

GIFTS

I. REFERENCES.

A. Statutes:

1. 5 U.S.C. § 7342 (Foreign Gifts and Decorations Act).
2. 31 U.S.C. § 1353 (Acceptance of Travel and Travel Related Expenses from Non-Federal Sources).
3. 10 U.S.C. § 2601, 2608 (General Gift Funds)
4. 5 U.S.C. § 7351 (Gifts to Superiors)
5. 5 U.S.C. § 7353 (Gifts to Federal Employees)
6. 5 U.S.C. § 4111 (Gifts of Training to Federal Civilian Employees)
7. 10 USC 2601a (New Gift Statute)

B. Regulations:

1. Government-wide
 - a. 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (Office of Government Ethics Rules).
 - b. 41 C.F.R. Chapter 304, Payment of Travel Expenses from a Non-Federal Source.

II. DOD-WIDE

- a. DOD 5500.07-R, Joint Ethics Regulation (JER)
<http://www.dtic.mil/whs/directives/corres/pdf/550007r.pdf>
 - b. DODD 1005.13, Gifts and Decorations from Foreign Governments, 19 Feb 2002, w/ Ch. 1, Dec. 6, 2002.
 - c. DOD SOCO Ethics Issues Involving Contractors in the Federal Workplace, July 28, 2006.
http://www.dod.mil/dodgc/defense_ethics/resource_library/Contractors_in_Workplace.doc
 - d. DOD SOCO Holiday Guidance for Federal Personnel, November 19, 2010
http://www.dod.mil/dodgc/defense_ethics/resource_library/dod_holiday_guidance_2010.pdf
 - e. DOD General Counsel Information Paper on Gifts Intended Solely for Presentation, November 2003.
http://www.dod.mil/dodgc/defense_ethics/resource_library/presentation_gifts.pdf
 - f. DOD SOCO Gifts to Service Members and Their Families from Non-Federal Sources, August 28, 2008.
http://www.dod.mil/dodgc/defense_ethics/2008_Advisories/ADV_0806.htm
 - g. DOD SOCO Special Edition: Application of the Widely Attended Gathering (WAG) Gift Exception to Invitations, July 3, 2008.
http://www.dod.mil/dodgc/defense_ethics/2008_Advisories/ADV_0805.htm
2. Army
 - a. AR 1-100, Gifts and Donations, Nov. 15, 1983.
 - b. AR 1-101, Gifts for Distribution to Individuals, May 1, 1981.

- c. SECARMY Memorandum, Policy for Travel by Department of the Army Officials, January 25, 2007 (Army Directive 2007-01).
- 3. Navy
 - a. Secretary of the Navy Instruction (SECNAVINST) 4001.2J, Acceptance of Gifts, Aug. 12, 2009.
 - b. OPNAVINST 4001.1F, Acceptance of Gifts, Jul. 2, 2010.
 - c. SECNAVINST 1650.1H, Navy and Marine Corps Awards Manual, Chapter 9 (Foreign Awards, Gifts and Decorations), Aug. 22, 2006.
 - d. Marine Corps Order P5800.16A, w/Ch. 1-5, Marine Corps Manual for Legal Administration (Chapter 12), Aug. 31, 1999.
- 4. Air Force
 - a. AFI 24-101, Passenger Movement, Oct. 27, 2004.
 - b. AFI 51-601, Gifts to the Department of the Air Force, Nov. 26, 2003.
 - c. AFI 51-901, Gifts from Foreign Governments, Feb. 16, 2005.

III. GENERAL ETHICAL PRINCIPLES APPLICABLE TO GIFTS.

- A. Public service is a public trust - 5 C.F.R. § 2635.101(b)(1).
- B. Employees shall not solicit or accept a gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties – 5 C.F.R. § 2635.101(b)(4).

- C. Employees shall not use public office for private gain – 5 C.F.R. § 2635.101(b)(7).

IV. GIFTS FROM OUTSIDE SOURCES.

- A. Basic Punitive Prohibition on Gifts from Outside Sources. An employee shall not solicit or accept, directly or indirectly, a gift from a prohibited source or given because of the employee's official position. 5 C.F.R. § 2635.202(a).

