeting in Beltsville served primarily as a fact finding event.

A wide variety of practices exist among universities. Discussions addressed:

1. Memorandums of Understanding that determine the relationship of ARS to individual universities;
2. How universities "rank" (for assistant professor and associate professor) and designate ARS scientists for adjunct designations;
3. How adjunct designations might be made to either the university or to the graduate faculty of the university;
4. The effect of the physical location of a laboratory on the adjunct designation;
5. Privileges that do and do not come with the designation (i.e., adjuncts pay faculty rates for parking, but do not get free parking);
6. Service by adjuncts on various university committees (i.e., the "space committee" that allocates who may use laboratory space);
7. Service by adjuncts on university committees for master's degree and Ph.D. candidates;
8. Problems with determining ownership of intellectual property rights between the university and the agency stemming from the adjunct designation;
9. Statutory and regulatory limitations on activities of agency scientists; and
10. Closely related problems with agency scientists wanting to serve as principal investigators on research projects funded by Federal government grants.

Meeting participants agreed that the next step would be to develop, for review and discussion, internal ARS guidance on what an agency scientist may do as "adjunct professor" while remaining in his or her official capacity as an agency scientist.



## Meet a Mission Area Ethics Advisor

As you probably guessed from this edition's "Director's Corner," I'm on a soapbox waving the flag for USDA Ethics Advisors. And, we have a pretty terrific group of professional, dedicated, and hardworking souls in the trenches. To blow our USDA horn, so to speak, we've decided to interview the members of our merry band. Sooo, in this and in future editions, we'd like you to...*Meet a Mission Area Ethics Advisor*. Our first interviewee is:

Name: Anita M. Cunningham  
Agency: Food and Nutrition Service (FNS)  
Address: 3101 Park Center Drive,  
Room 428  
Alexandria, VA 22302  
Tele. No.: (703) 305-0986  
Email: [anita.cunningham@fns.usda.gov](mailto:anita.cunningham@fns.usda.gov)

### \*\*GENERAL INFORMATION\*\*

- Q. Anita, how long have you been working in ethics, and where were you working prior to accepting your current position?**
- A. Ray, I've been in the ethics program with FNS for 8 months. Prior to working in ethics, I worked for about twenty-three years with the Colorado Department of Social Services managing public assistance and underserved populations programs. I began this portion of my career as an entry-level eligibility worker and worked my way up to District Food Stamp Officer dealing with ethics, hearings, appeals and community outreach food stamp activities. I was later recruited to the Federal government as a Program Analyst with FNS in positions as Quality Control Reviewer, Compliance Reviewer and Regional Arbitrator. I subsequently relocated to the Virginia area to accept a position at FNS HQ to work with food-stamp waivers and to develop policy*

*addressing the work requirement for able-bodied adults without dependent children. I was assigned to a Special Project Manager position for an initiative instituted by former Undersecretary Shirley Watkins to establish a partnership with the American School Food Service Association and D.C. Central Kitchens. Here I created a program to recruit, train and place food stamp applicants, recipients and adults from low-income families into school food service positions.*

- Q. What ultimately brought you to the Federal Ethics Program?**
- A. Management asked me to take over the Ethics Program and develop new initiatives that would improve overall program effectiveness and communications between, FNS HQ, Regional Office staff and other Federal agencies. And, as I'm interesting in maintaining the integrity of Federal employees, I decided to accept the offer.*
- Q. After moving into the position, did you find any surprises?**
- A. Yes, I did. We have some outstanding issues resulting from an OGE review that need to be cleaned up.*
- Q. Are you assigned work outside the Ethics Program?**
- A. As with the greater majority of my colleagues, Ray, I am. I spend a good deal of my time handling Employee Relations matters.*

### \*\*PROGRAM OVERVIEW\*\*

- Q. What is the total population of FNS and of that number, how many file confidential disclosure reports?**
- A. FNS consists of approximately 1700 employees, of which, 358 disclose.*
- Q. Anita, are you the sole Ethics Advisor in FNS, or do others assist with the program?**

