

Government Ethics and the Use of Social Media*
2014 Office of Government Ethics Conference
Washington DC

SESSION DESCRIPTION: This presentation will (1) introduce attendees to the terminology and background of social media, (2) discuss how Government ethics principles are implicated in official and personal use of social media tools, (3) provide insight into best practices, recommendations, and lessons learned from other ethics officials; and (4) provide resources for practitioner's reference.

I. OVERVIEW- ETHICS CONSIDERATIONS WHEN IMPLEMENTING SOCIAL MEDIA: (Social Media 101—The Basics)

- A. **What** is “Social Media” is an umbrella term referring to internet-based services that permit users to create, share, re-purpose and publish informational content. Social media websites require users to affirmatively join, and typically require users to create a uniquely identifiable profile. Examples include, but are not limited to, Facebook, Twitter, LinkedIn, Wikis, and Google+.
- B. **Why** is the Government interested in the use of Social Media?
1. Can serve the Government's mission for outreach and public affairs (educational tool).
 2. Public can participate in a conversation about relevant issues (interactive).
 3. Government efficiency – cost effective means of communication.
 4. Great way for Government to be collaborative, transparent, and participatory.
 5. Government can control its message.
 6. It's how people communicate and get information.
- C. **Examples** of Social Media Tools/Services (See *Appendix A* for more detailed examples & definitions)
- **Blogs** – Short for “web log” is a type of website, usually maintained by a single individual/entity with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order, and usually with a particular topic or area of concentration.
 - **Wikis** - is a website that allows the easy creation and editing of any number of interlinked web pages via a web browser. Wikis are typically powered by wiki software and are often used to create collaborative websites, to power community websites, for personal note taking, in corporate intranets, and in knowledge management systems. E.g., Wikipedia.

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D. **Ethics Considerations** in Implementation of Social Media

1. Selecting a tool. **Impartiality**. How do you select an effective social media tool? 5 CFR 2635.502. And ensure a fair competition—where acquisition rules are not triggered? 5 C.F.R. § 2635.702 and 48 C.F.R. § 3.101-1.
2. Terms of Service. **Misuse of government resources**. Beware of terms that mandate license to use Government seals/logos or otherwise imply endorsement.
3. Setting up a site. Avoid even the appearance of **preferential treatment** or government **sanction**. Use a disclaimer.
4. Publicizing Implementation. **Endorsement** issues.

E. **Other Legal Considerations** when implementing Social Media

1. Authority. What is the agency mission requirement to employ social media? What are the stated parameters of such an engagement—who is the champion, what is the purpose and intent? Should efforts be measurable to determine effectiveness?
2. Terms of Service Agreement
 - a. GSA or independently negotiated
 - b. Indemnification issue
 - c. Choice of law – sovereignty
3. Considerations for inclusion on .gov or .mil websites:
 - a. Consider Agency Branding to assist in the identification of official and unofficial efforts.
 - b. Include a goodbye page when linking to a non-Federal website. Such as a page with a disclaimer and notice that the user is leaving the Federal Site and how to return to Federal content.
 - c. Create a dedicated agency social media page. Where the agency notifies users of the policies and practices, as well as lists all the Agency’s social media presences with a disclaimer statement and a perhaps also a statement indicating the agency willingness to consider use of other social media (to avoid concerns of preferential treatment).
 - d. Provide as many share tools as possible. If you are going to provide options for users to share the information from your websites, include a full list of sharing options to avoid any implied endorsement and show impartiality, e.g., RSS, email, Facebook, Twitter.
 - e. Only include links that are determined as necessary to accomplish the agency social media mission, and avoid items that are commercial in nature.

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ETHICS IMPLICATIONS FOR USE OF SOCIAL MEDIA

A. **GENERAL PRINCIPLE:** The Standards of Ethical Conduct impact on use of social media, in official or personal capacities, does not have special treatment.

B. **OFFICIAL USE:**

1. **Conflicting financial interests** – employees are prohibited by criminal statute from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. (18 U.S.C. § 208; 5 C.F.R. §2635.401-403)
2. **Impartiality in performing official duties** - Employees must avoid the appearance of loss of impartiality in the performance of their official duties. (5 C.F.R. §§ 2635.501-502)
3. **Misuse of Government property & time** – Employees have a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Likewise, employees shall use official time in an honest effort to perform official duties. (5 C.F.R. §§ 2635.704–705)

TIP: Does your agency have other policy restrictions (e.g., limited use, operational security)?

4. **Misuse of position** (5 C.F.R. § 2635.702)
 - a. Inducement or coercion of benefits (5 C.F.R. § 2635.702(a)).
 - b. Appearance of a governmental sanction (5 C.F.R. § 2635.702(b))
 - c. Endorsements (5 C.F.R. § 2635.702(c)) (see discussion under pitfalls)
 - d. Performance of official duties affecting a private interest (5 C.F.R. §2635.702(d))
5. **Use of nonpublic information** – employees shall not allow the improper use of nonpublic information to further their own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure. (5 C.F.R. §2635.703)
 - a. Prohibition (5 C.F.R. §2635.703(a))
 - b. Definition of nonpublic information (5 C.F.R. §2635.703(b))
6. **Fundraising in an official capacity** – An employee may participate in fundraising in an official capacity if, in accordance with statute, Executive Order, regulation or

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otherwise as determined by the agency, he is authorized to engage in fundraising activity as part of his official duties. (5 C.F.R. §§2635. 808(b))

7. **Gifts to Agency** - Check whether your Agency has Gift Acceptance Authority for unsolicited offers of products, services, the product if the “gift” was unsolicited.