1. "Prohibited Source" means any person or entity that:
 - a. Is **seeking official action** by the employee's agency;
 - b. **Does or seeks to do business** with the employee's agency;
 - c. Is **regulated** by the employee's agency;
 - d. Has interests that may be substantially **affected by performance or nonperformance of the employee's official duties**; or
 - e. Is an **organization a majority of whose members** fit into one or more of these categories. 5 C.F.R. § 2635.203(d).

A person does not become a prohibited source merely because of the offer of a gift.

2. "Indirect Gifts" include gifts:
 - a. Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee; or
 - b. Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee. 5 C.F.R. § 2635.203(f).

3. The test for "official position" is whether the gift would have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his federal position. 5 C.F.R. § 2635.203(e).
4. Executive Order 13490, Jan. 21, 2009 requires every full-time, political appointee appointed on or after January 20, 2009 to sign an Ethics Pledge.
 - a. See **DAEOgram DO-09-003, New Ethics Pledge**, http://www.oge.gov/ethics_guidance/daeograms/dgr_files/2009/do09003.pdf
 - b. See **Summary of Obligations Under the Ethics Pledge, Executive Order 13490 (January 26, 2010)**, http://www.dod.gov/dodgc/defense_ethics/resource_library/guidance.htm
 - c. Political appointees who were appointed after January 20, 2009 must commit that they will not accept gifts or gratuities from registered lobbyists or lobbying organizations (subject only to a limited number of exceptions provided in the OGE Standards of Ethical Conduct, as well as other exceptions that OGE may authorize in the future for situations that do not implicate the purpose of the gift ban).
 - (1) Appointees are defined as every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.
 - (2) "Registered lobbyist" is any individual registered with the Clerk of the House of Representatives and the Secretary of the Senate. Generally this will not include media organizations or not-for-profit entities exempt from taxation under 26 U.S.C. § 501(c)(3).

B. Practical Approach. Three-part analysis:

1. Is the item actually a gift? The term "gift" is broadly defined and includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, and lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement (5 C.F.R. § 2635.203(b)). It does not include the following items (**exclusions**):
 - a. Coffee, donuts, and similar modest items of food and refreshments when offered other than as part of a meal;
 - b. Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
 - (1) See DOD General Counsel Information Paper on Gifts Intended Solely for Presentation, November 2003.
http://www.dod.mil/dodgc/defense_ethics/resource_library/presentation_gifts.pdf.
 - c. Rewards and prizes in contests open to the public. Contest must be "open to the public" and employee's entry into the contest must not be part of his/her official duties.
 - (1) See OGE DAEOGRAM DO-99-017 (April 26, 1999)
http://www.usoge.gov/pages/daeograms/dgr_files/1999/do99017.txt This explains that "open to the public" means that there can be no cost or fee (such as a conference fee) to be eligible to win the prize.
 - d. Commercial discounts available to the general public or to all Government or military personnel, whether or not restricted by geography. Would not apply to discounts to subgroups based on rank, position or organization. The exception in 5 C.F.R. 2635.204(c)(2)(iii) may apply.

(1) See OGE DAEOGRAM DO-99-001 (January 5, 1999) for detailed discussion.
http://www.usoge.gov/pages/daeograms/dgr_files/1999/do99001a.txt

- e. Loans from banks and other financial institutions (entities in the business of loaning money) on terms generally available to the public;
- f. Anything paid for by the Government or secured by the Government under Government contract;

PRACTICE TIP: Examine the contract type (Cost or Fixed Price) and whether the item secured by the Government causes additional costs under the contract. Government should not procure items in order to avoid gift rules. “Agencies are responsible for ensuring that such arrangements are otherwise appropriate under applicable law, including their authorizing statutes, procurement law, and principles prohibiting unauthorized augmentation of appropriations.” OGE DAEOGRAM DO-99-001 (January 5, 1999)
http://www.usoge.gov/pages/daeograms/dgr_files/1999/do99001a.txt

- g. Anything for which the employee pays market value (i.e., retail cost employee would incur to purchase the gift);

PRACTICE TIP: Market value should not include private or membership clubs, or limited access purchases.

(1) For Skyboxes or private suites: “Market value” is computed as ticket price for the most expensive publicly available ticket to the event plus the value of food, parking, and other tangible benefits provided in connection with the gift of attendance. OGE DAEOGRAM, DO-07-003 (February 9, 2007)
http://www.usoge.gov/pages/daeograms/dgr_files/2007/do07003.txt

- h. Anything accepted by the Government in accordance with agency gift acceptance statutes. Examples include:

(1) Gifts of Travel – 31 U.S.C. § 1353.