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- A. *FNS has (7) "field advisors" devoting approximately 20 % of their time to ethics. These advisors are located (7) regional offices and they're responsible for: distributing confidential disclosure reports to filers and, ultimately, forwarding completed reports to me for review and certification; conducting annual ethics training; and completing the orientation process with new employees.*
- Q. **If you could make one suggestion for overall program improvement, what would it be?**
- A. *Oh Ray, that's easy. This position is currently assigned to Human Resources. I'd like to see the Mission Area Ethics Advisor position reassigned to the Office of the Administrator at FNS. I feel that this move would provide heightened visibility, promote the importance of ethics in FNS, establish higher grades for this position (due to its level of training and expertise required), and increase promotional opportunities.*

**\*\*OF MERIT\*\***

As a result of her accomplishments towards the development of a partnership with the American School Food Service Association and D.C. Central Kitchens, Anita received a Secretary Honor Award in 2000.

**\*\*INVITATION TO NETWORK\*\***

Anita welcomes partnering and collaboration. She's currently involved in the following projects:

1. developing a "Frequently Asked Questions" ethics web site to assist others in finding answers to ethics questions;
2. developing an annual training plan unique to political appointees concerning the Hatch Act to include a Q & A worksheet;
3. developing ethics training videos to assist Regional Personnel liaisons in conducting annual ethics training;
4. and as many of you will recall from our Ethics Retreat (see article on

page 1), Anita is also in the process of establishing a USDA Intra-Agency Partnering Workgroup to improve communication, provide networking opportunities, and promote consistency and collaboration between Mission Areas.

If you're interested in working with Anita or joining the Workgroup (see dates and times below), don't hesitate to give her a call.

Finally, for being a guest interviewee, Anita, we at the Office of Ethics would like to give you a gift certificate from the famous [name of company deleted] Catalogue; however, since nothing in the Catalogue is worth \$10 or less, please accept our thanks.

**Intra-Agency Partnering Workgroup Meeting**

The Office of Ethics and Mission Area Ethics Advisors' Intra-Agency Partnering Workgroup meeting will be held on Wednesday, November 20, 2002, from 1p.m. to 2:30 p.m., in room 4916 South Building. All Ethics Advisors and their Assistants are encouraged to attend.



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billing ethics as a separate program, rather than a collateral duty; maximizing the utilization of on-line training modules by specializing them according to needs and organizing them by complexity; sharing information on standard operating procedures through AESOP; and, finally, forming an Intra-Agency Partnering workgroup designed to network Ethics Advisors, facilitated by Anita Cunningham, Food and Nutrition Service (FNS).

Sue Mutchler, ARS, and Dave Spradlin, OE, addressed Scientific Ethics, bringing together historical and current issues. The overriding issue was the designation of scientists as adjunct professors at the universities where they are assigned. Pat closed the first day with an in-depth presentation of the complex and confounding issue of representation, 18 U.S.C. § 203 and § 205.

On the second day, Ed Peterman, Rural Development, led a discussion on "Surviving an OGE Audit." Ed, who once served as an OGE Program Reviewer (read "auditor"), provided substantial information, not only on how to survive an audit, but also on how to run an effective financial disclosure program. Dave took the floor again on Political Activity, a standard presentation during election years. Guest speaker Art Gary, Department of Interior, lectured on the complexities in dealing with ethics issues involving Native American Federal employees and Native American tribes.

As the retreat came to a close, OE Director Ray Sheehan, who should resist doing his Bogart impression, led discussions on procedures for accepting reimbursement for travel from non-Federal sources, and the troubling question of the relationship of the conflict of interest statute [18 U.S.C. § 208(a)] with service in an official government capacity as officer or as member of a board of a non-Federal entity.

## USDA Ethics Officials Attend 2002 COGEL Conference in Ottawa

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USDA's Ethics Program was well-represented at the 2002 Annual Conference of the Council on Governmental Ethics Laws (COGEL) in Ottawa, Ontario. Showing USDA's colors at the conference were USDA Designated Agency Ethics Official John Surina, Office of Ethics (OE) Director Ray Sheehan, OE Senior Ethics Specialist Pat Tippett, and FFAS Ethics Specialist Tonya Willis. The COGEL Conference brought together over 420 ethics, lobby registration, and campaign finance officials from the U.S. (representing Federal, state, county & municipal jurisdictions), Canada, the United Kingdom, Mexico, South Africa, Germany and Australia.