C. PERSONAL USE: Outside Activities (5 C.F.R. §§ 2635.801-809)

1. **Prohibition against assisting in the prosecution of claims against the Government or acting as an agent or attorney before the Government** (18 U.S.C. §§ 203 and 205)
2. **Outside employment or activity cannot conflict with employee’s official duties** (5 C.F.R. §2635.802)
 - Employees are permitted to writing a private blog or engage in other personal social media activity (First Amendment), but they should be careful that the activities do not create a conflict with their duties.¹
 - Consider availability of remedial action. Generally, there are few employment law avenues to reach beyond official action, and discipline an employee for activities in their personal capacity.
3. **Prior approval to engage in outside employment or activities** (5 C.F.R. § 2635.803) Check for any supplemental regulations requiring prior approval. E.g., EPA 5 C.F.R. § 6401.103; DoD 5 C.F.R. § 3601.107.
4. **Compensation for teaching, speaking, or writing** – With certain exceptions, employees generally shall not receive compensation from any source other than Government for teaching, speaking, or writing that relates to the employees’ official duties. (5 C.F.R. §§2635.807(a))
5. **Reference to official position** – Employees may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking, or writing, provided that his title or position is given no more prominence than other significant biographical details. (5 C.F.R. §§2635.807(b)(1)) Applies to outside employment and outside activities (5 C.F.R. §§2635.807(b)) *See also OGE Advisory Opinion 10 x 1 at http://www.usoge.gov/ethics_guidance/opinons/advop_files/2010/10x1.pdf*
6. **Fundraising in a personal capacity** – Employees may engage in fundraising in their personal capacities provided that they do not personally solicit funds or other support

¹ See Pickering v. Board of Education of Township High School District 205, Will County, 391 U.S. 563, 571-73 (1968).

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from a subordinate or from any person known to be a prohibited source. (5 C.F.R. §§2635.808(c))

III. OTHER PITFALLS/LESSONS LEARNED:

A. Tips for Using Web 2.0/Social Media Tools

1. **PURPOSE:** Ask yourself, why use social media? How does it relate to the agency's mission? There must be an identified mission need to expend appropriations towards this effort.
2. **SELECTION:** How do you select a tool? Must be impartial when selecting a social media tool – Approach all equivalent, similar parties.
 - Where appropriated funds are not expended there are no Federal Acquisition Regulation requirements.

E.g., If you want to post photographs, you should approach all available providers, not just Flickr or Picasa.

Best Practice(BP): Consider including on your website a comment area to allow responders to identify other third party sites or new forms of communications tools.

B. Practical Tips

1. Terms of Service Agreements

a. GSA has negotiated Government-wide terms of service with several social media providers and is making those services/products available for agency use at <http://www.digitalgov.gov/resources/negotiated-terms-of-service-agreements/>

b. Alternatively, agencies must negotiate the terms of service in accordance with government-wide rules and agency-specific restrictions.

c. Lessons Learned:

- i. Most social media agreements are product licenses to permit public use free of charge, where income is derived from selling advertising space/resources.
- ii. Negotiations for terms which change the product could result in a Contract or a Gift.

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- iii. A Contract would implicate the Federal Acquisition Regulation (FAR 48 C.F.R) and would require competition or sole source authority as per the FAR.
 - iv. Agencies with gift acceptance authority may be permitted to accept unsolicited gifts from terms of service agreements/negotiations.
- d. Use of Agency Name/Seal – Terms of service agreements usually include a clause which permits use of the agency’s name/seal for commercial purposes, which may raise improper endorsement issues.
- i. Factual statements are permissible. Limit agency use of the agency’s name/seal to factual statement—that it is a service user
 - ii. Lessons Learned: Preferably, include an express provision stating that the company may not represent or imply that the Government endorses the product.

2. Setting Up a Site

- a. Include link to official government site. Might be preferable to re-direct users to your official government site for dissemination of official information to clearly delineate where official/authorized information can be received as opposed to social media interaction.
- b. Include a disclaimer or explanation on the social media site, like:

We are providing the following links to FEMA’s presence on other third party sites for your reference. FEMA does not endorse any non-government websites, companies or applications.

- c. Implement a comprehensive Comment Policy -
 - i. Moderate/monitor comments
 - ii. Include a clear statement of policy regarding what comments will be removed.
- d. Branding – Consider implementing agency branding to assist with validation of information, and protect the agency seal. This is the best way to create uniformity/recognition for the agency.
- e. Avoid Links to Third Party Site, Graphics or Trademarks – it raises concerns of improper endorsements. If they must be included, consider adding a bumper or similar style disclaimer, like:

“You are now exiting the Federal Emergency Management Agency (FEMA) web site...and entering the site: www.youtube.com/fema. We

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have provided a link to this site because it has information that may be of interest to our viewers. FEMA does not necessarily endorse the views expressed or the facts presented on this site. FEMA does not endorse **any commercial products** that may be advertised or on this site. The FEMA **Privacy Policy** does not apply on this site. Please check the site for its Privacy Notice. To easily return, make sure you have added www.fema.gov as a Bookmark or Favorite.”

- f. On official website, beware of raising concerns about impartiality in listing of social media tools/share software. Consider listing alphabetically.

C. Other Legal Considerations:

1. First Amendment

Personal Capacity

- Public employees do not forfeit constitutional rights by virtue of employment. *See Pickering v. Board of Education*, 391 U.S. 563, 568 (1968).
- Right to comment as a citizen about matters of public concern.

Official Capacity

- Government branded, external social media sites may be limited public forums or designated public forums.
- Limited public forums – May allow interaction but restricts access to certain groups, topics, or individuals. Restrictions must be reasonable and viewpoint-neutral.
- Designated public forums – Allows interaction. Restrictions based on viewpoint prohibited.

2. The Hatch Act (5 USC §§ 7321-7326)

Official Restrictions

- Regulates the political activities of all federal employees in the Executive Branch of the Federal Government
- Political Activity is activity directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.

Personal Restrictions

- May not solicit, accept or receive political contributions in general.
- May not permit the use of one’s name or title as a sponsor or host of a political party or partisan candidate.