- (2) Foreign Gifts – 5 U.S.C. § 7342.
- (3) General Gift Funds – 10 U.S.C. § 2601.
- (4) Fellowships, Scholarships, or Grants – 10 U.S.C. § 2603
- (5) Gifts for Defense Dependent Schools – 10 U.S.C. § 2605.
- (6) Contributions to Defense Programs – 10 U.S.C. § 2608.
- (7) Competitions of Excellence: Acceptance of Monetary Awards – 10 U.S.C. § 2610.
- (8) Army Specific Gift Statutes:

 - Gifts to United States Military Academy – 10 U.S.C. § 4356.
- (9) Navy Specific Gift Statutes:
 - (a) Gifts, Bequests, and Loans of Property: acceptance for benefit and use of Naval Academy – 10 U.S.C. § 6973.
 - (b) United States Naval Academy Gift Fund – 10 U.S.C. § 6974.
 - (c) Gifts to Vessels – 10 U.S.C. § 7221.
 - (d) Gifts for Welfare of Enlisted Members – 10 U.S.C. § 7220.
- (10) Air Force Specific Gift Statutes: None.

- 2. Does an exception apply? Common **exceptions** (5 C.F.R. § 2635.204) when an employee may accept a gift:

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- a. **Gifts of \$20 or Less (5 C.F.R. § 2635.204(a)).** Unsolicited gifts with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50. **Does not apply to gifts of cash or investment interests (e.g., stocks or bonds).**

PRACTICE TIP: Employees may decline gifts to keep aggregate value at \$20 or less, but may not pay differential over \$20 to retain gift(s) – No “buy down”. Applies to both \$20 per occasion and \$50 per calendar year limits.

- b. **Gifts Based on a Personal Relationship (5 C.F.R. § 2635.204(b)).** Gifts based on a personal relationship, such as a family relationship or personal friendship rather than the position of the employee;

PRACTICE TIP: Relevant factors to consider in making the determination include history of the relationship and whether family member or friend personally pays for the gift. Also look at the occasion where the gift is presented. For example, Commanding General is personal friends with contractor Program Manager. A “personal” gift given during an official presentation may not satisfy the exception.

- c. **Discounts and Similar Benefits (5 C.F.R. § 2635.204(c)).** In addition to those opportunities and benefits excluded from the definition of a gift by 5 C.F.R. § 2635.203(b)(4), employees may accept:

- (1) Reduced membership or other fees in organization activities offered to all Government employees or all military personnel by professional organizations if the only restrictions on membership relate to professional qualifications (e.g., ABA offers discount membership fee to all Government attorneys);
- (2) Opportunities and benefits, including favorable rates and commercial discounts:
 - (i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size;

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay;

(b) See for extensive discussion and examples: OGE DAEOGRAM DO-99-001 (January 5, 1999) http://www.usoge.gov/pages/daeograms/dgr_files/1999/do99001a.txt.

d. **Awards and Honorary Degrees (5 C.F.R. § 2635.204(d)).**

(1) Awards. Employees may accept gifts that are a bona fide award or incident to a bona fide award in recognition for meritorious public service by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests require a written determination from agency ethics official that the award is part of an established plan of recognition made on a regular basis pursuant to written standards.

(2) Honorary Degrees. Employees may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. § 1141(a) with agency ethics official determination that timing would not cause reasonable person to question employee's impartiality in a matter affecting the awarding institution;

e. **Gifts Based on Outside Business or Employment (5 C.F.R. § 2635.204(e)).** An employee may accept meals, lodgings, transportation, and other benefits:

- (1) Resulting from the business activities of the spouse when it is clear that the benefits have not been offered or enhanced because of the employee's official position;
 - (2) Resulting from the employee's outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of the employee's status; or
 - (3) Customarily provided by a prospective employer in connection with bona fide employment discussion;
- f. **Gifts in Connection with Political Activities (5 C.F.R. § 2635.204(f)).** An employee who takes an active part in political management or in political campaigns (consistent with the Hatch Act Reform Amendments of 1993), may accept meals, lodgings, transportation, and other benefits in connection with such participation from a political organization described in 26 U.S.C. § 527(e).