Mr. Surina served as a panelist at two sessions - one dealing with electronic filing of financial disclosure reports and a second demonstrating USDA's online training system. Copies of the source code for the training modules were given out to state and local ethics officials so that they could adapt our programs to their unique circumstances. Reflecting the new area in which we all must operate, separate presentations were also conducted on continuity of operations (COOP) plans during which the latest USDA developments were also explained. The information exchange was two ways - considerable material generated by other jurisdictions was collected from which we at USDA may borrow particular techniques for replication here.

Other conference highlights included:

The keynote speech by Canadian broadcaster, commentator, and columnist Rex Murphy, Mr. Murphy's most-civil engagement in the fine art of barbed political humor thoroughly captured the audience. His speech, however, was dedicated to the higher themes of savoring our imperfect democracies. Related to this point, Mr. Murphy stressed the need for those of us fortunate enough to live in free societies to appreciate the level of government ethic that we have rather than falling prey to the easy spiral of cynicism that can come about when faced with discoveries of the ethics shortcomings our public officials.

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**(USDA Ethics Officials Attend 2002 COGEL Conference in Ottawa - Continued from page 5)**

A Campaign Finance Debate centered on the constitutionality of the Bipartisan Campaign Reform Act of 2002 featuring Larry Noble, Executive Director and General Counsel of the Center for Responsive Ethics (pro) against Clela Mitchell, counsel for the National Rifle Association.

During a Plenary Session, Jeri Thompson, Secretary of the U.S. Senate, recalled events following the discovery of anthrax-contaminated mail in Senate offices. Ms. Thompson stressed the criticality of establishing thorough operational procedures to address various disasters, including terrorist attacks. Interestingly, up-to-date schematics of air-handling systems were not available and this caused significant delays in containing the virus. Offices must also be prepared to address the evacuation of employees and visitors, and to identify alternative duty locations for displaced employees.

An international panel discussion on focused on efforts to level the campaign playing field involving David Mason, Federal Elections Commission, Sam Younger, Chairman, UK Electoral Commission, and Andy Becker, Australian Electoral Commission.

The Awards Banquet at the Canadian Museum of Civilization in Hull, Quebec. Among the awardees were Senators John McCain & Russ Feingold, authors of the Bipartisan Campaign Finance Act of 2002. The Senators were present via pre-recorded video-tape.

A strong closing speech by Amy Comstock, Director, U.S. Office of Government Ethics entitled "Ethics Leadership: Building an Ethical Culture in the New Ethics Environment." Director Comstock, with reference to the ethical pitfalls that have hit corporate America, made a strong case for rethinking traditional approaches to government and corporate ethics: turning away from a strict focus on the rules (the minimum standards below which we tread at our legal and professional peril) to a greater emphasis on achieving a higher standard of behavior based upon agreed values (in the Federal sense, these are set forth at 5 CFR 2635.101).

Breakout sessions of note included:  
Achieving Public Integrity Through Whistleblower Laws.  
Impact of 9/11 on Access to Public Buildings, Records & Information  
Stonewalling vs. Transparency: Executive Privilege vs. Accountability  
Revolving Door/Conflict of Interest: Where Do Loyalties Lie?  
Effective Enforcement of Financial Disclosure Requirements

**Ethics Practitioners' Association of Canada**

Immediately following the COGEL Conference, a luncheon/seminar was provided by the Ethics Practitioners' Association of Canada (EPAC), a professional organization composed of Canadian ethics practitioners consulting in the field of organizational ethics. The seminar "Core Values, Principles and Codes - The Heart of Your Organization" consisted of presentations made by Dr. Ted Keyserlingk, Canadian Public Service Integrity Officer, Ms. Amy Comstock, Director, U. S. Office of Government Ethics; Mr. Robert M. Stern, President, U.S. Center for Governmental Studies, Mr. Gerry Barr, President, Canadian Council for International Co-operation and Mr. Howie Wilson, Ethics Counselor to the Canadian federal government.