See Frequently Asked Questions Regarding Social Media and the Hatch Act, U.S. Office of Special Counsel (Apr. 4, 2012),

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3. **The Anti-Lobbying Act** (18 U.S.C. 1913)
 - Prohibits the use of appropriated funds for indirect lobbying when federal employees are on duty.
 - Cannot make explicit statements asking the public to contact members of Congress in support of or in opposition to a legislative proposal.
4. Whistleblower/Retaliation – Agencies should be careful to discern between a protected disclosure and the release of non-public information.
5. Records Management – Whether something is a record that must be managed and preserved depends not on the form of the record, but on the content. If the social media content is a record, then the record must be maintained in accordance with records management disposition schedules. See [NARA guidance](#) and agency specific disposition schedules.
6. Privacy Act and Freedom of Information Act
7. Contractual Issues
8. Federal Advisory Committee Act (FACA) may be inadvertently triggered if an agency seeks a consensus via social media .
9. Compliance with Section 508 of the Rehabilitation Act
10. Compliance with EO 13166 on Limited English Proficiency

F. Other Tips & Issues To Consider

1. Consider whether you have the resources to maintain, monitor, and administer the social media tools under consideration.
2. Identify the areas where you need a point of contact.
3. Establish a working group to develop Web 2.0 Strategy/Policy Creation/Interagency cooperation includes all relevant agency POCs, such as:

▪ Ethics	▪ IT Security
▪ Legal	▪ Records Management
▪ Public Affairs	▪ Management
▪ Information Technology	▪ Program Offices
▪ Privacy	▪ Human Resources
4. Make sure the POCs use the technology before signing off on any web 2.0 technology.
5. Set up a personal account and play with the applications.
6. Identify the issues and develop solutions.
7. Be creative in your solutions – think outside of the box.
8. Develop employee training for official and non-official use.

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G. Best Practices & Final Lessons Learned:

1. **Learn more** because it's happening, whether you "link in" or not.
2. Avoid blurring distinctions between official and personal use.
3. Treat it the same as all other government equipment and communications – the Federal rules apply!
4. The law does not address this type of technology; agencies should act in the "spirit" of the law.

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APPENDIX A

DEFINITIONS/EXAMPLES OF SOCIAL MEDIA

1. Cloud Computing - Use and access of multiple server-based computational resources via a digital network (e.g., internet). Cloud users access the server resources using a computer, netbook, pad computer, smart phone, or other device. In cloud computing, applications are provided and managed by the cloud server and data is stored remotely. Users do not download and install applications on their own device or computer; all processing and storage is maintained by the cloud server. The data on the Cloud can move between servers based on the amount of data traffic. The user never really knows where the data is hosted; it could be in California one day and India the next.
2. Crowd Sourcing – Where data is mashed together on a map to allow users to visually see the location of different sources of information.
3. Blogs – Short for “web log” is a type of website, usually maintained by a single individual/entity with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order, and usually with a particular topic or area of concentration.
4. Mashups - is a web page or application that combines data or functionality from two or more external sources to create a new service. The term mashup is primarily used to describe a *remix* of digital data.
5. Mobile Applications or Apps - Mobile Apps are small applications on your mobile device that either connect to specific content or run an application such as a game, video player, or word processing software. E.g. <http://apps.usa.gov/>.
6. Mobile Friendly Websites - Web sites that provide content and functionality without clutter, and should be easily viewable in a mobile device (i.e. wireless PDA, smartphone, cell phone, etc.), as long as the mobile device is capable of viewing Web sites. E.g., m.fema.gov.
7. Podcasting - is a series of digital media files (either audio or video) that are released episodically and downloaded through web syndication. The mode of delivery differentiates podcasting from other means of accessing media files over the internet, such as direct download, or streaming webcasting (webinars). A list of all the audio or video files currently associated with a given series is maintained centrally on the distributor's server as a web feed, and the listener or viewer employs special client application software that can access this web feed, check it for updates, and download any new files in the series. This process can be automated so that new files are downloaded automatically. Files are stored locally on the user's computer or other device ready for offline use, giving simple and convenient access to episodic content.
8. RSS – (short for "Really Simple Syndication") is a web feed format, which proactively pushes out updated to such social media sites—such as blog entries, news headlines, audio,

and video—in a standardized format. An RSS document includes full or summarized text. Web feeds benefit the public as a form of automatic syndication. They benefit readers who want to subscribe to timely updates from favored websites or to aggregate feeds from many sites into one place.

9. Social Networking – Is the act of building social networks or relations among people, e.g., who share interests and/or activities. A social network service essentially consists of a representation of each user (often a profile), his/her social links, and a variety of additional services. Most social network services are web based and provide means for users to interact over the internet, such as e-mail and instant messaging. Although online communities (LinkedIn, Facebook, MySpace etc) services are sometimes considered as a social network service in a broader sense, social network usually means an individual-centered service whereas online community services are group-centered.
10. Video/Photo Sharing – These online “social media” avenues permit users to keep videos/photos safe, organized and sharable in a web setting. E.g., Flickr, Shutterfly
11. Webinars – An interactive seminar conducted via the world-wide web. Usually a live presentation, it happens in real time as users participate through chats rooms, sharing audio and visual media file.
12. Widgets - A widget is a stand-alone application that can be embedded into third party sites by any user on a page where they have rights of authorship (e.g., a webpage, blog, or profile on a social media site). Widgets are fun, engaging, and useful applications that allow users to turn personal content into dynamic web apps that can be shared on just about any website. E.g., a "Weather Report Widget" could report today's weather by accessing data from the Weather Channel, it could even be sponsored by the Weather Channel. Should you want to put that widget on your own Facebook profile, you could do this by copying and pasting the embed code into your profile on Facebook.
13. Wikis - is a website that allows the easy creation and editing of any number of interlinked web pages via a web browser. Wikis are typically powered by wiki software and are often used to create collaborative websites, to power community websites, for personal note taking, in corporate intranets, and in knowledge management systems. E.g., Wikipedia.