PRACTICE TIP: Remember that Political Activities of Uniformed Members are regulated by DOD Directive 1344.10, 19 February 2008, and political activities of DoD civilian employees is established by Deputy Secretary of Defense Memo dated Oct. 12, 2010. This guidance is discussed in the chapter on political activities in this deskbook.

- g. **Widely Attended Gatherings and Other Events (5 C.F.R. § 2635.204(g)).**
- (1) **Speaking and Similar Engagements.** An employee assigned in his official capacity to participate as a speaker, panel member, or to otherwise provide information on behalf of the agency at an event may accept free attendance at the event on the day of his presentation from the sponsor of the event. Free attendance under these circumstances is considered to be a customary and necessary part of the employee's performance and does not involve a gift to the employee or the agency.

- (a) Since the employee's participation in the event is part of his official duties, the agency may pay the employee's travel expenses.
- (2) Widely Attended Gatherings. An employee may accept free attendance from the sponsor of a "widely attended gathering" if the agency determines that employee's attendance is in the interest of the agency because it will further agency programs or operations (employee attends in a personal capacity). Free attendance may be accepted from a person other than the sponsor of a "widely attended gathering" if more than 100 people will be in attendance and the cost is \$350 or less.
- (a) "A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter."
 - (i) See OGE DAEOGRAM DO-07-047, Dec. 5, 2007 for a detailed discussion
http://www.usoge.gov/pages/daeograms/dgr_files/2007/do07047.txt
 - (ii) See DOD SOCO Special Edition: Application of the Widely Attended Gathering (WAG) Gift Exception to Invitations to Play Golf or Attend Sporting, Recreational or Entertainment Events, July 3, 2008 for a detailed discussion of entertainment events:
http://www.dod.mil/dodgc/defense_ethics/2008_Advisories/ADV_0805.htm
- (3) "Free Attendance" may include waiver of all or part of a conference fee, the provision of food, refreshments, entertainment, instruction, and material furnished to all attendees as an integral part of the event. It does not include travel or lodging expenses.

- (a) Gift bags delivered at the end of an event as guests are departing are rarely “integral part of the event” and therefore may not be accepted as part of free attendance. See DoD SOCO Advisory 02-12, Jul. 10, 2002.

PRACTICE TIP: When an employee is not speaking or otherwise participating in the event, and accepts free attendance at a widely attended gathering, such attendance must be in a leave or other authorized absence status. The employee may not attend while on or as part of his/her official duties. Moreover, the agency may not expend appropriated funds to send personnel to widely attended gathering events. Use of a government vehicle to attend such an event would not be authorized.

- h. **Social Invitations from Other Than Prohibited Sources (5 C.F.R. § 2635.204(h)).** An individual may accept food, refreshments, and entertainment (not travel or lodging) at a social event attended by several persons where the invitation is from a person who is not a prohibited source and where no one in attendance is charged a fee to attend the event.
- i. **Meals, Refreshments, and Entertainment in Foreign Areas (5 C.F.R. § 2635.204(i)).** Employees assigned to duty in, or on official travel to, a foreign area may accept food, refreshments, and entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event provided:
 - (1) The market value does not exceed the per diem for the foreign area (This includes the complete per diem, not merely that portion of the per diem for food.);
 - (2) There is participation in the meeting or event by non-US citizens or representatives of foreign governments or entities;
 - (3) Attendance at the meeting or event is part of the employee’s official duties; and
 - (4) The gift of meals or entertainment is from a person other than a foreign government.

- j. **Gifts to the President and Vice President (5 C.F.R. 2635.204(j)).**
 - k. **Gifts Authorized by Supplemental Agency Regulation (5 C.F.R. § 2635.204(k)).** An employee may accept a gift the acceptance of which is authorized by supplemental agency regulation.
 - (1) Unsolicited gifts of free attendance for DOD employees (and spouses) at events sponsored by state or local governments or non-profit, tax-exempt civic organizations, where the agency has determined its community relations interests are served by attending the event (JER 2-202a);
 - (2) Educational scholarships and grants for DOD employees or their dependents (JER 2-202b); and
 - l. **Gifts Accepted Under Specific Statutory Authority (5 C.F.R. § 2635.204(l)).**
3. Would using the exception undermine Government integrity?
- a. Appearance concerns. If a gift falls within one of the exceptions, acceptance of the gift will not violate any of the basic obligations of public service set forth in 5 C.F.R. § 2635.101(b), including the principle that employees shall avoid creating even the "appearance" of an ethical violation. However, it is never inappropriate and frequently prudent to decline a gift offered by a prohibited source or given because of one's official position (5 C.F.R. § 2635.204)).
 - b. *Notwithstanding the applicability of any exception, 5 C.F.R. § 2635.202(c) provides that an employee may not:*
 - (1) Use his official position to solicit or coerce the offering of a gift;