**Facts on Financial Disclosure**

**Total # of OGE-450 filers required to file in 2001  
(broken down by mission area)**

<b>MISSION AREA</b>	<b>REQUIRED TO FILE</b>
Departmental Administration	424
Farm & Foreign Agricultural Services	2406
Food & Nutrition Service	353
Food Safety	556
Marketing & Regulatory Programs	2932
Milk Marketing Administration	214
National Finance Center	155
Natural Resources & Environment :	
<b>Forest Service</b>	2645
<b>Natl. Resources Conservation Service</b>	79
Office of Inspector General	523
Research, Education & Economics	2378
Rural Development	2886

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(Facts on Financial Disclosure - Continued from page 6)

### Total # of SF-278 filers required to file in 2001

FILER	REQUIRED TO FILE
New Entrant	201
Annual	354
Termination	25
Combined	301

### DID YOU KNOW?

◆ The Office of Government Ethics has issued a final rule to amend the regulations describing procedures for granting filing extensions and late filing fee waivers under the public financial disclosure system. Effective as of September 3, 2002, agencies have the authority to grant public filers the additional extensions of time, which shall not exceed 45 days, to file their public financial disclosure reports, and waive the late filing fee. The late filing fee waiver revision also expands the definition of extraordinary circumstances to include administrative oversight culminating in the failure to notify a new entrant, first-time annual, or termination public filer of the requirement.

◆ The thresholds for reporting of gifts, reimbursements and travel expenses for public and confidential financial disclosure reports have been increased, retroactive to January 1, 2002. The new thresholds are "more than \$285" for the aggregation level for reporting, and "\$114 or less" for the de minimis aggregation exception threshold, for gifts and travel reimbursements received from any one source during the reporting period.



### Announcements

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#### • NEW ETHICS PERSONNEL

##### MRP

Julie Dunn, Ethics Assistant  
Mary Royster, Ethics Advisor

##### NRE

Barbara Jacob, Ethics Advisor  
Jeanne Simmons, Ethics Advisor

##### OE

Dwaine Grove, Intern  
Lolita Roberson, Ethics Advisor

##### OIG

Marion Wright, Ethics Advisor

#### •DEPARTING PERSONNEL

##### FS

Mark Reed, Ethics Advisor

## Awards

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### COMMENDATIONS:

REE, NFC, and RD: Agencies that have submitted timely OGE 450 Progress Reports

### APPRECIATION:

REE Ethics Staff: Sue Mutchler, Clarice Fleming, and Sue Prada: Hosting the 2002 Ethics Retreat

### DISTINGUISHED EFFORT AWARDS:

Sue Mutchler & Vicki Hanbury, ARS: Issue Management: Scientists & Ethics

Ed Peterman, RD: Program Improvement

Lolita Roberson, OE: Developing an On-line Ethics Newsletter and Coordinating the 2002 Ethics Retreat

**It's the Combined Federal Campaign (CFC) Season, again.** That means more of those nagging questions that pit doing good things to benefit CFC against those perplexing ethics rules. To make matters easier, we've looked at some of the key issues and put together the following to, perhaps, reduce the number of calls you face.

## **I. VOLUNTARY PARTICIPATION:**

You may participate in and inform others of the opportunity to participate in special CFC non-solicitation events such as "kick-off" events, victory celebrations, and award activities. This includes allowing special CFC events permitted by CFC regulations, where approved by an agency head or other appropriate agency official, consistent with agency ethics requirements.

However, take no action that removes, or could appear to remove, an employee's free choice to participate or not participate as he or she chooses. This includes whether or not to give through the CFC, whether to make gifts confidential, or how much to give.

The following are specifically prohibited:

Solicitation of subordinates by supervisors Note: This does not prohibit agency officials from allowing "kick-off" activities or demonstrating support for CFC, and it does not prohibit individual supervisors from encouraging participation, such as through a broadly-distributed memorandum;

Supervisory inquiries of employee personal participation in CFC Note: This does not preclude a supervisor from knowing summary information about their organization's participation;

Publicizing an employee's particular donation election, or choice not to participate in CFC, if the employee seeks confidentiality;

Developing and using lists of non-contributors;

Providing and using contributor lists for purposes other than routine collection and forwarding of contributions;

Use of the incentive awards program to reward donations or participation; or

Establishment of 100% goals or personal dollar goals or quotas;

## **II. USE OF APPROPRIATED FUNDS:**

Since CFC is an official program, limited use of resources is appropriate. This normally is related to "kick-offs," victory celebrations, awards, official time for campaign activities, and other events to build support for CFC.