APPENDIX B

OTHER GOVERNMENT REFERENCE MATERIAL

(non-exhaustive list)

WEBCONTENT.GOV

Social Media and Web 2.0 in Government site:

http://www.usa.gov/webcontent/technology/other_tech.shtml

SOCIAL MEDIA TOOLS

GSA Negotiated Terms of Service Agreements:

<http://www.digitalgov.gov/resources/negotiated-terms-of-service-agreements/>

GSA Tool to Shorten the Length of URLs:

<https://go.usa.gov/>

OMB

OMB Memo 10-22, Guidance for Online Use of Web Measurement and Customization Technologies

http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf

OMB Memo 10-23, Guidance for Agency Use of Third-Party Websites and Applications

http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-23.pdf

OMB Memorandum, Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act

http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf

DEPARTMENT OF DEFENSE

DoD Social Media Hub, <http://www.defense.gov/socialmedia/>

Policies: <http://www.defense.gov/webmasters/>

Journal of Public Inquiry (DoD/Council of the Inspectors General on Integrity and Efficiency), Fall 2012/13, pp. 19-28, *What Social Media Has to Offer Offices of Inspectors General*, <http://www.ignet.gov/randp/jpi-fall-winter-2012-2013.pdf>

AIR FORCE

Social Media site: <http://www.af.mil/AFSites/SocialMediaSites.aspx>

Publication, New Media and the Air Force,

<http://www.af.mil/Portals/1/documents/socialmedia/social-media-and-the-air-force.pdf>

AF Social Media Guide,
<http://www.af.mil/Portals/1/documents/SocialMediaGuide2013.pdf>

ARMY

Social Media site <http://www.army.mil/media/socialmedia/>

NAVY

Social Media site: <http://www.navy.mil/CommandDirectory.asp>

Journal of Public Inquiry (DoD/Council of the Inspectors General on Integrity and Efficiency), Fall 2012/13, pp. 19-28, *What Social Media Has to Offer Offices of Inspectors General*, <http://www.ignet.gov/randp/jpi-fall-winter-2012-2013.pdf>

DEPARTMENT OF ENERGY

Social Media site: <http://energy.gov/about-us/web-policies/social-media>

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Media, <http://www.hhs.gov/web/socialmedia/>

Center for Disease Control, Social Media at CDC, <http://www.cdc.gov/socialmedia/>

OFFICE OF INSPECTOR GENERAL, <https://oig.hhs.gov/newsroom/new-media/>

DEPARTMENT OF HOMELAND SECURITY

Social Media site: http://www.dhs.gov/xabout/gc_1238684422624.shtm

FEMA

Social Media site: <https://www.fema.gov/social-media> and <http://www.ready.gov/social-media>

OFFICE OF INSPECTOR GENERAL/COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY, *New Media for Offices of Inspectors General: A Discussion of Legal, Privacy and Information Security Issues* (September 2013), <http://www.ignet.gov/randp/New%20Media%20Report%20-%20Sept%202013.pdf>.

DEPARTMENT OF JUSTICE

<http://www.justice.gov/oip/blog/expanding-departments-social-media-presence>

FEDERAL BUREAU OF INVESTIGATION

Social media site: <http://www.fbi.gov/news/fbi-social-media-sites>

Social Media: Establishing Criteria for Law Enforcement Use, <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2013/february/social-media-establishing-criteria-for-law-enforcement-use>

Justice Guide to Developing a Policy on the Use of Social Media,
https://it.ojp.gov/gist/files/developing%20a%20policy%20on%20the%20use%20of%20social%20media%20in%20intelligence%20and%20investigative%20activities_compliant.pdf

ENVIRONMENTAL PROTECTION AGENCY

Social Media site: <http://www.epa.gov/epahome/socialmedia.html>

GENERAL SERVICES ADMINISTRATION

GSA Order - GSA Social Media Policy

<http://www.gsa.gov/graphics/staffoffices/socialmediapolicy.pdf>

GSA Social Media Registry

<http://www.usa.gov/About/developer-resources/social-media-registry.shtml>

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Social Media and Digital Engagement, <http://www.archives.gov/social-media/>

NARA Bulletin 2014-02, Guidance on managing social media records

<http://www.archives.gov/records-mgmt/bulletins/2014/2014-02.html>

OFFICE OF PERSONNEL MANAGEMENT

Social Media Policy, version 5.0, December 2012, <http://www.opm.gov/news/social-media-presence/social-media-policy.pdf>



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ROADMAP

- ❖ **Part I: Introduction to Social Media**
- ❖ **Part II: Ethics Considerations for Social Media Users: Personal vs. Official**
- ❖ **Part III: Other Legal Issues**
- ❖ **Part IV: Other Implementation Tips/Pitfalls**

INTRODUCTION TO SOCIAL MEDIA

PART I

WHAT IS SOCIAL MEDIA?

- ❖ **Social Media is an umbrella term referring to internet-based services that permit users to create, share, re-purpose and publish informational content. Social media websites require users to affirmatively join, and typically require users to create a uniquely identifiable profile. Examples include, but are not limited to, Facebook, Twitter, LinkedIn, Wikis, and Google+.**
- ❖ **Reference to specific social media platforms is not an endorsement of any the products or services of these third-**

WHY?

- ❖ **Mission, mission, mission**

- ❖ Another tool for communication, education, and information sharing

- ❖ *You* control your message

- ❖ **People expect the news to come to them**

- ❖ **It's where the people are**

- ❖ 500M daily Tweets, 271M active users

- ❖ 1.23B active Facebook users; 757M

WHAT (TOOLS)?

Examples of Social Media

- ❖ Mobile web/Mobile Apps
- ❖ Blogs
- ❖ Social networking
- ❖ Widgets
- ❖ Wikis
- ❖ Video/photo sharing
- ❖ Podcasting
- ❖ RSS
- ❖ Mashups
- ❖ Webinars

EXAMPLES OF SOCIAL MEDIA

Every Airman Counts
Air Force Sexual Assault Prevention and Response Program Blog

COMMENT POLICY

Categories: Blog

Behavioral Issues

The SAPRP Team is traveling around to collect getting input on Sexual Assault Prevention and Response program. One of the issues brought up during the focus groups is social interaction. In other words "What is proper social behavior?" I find it interesting that we have people that think this is one way of strengthening the SAPRP program. I couldn't agree more that many people in today's digital age seemed to have lost or never developed many social skills needed for one on one or even group interaction. But do you think it's an issue that affects sexual assault?

Posted in Blog

Tagged with air force, Airman, Ammon, Dining at the Bar, military, Military Justice, SAPRP, sexual assault, Sexual Assault Prevention, Sexual Assault Prevention and Response, UCMJ.

By jllwee - July 22, 2014

Restricted Report Option: Did you know?