- (2) Accept a gift in exchange for being influenced in the performance of official action (bribe or illegal gratuity); *See* OGE Memorandum DO-99-024, May 19, 1999 ([United States v. Sun Diamond Growers](http://www.usoge.gov/pages/daeograms/dgr_files/1999/do99024.txt) http://www.usoge.gov/pages/daeograms/dgr_files/1999/do99024.txt)
- (3) Accept a gift in violation of statute (e.g., 18 U.S.C. §§ 201(b) and 209); or
- (4) Accept gifts from the same or different sources so frequently that a reasonable person would conclude that the employee is using his public office for private gain;
- (5) Accept Vendor Promotional Training (i.e., training provided by any person for the purpose of promoting its products or services) contrary to applicable rules governing procurement of supplies and services.

C. Handling Improper Gifts from Outside Sources (5 C.F.R. § 2635.205). When an employee cannot accept a gift, the employee shall:

1. Refuse the gift (if possible) and diplomatically explain the restrictions on acceptance of gifts by Federal employees.
2. Return the gift or pay the donor its fair market value. An agency may authorize disposition or return of the gift at Government expense.
3. Perishable items may be donated to charity, shared within the office, or destroyed with the approval of the supervisor or ethics counselor.

D. Reporting Gifts from Outside Sources. Employees, who file financial disclosure reports, must report travel-related cash reimbursements or other gifts totaling more than \$350 from any one source received by the employee, spouse, or dependent children during the reporting period on:

1. OGE Form 450 (Confidential Financial Disclosure Report), Part V. This requirement does not apply to New Entrants or Special Government Employees.

2. SF 278 (Public Financial Disclosure Report), Schedule B, Part II.

V. FOREIGN GIFTS.

- A. U.S. Constitution (Art. I, Sec. 9, Cl. 8) provides:

No Title of Nobility shall be granted by the United States: And no person holding any Office of Profit or Trust under them, shall, without the consent of Congress, accept any present, Emolument, Office or Title from a King, Prince or foreign state.

- B. 5 U.S.C. § 7342, Receipt and Disposition of Foreign Gifts and Decorations, provides:

1. Employees may accept a gift (or combination of gifts) of "minimal value," i.e., having retail value in the United States at the time of acceptance of \$350 or less, tendered and received as a souvenir or mark of courtesy from a foreign government. "Minimum value" is established by GSA and adjusted every three years based on the Consumer Price Index.
2. See implementing DOD guidance at DoDD 1005.13 (Gifts and Decorations from Foreign Governments), 19 February 2002.
3. Gifts exceeding "minimum value" may be accepted when the gift is in the nature of an educational scholarship or medical treatment or when it appears that refusal is likely to cause offense or embarrassment or adversely affect foreign relations.
 - a. Such gifts are accepted on behalf of the United States and, upon acceptance, become the property of the United States.

- b. Such gifts must be reported to and deposited with the agency for official use or disposal (or return to donor or forward to GSA for utilization decision or disposal). For Army, report to and deposit gifts with Office of the Administrative Assistant to the Secretary of the Army, ATTN: Ms. Jennifer Brown, Army Gift Program Coordinator, 105 Army Pentagon, Washington D.C. 20310-0105; telephone: 703-697-3067; e-mail: jen.lynn.brown@conus.army.mil. For Air Force, report the gifts IAW Air Force Instruction 51-901, Gifts from Foreign Governments, 16 Feb 05. For Navy, report to and deposit gifts in accordance with SECNAVINST 1650.1H, Chapter 9.
 - c. Gifts retained by the DOD component are not to be used for the benefit or personal use of any individual employee (includes a spouse or dependent). DoDD 1005.13, E3.1.1.1.2. See SOCO Advisory 02-04, Feb. 21, 2002, for discussion of retention of personal use items (e.g., watches and jewelry).
4. Calculation of "minimal value" (JER 2-300b).
- a. Aggregate the value of gifts at the same presentation from the same source, i.e., same level of government (city, state, or national). Note that under DoDD 1005.13, para. 4.6, if more than one gift is given from the same source at the same presentation, they shall be considered a single gift and the aggregate value shall be used to determine whether the gift exceeds minimal value. JER provision, 2-300.b.2., which allows individuals to keep some of those gifts with an aggregate of less than minimal value, is superseded.
 - b. Do not aggregate the value of gifts from the same source at different presentations (even if on the same day) or different sources at the same presentation.
 - c. A gift from the spouse of a foreign official is deemed to be a gift from the foreign official/government.
 - d. A gift to employee's spouse is deemed to be a gift to the employee.
- C. Gifts of Travel from Foreign Governments. See Section VII below.