However, the use of appropriated funds to pay for refreshments, personal gifts, or other items not essential to support CFC is prohibited. Also, the Department of Justice discourages the use of appropriated funds to buy incentives for CFC key workers and coordinators. However, other incentives, such as privileges (e.g., a reserved parking space for a limited period of time) are fine.

## **III. CONFLICTS OF INTEREST, IMPARTIALITY, AND FAVORITISM:**

### **Conflict of Interest. 18 U.S.C. 208.**

If you serve on the Local Federal Coordinating Committee (LFCC), the eligibility committee, or as an agency fundraising program coordinator, you may not serve on the board of directors of any organization that serves the LFCC as its Principal Combined Fund Organization (PCFO) -- the local non-Federal organization that runs the CFC on behalf of designated charities.



Also, if you serve on the board of any other charitable organization, or have an affiliation with such an organization, you may not participate in any official decisions that may appear to have a direct and predictable interest on that organization. Accordingly, you should avoid applying for inclusion on the local list on behalf of the organization, or participating in the eligibility determinations. This is a violation of 18 U.S.C. 208.

**Loss of Impartiality and Favoritism. 5 CFR Part 2635, subparts E and G.**

You may not endorse or encourage employees to donate to a specific charity or federation of charities, whether privately or as part of a CFC “kick-off” event;

You may not solicit donations on behalf of a charity or federation of charities with which you have an affiliation; and

You may not permit a participant charity or federation of charities with which you are affiliated to make use of your official title, position, or authority, or using such yourself for the benefit of the charity.

**IV. SPECIAL EVENTS, GAMES OF CHANCE & GAMBLING:**

**Permissible CFC Fundraising Events.** The following activities generally are permitted during the 6-week CFC campaign period: Bake sales, silent auctions, raffles, lotteries, carnivals, athletic events, and other similar events. However, such events must be consistent with ethics regulations. Accordingly:

- Bake sale or silent auction items must be voluntarily donated by the employee(s); and
- Games of chance must be conducted so as not to constitute gambling

Gambling in Support of CFC is Prohibited. **In planning opportunities of chance (raffles, lotteries, door-prizes, etc.), you must avoid gambling. Avoid planning events that involve the following three elements:**

- The donor (employee) wagering something of value (consideration);
- In order to participate in an event involving chance; and
- Which offers a reward or prize.

The first element is usually the one on which problems hinge. If entry is based simply on attendance at a CFC event, or by merely drawing a CFC pledge card, then the game is permitted. There is nothing of value paid by the participant. For example, door-decorating competitions, quizzes, guessing games with no requirement of donation as a condition of entry are fine. If there is any requirement for a contribution, an entry fee, or expectation of a contribution, it is not permitted.

*Note: A container for donations may be prominently displayed in proximity to the location of the event as long as it is clearly communicated that donations are voluntary.*

**V. IMPROPER SOLICITATIONS :**

**Soliciting Non-Federal Personnel.** Contractor personnel, Credit Union employees, other non-Federal personnel employed on Federal premises, and Federal retirees may be offered the opportunity to make single contributions to the CFC if they so choose. However, under 5 CFR 950.103(g), they may not be solicited. This applies to contributions of cash, in-kind, directly or indirectly.

**Soliciting Outside Sources for Contributions.** The CFC regulation simply permits solicitation of charitable donations from Federal employees in the Federal workplace. It does not authorize Federal agencies participating in CFC to solicit gifts to the agency from outside parties. Moreover, agency gift acceptance authorities should not be used to accomplish for CFC what cannot be accomplished under the CFC rules.

*Note 1: To the extent that such solicitation may be done, it is done on behalf of the CFC by the PCFOs.*