If you weren't paying attention to the news in May you probably didn't know that the DoD released its annual report on sexual assault in the military. In the Air Force, 1,047 sexual assault reports were documented in FY13. Of the 1,047 reports, 436 were restricted reports however, 79 of those converted from restricted to unrestricted in FY13.

Categories: Blog

Search

Subscribe with RSS Feed

About Every Airman Counts

SEARCH FOR:

Comment policy

Comments on this blog are moderated, meaning all comments will be reviewed before we post them. We reserve the right to determine which comments meet our criteria for inclusion in this page. Click here for more of our moderation policy.

Recent Posts

- Behavioral Issues
- Restricted Report Option: Did you know?

facebook

Department of Defense (DoD) is on Facebook

Sign up for Facebook to connect with Department of Defense (DoD).

Department of Defense (DoD)

Wall Info Live RSS/Blog Discussions Notes

RECENT ACTIVITY

- Department of Defense (DoD) discussed WHAT ABOUT on the Department of Defense (DoD) Discussion board.
- Department of Defense (DoD) discussed ROMANIAN LANGUAGE AGAIN on the Department of Defense (DoD) Discussion board.
- 4 more similar stories.

Department of Defense (DoD) <http://www.defense.gov/releases/release.aspx?releaseid=13354>

Defense.gov News Release: Pentagon Statement on Helix Entrance Shooting

A shooting incident has occurred at the Pentagon Helix Entrance this evening at approximately 6:40 p.m. EDT. Two Pentagon Force Protection Agency (PFPA) officers were injured when an assailant...

March 5 at 5:55am Comment Like

Gorgio, Sahin, Ivan and 19 others like this.

View all 40 comments

Department of Defense (DoD) <http://socialmedia.defense.gov/index.php>

LinkedIn

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Discussions Members Search More

Post your own discussions with one click. Browse your archived discussions.

What a discussion or group is similar with the group.

Member high a 200 discussions

By a day

What's Happening

President Obama to Travel to the Midwest on a Three Day Economic Bus

What are Your Questions for the President's Council on Jobs and Competitiveness?

Most Popular Discussions

Economy Grows at Sluggish 1.3%; Consumers Pull Back

David Blawie comments on: What are Your Questions for the President's Council on Jobs and Competitiveness?

David Blawie comments on: Economy Grows at Sluggish 1.3%; Consumers Pull Back

8 people have joined the group including David Blawie, Paul Lathrop and John Stappes

What are Your Questions for the President's Council on Jobs and Competitiveness?

On Tuesday, August 2nd, the President's Council is holding the next in a series of Listening and Action Sessions about the public.

Homeland Security

DHSOIG @DHSOIG

1,066 TWEETS 90 FOLLOWING 958 FOLLOWERS

Don't miss any updates from DHSOIG

Full name

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Tweets Tweets and replies

DHSOIG @DHSOIG Aug 1

#OIGBIT you can access an #audited/ #inspected #DHS Agency's/Program comments in the #DHSOIGReport appendix go.usa.gov/wL6

DHSOIG @DHSOIG Aug 1

Latest #DHSOIGReport #CBP's Workload #Model go.usa.gov/NjWY #OIGSpotlight go.usa.gov/NjXG

FEMA

Prepared. Responsive. Committed.

The Federal Emergency Management Agency

FEMA

Joined March 04, 2006

Last login 1 day ago

Subscribers 28

Channel Views 3,658

DISASTER: It comes anytime, anywhere. It takes many forms -- a hurricane, an earthquake, a tornado, a flood, a fire or a hazardous spill, an act of sabotage or an act of terrorism. It builds over days or weeks, or hits suddenly, without warning. Every year, millions of Americans face disaster, and its terrifying consequences.

On March 1, 2003, the Federal Emergency Management Agency (FEMA) became part of the U.S. Department of Homeland Security (DHS). The

Robertson Stadium Houston, TX

ETHICS CONSIDERATIONS FOR SOCIAL MEDIA USERS:

Personal vs. Official

PART II

ETHICS

- ❖ **Impartiality and endorsements – unofficial & official social media use**
- ❖ **Employee use of government resources**
- ❖ **Restrictions on outside activities**
- ❖ **Nondisclosure of nonpublic information**
- ❖ **Prohibition on lobbying, partisan activities, fundraising, solicitation of gifts, and “self-aggrandizement”**

ETHICS ISSUES – OFFICIAL USE

- ❖ **Must be Acting in an Official Capacity:**
 - ❖ Authorized to speak for the Agency
 - ❖ Identified as an Agency Official & Representative
 - ❖ Releasing only Authorized Information
 - ❖ Using an official Agency Account

ETHICS ISSUES – OFFICIAL USE ISSUES

- × Endorsement (5 CFR 2635.702)**
- × Impartiality (5 CFR 2635.502)**
- × Conflict of Interest (18 USC 208)**
- × No fundraising (5 CFR 2635.808)**
- × No solicitation of gifts (5 CFR 2635.202)**
 - × Acceptance of gifts only with Agency specific authority

ETHICS ISSUES - ENDORSEMENT

- ❖ **Ethics regs prohibit using public office to endorse any product, service or enterprise (unless exception applies)**
- ❖ **What are endorsements? May include:**
 - ❖ Retweets
 - ❖ “Likes”
 - ❖ Recommendations (LinkedIn)
 - ❖ Subscribing to or following may appear to be endorsement, too

ETHICS ISSUES – IMPARTIALITY

- ❖ **Use a disclaimer on all official sites**
- ❖ **Banner when leaving official site to third party**
- ❖ **Don't let third-party providers use Government logos or seals**
- ❖ **Don't endorse or promote non-Federal logos or seals**
- ❖ **FAR requires impartiality, too (48 CFR 3.101-1)**

ETHICS ISSUES – MISUSE OF POSITION

× Official Use/Misuse of Position (5 CFR 2635.702-705)

- + No use of public office for private gain
- + No improper endorsements or implied Government sanction
- + Misuse of Government resources – property/time
- + No unauthorized disclosure of nonpublic information

ETHICS ISSUES – PERSONAL CAPACITY

- ❖ **Acting in A Personal Capacity:**
 - ❖ Using a personal account
 - ❖ Beware of mixed official/personal accounts
 - ❖ Not on Government time/equipment
 - ❖ Limited personal use exception
 - ❖ Agency Policy
 - ❖ Expressing a personal opinion
 - ❖ Not discussing nonpublic government information
 - ❖ What is nonpublic government information?

ETHICS ISSUES – PERSONAL CAPACITY

❖ Examples:

- ❖ Personal Blogs
- ❖ Social Network postings
- ❖ Professional Network postings
- ❖ Comments on other social media postings
- ❖ Any social media use that is not the official use of agency

ETHICS ISSUES– PERSONAL CAPACITY

- ❖ **Prohibition against assisting in the prosecution of claims against the Government or acting as an agent or attorney before the Government (18 U.S.C. §§ 203 and 205)**

ETHICS ISSUES – PERSONAL CAPACITY

- ❖ **Outside employment or activity cannot conflict with employee's official duties (5 C.F.R. §2635.802).**
- ❖ **Prior approval to engage in outside employment or activities (5 C.F.R. § 2635.803)**
 - ❖ Check for agency supplemental rules requiring prior approval. E.g., 5 C.F.R. 3601.107 (DoD).

ETHICS ISSUES – PERSONAL CAPACITY

- ❖ **Compensation for teaching, speaking, or writing: With certain exceptions, employees generally shall not receive compensation from any source other than Government for teaching, speaking, or writing that relates to the employees' official duties. (5 C.F.R. 2635.807(a))**

ETHICS ISSUES – PERSONAL CAPACITY

- ❖ **Reference to official position (5 C.F.R. 2635.807(b)(1)).**
 - ❖ Applies to outside employment and outside activities (5 C.F.R. 2635.807(b)). *See also OGE Advisory Opinion 10 x 1.*
 - ❖ Check for Agency supplemental rules
- ❖ **Fundraising in a personal capacity (5 C.F.R. 2635.808(c)).**

ETHICS ISSUES – PERSONAL CAPACITY

- ❖ **Improper use of non-public information –
5 C.F.R. 2635.703**
- ❖ **Misuse of Government time/equipment –
5 C.F.R. 2635.704-705**

Other Legal Issues

PART III

OTHER TIPS/PITFALLS - LEGAL

- ❖ **First Amendment**
- ❖ **Anti-Lobbying Act**
- ❖ **Hatch Act**
- ❖ **HR/Whistleblower**
- ❖ **Privacy**
- ❖ **Terms of Service**
- ❖ **Paperwork Reduction Act**
- ❖ **FACA**
- ❖ **Records**

THE FIRST AMENDMENT

- ❖ **Public employees do not forfeit constitutional rights by virtue of employment**
 - ❖ See Pickering v. Board of Education, 391 U.S. 563 (1968)
- ❖ **Right to comment as a citizen about matters of public concern**

FIRST AMENDMENT – POLICY SUGGESTIONS

- ❖ Expressing personal views *pursuant to one's official duties*, whether on or off duty, may result in disciplinary action.
- ❖ Employees not authorized to speak on behalf of Agency must avoid giving the impression that they are representing Agency's views.
- ❖ Statements generally not afforded First Amendment protection include those that:
 - ❖ Reflect solely matters of internal or personal interest; false and defamatory statements about the Agency and/or Agency employees; threats and insults; "fighting words;" and statements that unduly disrupt the office, undermine a supervisor's authority, or destroy necessary close working relationships.
- ❖ Generally, employees may express themselves as private citizens about matters of concern and value to the public at large – as long as the speech does not undermine Agency's effectiveness and efficiency.
- ❖ The First Amendment protects only speech that an employee makes as a private citizen concerning a matter of public concern.

THE FIRST AMENDMENT - FORUM ANALYSIS

Type	Example	Regulation standard
Designated Public Forum	<ul style="list-style-type: none">• Interactive, allows public comments• Determining factor: Intent	<ul style="list-style-type: none">• Strict scrutiny• Regulations based on viewpoint prohibited
Limited Public Forum	May allow interaction but restricts access	<ul style="list-style-type: none">• Restrictions must be reasonable and viewpoint-neutral
Nonpublic Forum	Internal (e.g., SharePoint, internal wiki)	<ul style="list-style-type: none">• Time, manner, place restrictions okay but must be reasonable
Government Speech	Official social media – unidirectional	First Amendment does not apply

ANTI-LOBBYING ACT (18 USC 1913)

- ❖ **Prohibits Federal funds from being used to directly or indirectly to lobby Congress or any government official**
- ❖ **Careful about inadvertent violation**
 - ❖ Don't encourage public to write to Congress to support any law when on official time

HATCH ACT (5 U.S.C. §§ 7321-26)

- ❖ Ban on partisan political activities
- ❖ Be cautious about identifying workplace on social media, especially if you are a senior executive or publicly known employee
 - ❖ Hard to maintain purely “personal” account



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April 4, 2012

Frequently Asked Questions Regarding Social Media and the Hatch Act¹

In light of the many questions the Office of Special Counsel (OSC) has received concerning the Hatch Act's application to social media activity, OSC provides the following guidance on the issue, in the form of frequently asked questions concerning less restricted and further restricted federal employees (see Questions 1 through 8) as well as federal agencies (see Questions 9 through 11).

Note: The following guidance refers primarily to Facebook and Twitter due to the popularity of those sites for social networking, but the advice provided in response to these questions applies equally to all other social media platforms, such as Tumblr, Myspace, LinkedIn, etc. Please contact OSC at hatchact@osc.gov or (800) 854-2824 if you have a question not addressed by the following scenarios.

For Individual Federal Employees:

HATCH ACT - OFFICE OF SPECIAL COUNSEL FAQ

- ❖ **“Less restricted” employees may:**
 - ❖ List “political views” even if list official title
 - ❖ Advocate for political group or candidate as long as don’t refer to official position
- ❖ **“Less restricted” employees may not:**
 - ❖ Solicit political contributions or ask anyone to contribute
 - ❖ Provide links to contribution pages of political groups
 - ❖ Advocate for/against partisan group or candidate while on duty

HATCH ACT - OFFICE OF SPECIAL COUNSEL FAQ

❖ Supervisors

- ❖ May advocate for/against partisan group or candidate
 - ❖ May not direct any such message to subordinate or group of friends including subordinate
-
- ❖ **Official accounts must be politically neutral!**

WHISTLEBLOWER PROTECTION ACT

- ❖ **Disclosures on social media sites can be a protected disclosure under the Whistleblower Protection Act.**
 - ❖ Agency has to determine if it is a disclosure or a release of non-public information per 5 C.F.R. 2635.703.
 - ❖ Release of non-public information allows for disciplinary action.
 - ❖ Protected disclosure – no retaliation

HUMAN RESOURCES

- ❖ **Recruiting & Hiring**
- ❖ **Workplace Discrimination Claims**
- ❖ **Harassment & Hostile Work Environment**
- ❖ **Retaliation**
- ❖ **Taking adverse action**

PRIVACY ISSUES

- ❖ **Persistent Cookies**

- ❖ We do not embed third party applications that use persistent cookies on our sites.

- ❖ **Collection of PII Information**

- ❖ We use strong disclaimers advising people not to give us PII information.
 - ❖ Moderate to avoid posting PII
 - ❖ We have a Fan page as opposed to friends so we do not see individual's personal pages.

- ❖ **Anonymous Posting**

- ❖ We allow for and encourage anonymous posting using screen names on third party applications and posting anonymously on our blog.

- ❖ **Bringing PII information into Agency Records**

- ❖ Do not collect information

- ❖ **Contractors must follow the Privacy Act**

- ❖ As required by the FAR

OMB MEMO 10-22

- ❖ **M-10-22, Guidance for Online Use of Web Measurement and Customization Technologies (June 25, 2010)**
- ❖ **Use of Cookies**
 - ❖ Three Tiers (single session, multiple session, and multiple session with PII)
- ❖ **Privacy Notice**
 - ❖ Requires a privacy notice on all Social medial sites and the Agency's website.

OMB MEMO 10-23

- ❖ **Selection of Third Party Sites**
 - ❖ Appropriateness of Sites
- ❖ **Type of Content Placed on Third Party Sites**
 - ❖ Agency Branding
 - ❖ 508 issues
 - ❖ Procurement issues
 - ❖ Authoritative References
- ❖ **Rules of Engagement with the Public**
 - ❖ Comment Policy
 - ❖ Notification to Public

PROCUREMENT & TERMS OF SERVICE (TOS)

- ❖ **No-cost agreements**
- ❖ **User agreements & TOS**
- ❖ **Indemnification clauses**
- ❖ **Choice of law/choice of forum**
- ❖ **Confidentiality clauses**
- ❖ **Advertising clauses**

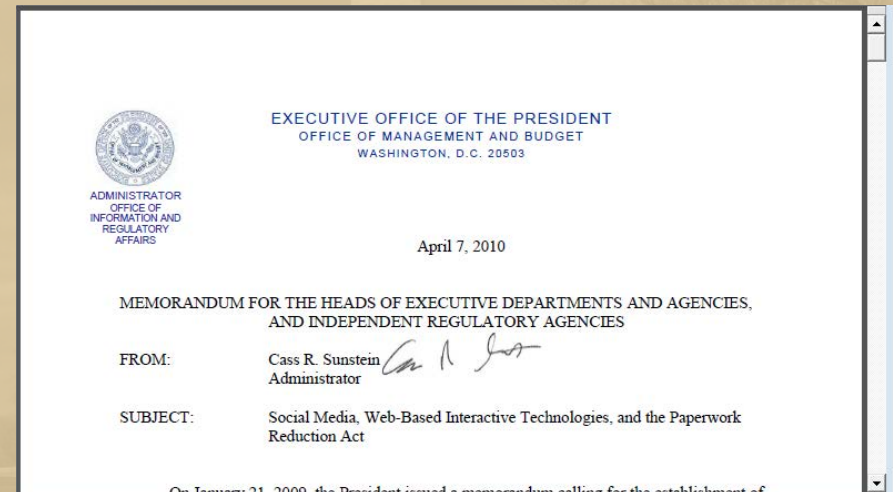
TOS ISSUES & SOLUTIONS

Clause	Issue	Solution
Indemnification	User to reimburse provider for damages to third party – violates ADA	Incorporate Federal gov liability limits from FTCA
Choice of law	Contrary to sovereign immunity doctrine	Change to incorporate fed laws
Choice of forum	Contrary to sovereign immunity doctrine	Change clause to reflect “any competent Federal court”
Unilateral changes	Provider reserves the right to unilaterally change TOS, after notice on website	Require notification period with time limit
Use of agency name/seal/logo	May create appearance of endorsement	Allow provider to use Agency’s name or seal only to state facts
Confidentiality	Possible inconsistency with Privacy Act, FOIA, or litigation requirements	Incorporate statutory disclosure requirements
Advertisements	May create appearance of endorsement	Change clause to prohibit third-party ads or solicitations

PAPERWORK REDUCTION ACT

Web 2.0 applications are not exempt from the Paperwork Reduction Act.

- ❖ OMB guidance (April 7, 2010 Memo) allows for generic questions such “What do you think?” Specific questions could be seen as a collection of information.
- ❖ Allow for comments without asking specific questions or performing surveys



FEDERAL ADVISORY COMMITTEE ACT

- ❖ **Web 2.0 technology allows an agency to set up its own network or portals limiting who has access to the information.**
 - ❖ This could trigger FACA.
- ❖ **Avoid FACA issues by allowing all access to web 2.0 applications.**
 - ❖ Or limiting access based on the FACA exceptions
 - ❖ State and Local officials

RECORDS MANAGEMENT

Records Management

- ❖ **Web 2.0 applications are Federal Records**
 - ❖ **Especially applications on a .mil,.gov site or on a third party site created by the Agency.**
 - ❖ **They are subject to FOIA, E-discovery, Federal Records Act.**
 - ❖ **Agencies need to create or insure the existence of records schedules for web 2.0 media.**
 - ❖ **Until then they must retain all web 2.0 posts.**

See NARA Bulletin 2014-02

Implementation Guidance

OTHER IMPLEMENTATION TIPS/PITFALLS

PART IV

OTHER TIPS/PITFALLS



OTHER TIPS/PITFALLS

❖ **Coordinate early and often**

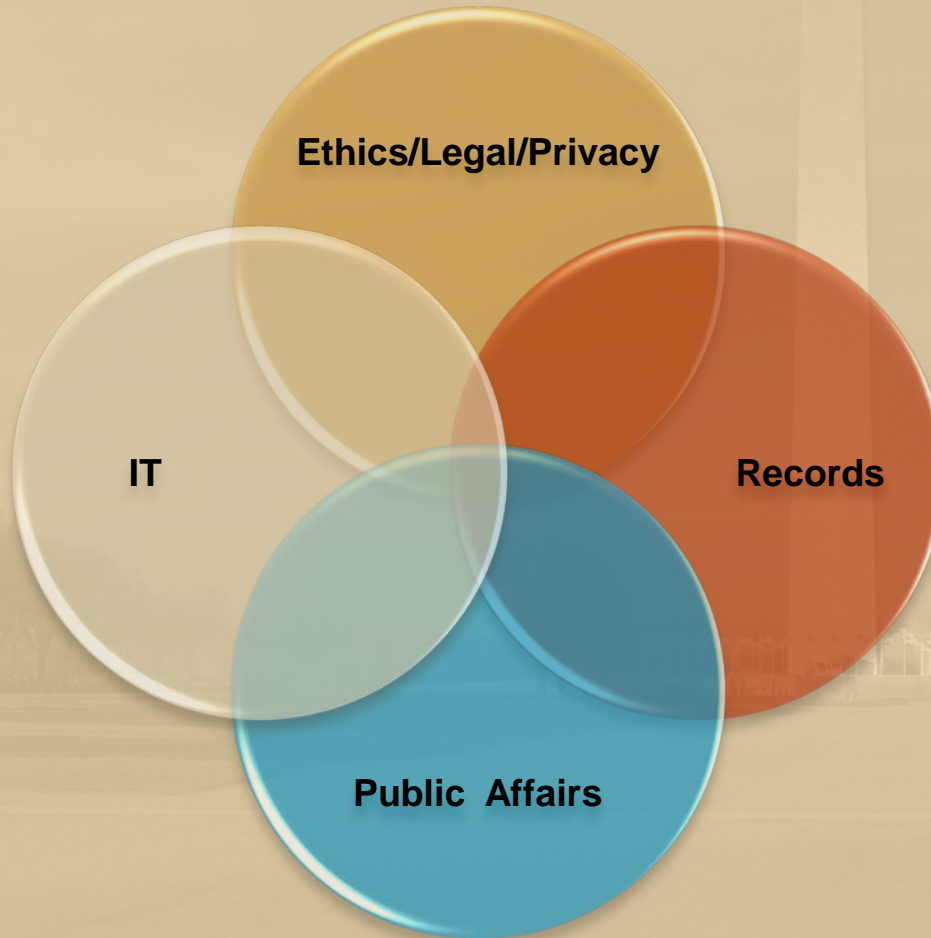
- ❖ Get all impacted parties together to coordinate
- ❖ Identify & address concerns
- ❖ Share information
- ❖ Determine plan for implementation/deployment

❖ **Create clear policies**

- ❖ Who is authorized to speak for agency
- ❖ Comment-monitoring

❖ **Consider developing employee training**

COORDINATION IS KEY



HOW SHOULD AGENCIES DEAL WITH WEB 2.0

GUIDANCE:

- ❖ **Develop policy**
- ❖ **Provide guidance to employees on how to use social media safely.**
 - ❖ Cyber security issues
 - ❖ How to respond to comments made about the Agency.

CONSIDERATIONS FOR POLICY DEVELOPMENT:

- ❖ **Require official users to identify themselves as official users**
 - ❖ Use the Agency name on the account
- ❖ **Require users in their personal capacity to identify themselves as Agency employees when discussing Agency public information and to link to official Agency material**

CONSIDERATIONS FOR POLICY DEVELOPMENT:

- ❖ **Prohibit employees from using their government e-mail to sign up for social media sites.**
 - ❖ Including sending invitations to social media sites to government e-mail addresses.
- ❖ **Limited use of government time/equipment for social media sites.**
 - ❖ Investigation of abuse of government time/equipment.

DEALING WITH WEB 2.0 ISSUES:

- 1. Identify the areas where you need a point of contact.**
- 2. Establish a working group that includes those POCs.**
- 3. Make sure the POCs use the technology before signing off on any web 2.0 technology**
 - ❖ Set up a personal account and play with the applications.
- 4. Identify the issues and develop solutions**
 - ❖ The law does not address this type of technology; agencies should act in the “spirit” of the law.
 - ❖ Be creative in your solutions – think outside of the

DEALING WITH WEB 2.0 ISSUES: (CONT'D)

5. **Make sure the POCs use the technology before signing off on any web 2.0 technology**
 - ❖ Set up a personal account and play with the applications.
6. **Identify the issues and develop solutions**
 - ❖ The law does not address this type of technology; agencies should act in the “spirit” of the law.
 - ❖ Be creative in your solutions – think outside of the box.

ETHICS ISSUES IN IMPLEMENTATION

How do you meet the spirit of the law?

- ✘ Decision-maker's personal conflicts of interest (18 U.S.C. § 208; 5 C.F.R. § 2635.402)
- ✘ Impartiality
 - ✘ Selecting social media tool
 - ✘ Refraining from promoting providers (third party logos/seals)
- ✘ Terms of Service may raise Misuse of Government Equipment/Resources concerns
- ✘ Preferential Treatment

ETHICS ISSUES IN IMPLEMENTATION

Considerations for .gov or .mil websites:*

- ✘ Only include external links that are necessary!
- ✘ Create a dedicated agency social media page.
- ✘ Agency Branding
- ✘ Include a goodbye page when linking to a non-Federal website.
- ✘ Provide as many share tools as possible.

* Most required by OMB Memo 10-23

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