VI. GIFTS BETWEEN EMPLOYEES.

- A. General Punitive Rules (5 C.F.R. § 2635.302(a)). An employee shall not, directly or indirectly:
1. Give a gift or make a donation toward a gift for an official superior or solicit a contribution from another employee for a gift to either his own official superior or that of another; or
 2. Accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in an official superior-subordinate relationship.
 3. “Official superior” means any other employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee or any official superior of the employee, i.e., anyone in the employee’s chain of command. 5 C.F.R. § 2635.303(d).
- B. Exceptions (5 C.F.R. § 2635.304).
1. Unsolicited gifts may be given on an **occasional basis** (not routine), including traditional gift-giving occasions, such as birthdays and holidays. This includes:
 - a. Items (no cash) with an aggregate value of \$10 or less per occasion;
 - b. Items such as food and refreshments that will be consumed at the office;
 - c. Personal hospitality (e.g., meals) at someone's home (of a type and value customarily provided to personal friends); and
 - d. Items in connection with the receipt of personal hospitality (of a type and value given on such occasions).

2. A subordinate may give a gift appropriate to the occasion or donate toward a gift to an official superior, and an official superior may accept a gift on **special infrequent occasions** such as:
 - a. In recognition of an infrequent event of personal significance such as marriage, illness, or birth of a child (would not include a promotion); or
 - b. Upon an occasion that terminates the official superior - subordinate relationship such as transfer, resignation, or retirement.
3. Group gifts on special infrequent occasions are limited to \$300 in value per donating group (JER 2-203(a)).
 - a. A donating group is comprised of all contributors to that group gift.
 - b. If one employee contributes to two or more donating groups, then the value of the gifts from groups with a common contributor are aggregated for the purposes of the \$300 limit (JER 2-203(a)(2)).

PRACTICE TIP: Although not specifically mentioned in JER 2-203, the \$300 limit in JER 2-203(a) is also subject to the no “buy-down” provisions.

PRACTICE TIP: These gift rules apply only to Federal employees. Such group gifts may not include contributions from parties who are not Federal employees, including contractor personnel who may be working in the same office.

PRACTICE TIP: The so-called “Perry exception” should no longer be invoked as an exception to the \$300 limit. See DOD SOCO Advisory 09-03 (March 23, 2009).

4. Solicitations for gifts to an official superior may not exceed \$10 (although employees are free to give more than \$10) and must be completely voluntary (given freely, without pressure or coercion). JER 2-203b.

VII. TRAVEL PAYMENTS FOR OFFICIAL TRAVEL FROM NON-FEDERAL SOURCES (31 U.S.C. § 1353).

A. Implementing regulations.

1. 41 C.F.R. Chapter 304, a GSA regulation that applies to Executive Branch employees.
2. JER paras. 4-100 & 4-101, which apply to DOD military members and civilian employees.

B. Conditions for acceptance. An employee may accept, on behalf of his or her agency, a travel payment from a non-Federal source to attend a meeting or similar function. 41 C.F.R. § 304-5.1. The DOD Component DAEO or designee must concur with the acceptance of official travel benefits. JER 4-101.c. **All** of the following conditions must be present:

1. The gift is in connection with a meeting or similar function relating to the official duties of the employee. (Note: Travel while on pass or in a permissive TDY status is not considered to be official duty for purposes of accepting a gift of travel under 31 U.S.C. § 1353). The function will take place away from the employee's permanent duty station (i.e., the employee must be in a travel status);
2. The travel is determined to be in the interest of the Government;
3. The non-Federal source is not disqualified due to a conflict of interest; and
4. Acceptance of the gift is approved before the travel. 41 C.F.R. § 304-3.12; JER para. 4-100.c(2). **Acceptance may be authorized after the travel has begun if the above criteria are met and the following additional conditions have been satisfied.** 41 C.F.R. § 304-3.13:
 - a. If the agency has already authorized acceptance of payment for some of the travel expenses for that meeting from a non-Federal source, then personnel may accept on behalf of their agency, payment for any of the additional travel expense from the same non-Federal source as long as –

- (1) The expenses paid or provided in kind are comparable in value to those offered to or purchased by other similarly situated meeting attendees; and
- (2) The employee's agency did not decline to accept payment for those particular expenses in advance of the travel.

PRACTICE TIP: Similarly situated meeting attendees may be defined by functions at the event. For examples, speakers may be offered a room with work areas, while attendees are offered rooms without work areas.

- b. If the employee's agency did not authorize acceptance of any payment from a non-Federal source prior to the travel, then –
 - (1) Personnel may accept, on behalf of their agency, payment from a non-Federal source of the following expenses:
 - (a) Only the types of travel expenses that are authorized by the travel authorization; and
 - (b) Only travel expenses that are within the maximum allowances stated in the travel orders (e.g., if the travel orders state that personnel are authorized to incur lodging expenses up to \$100 a night, personnel may not accept payment from the non-federal source for a \$200 per night hotel room);
 - (2) Personnel must request their agency's authorization for acceptance from the non-Federal source within **7 working days** after the trip ends; and
 - (3) If the agency does not authorize acceptance from the non-Federal source, the agency must either –
 - (a) Reimburse the non-Federal source for the reasonable approximation of the market value of the benefit provided, not to exceed the maximum allowance stated in the travel orders; or

- (b) Require the employee to reimburse the non-Federal source that amount and allow the employee to claim the amount on the travel claim for the trip.

C. "Meeting or similar function" means a conference, seminar, speaking engagement, symposium, training course, or similar event, and is sponsored or co-sponsored by a non-Federal source. 41 C.F.R. § 304-2.1. A "meeting or similar function" need not be widely attended and includes, but is not limited to:

1. An event at which the employee will participate as a speaker or panel member;
2. A conference, convention, seminar, symposium, or similar event the primary purpose of which is to receive training (other than promotional vendor training), or to present or exchange substantive information concerning a subject of mutual interest to a number of parties; or
3. An event at which the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulation.

D. "Meeting or similar function" does **not** include:

1. A meeting or other event required to carry out an agency's statutory or regulatory functions (i.e., a function essential to the agency's mission), such as investigations, inspections, audits, site visits, negotiations, or litigation; or
2. Promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.

E. "Non-Federal source" means any person or entity other than the Government of the United States. The term includes individuals, private or commercial entities, not-for-profit organizations, international or multinational organizations, and foreign, state, or local governments (including the District of Columbia). 41 C.F.R. § 302-2.1.

- F. "Travel-approving authority" is not defined in the JER. However, agencies must ensure that the travel-approving authorities are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment. 41 C.F.R. § 304-5.2. In most organizations, the "travel-approving authority" is the person authorized to sign travel orders.
1. The Secretary of the Army Travel Policy dated 25 January 2007 authorizes heads of an Army command or organizations to delegate approval authority in writing to accept travel payments from a non-Federal source to a division chief under their supervision serving in the grade of Colonel or the civilian equivalent.
- G. Travel on commercial airlines. If the non-Federal source offers the employee a gift of travel on a commercial airline, the employee may accept travel in coach class or in premium class other than first class (e.g., business class). However, the employee may not accept a gift of travel in first class, unless the conditions exist that would authorize the Government to purchase a first class airline seat for the employee. 41 C.F.R. § 304-5.5 and 5.6.
- H. Hotels that cost more than the Government lodging rate. Sometimes a non-Federal source will offer a gift of lodging in a hotel, and the cost of the hotel is more than the Government lodging rate for the city where the hotel is located. In that case, the employee may accept the gift of lodging only if the accommodations are "comparable in value to that offered to, or purchased by, other similarly situated individuals attending the function." 41 C.F.R. § 304-5.4.
- I. Conflict of interest analysis. A travel payment from a non-Federal source shall not be accepted if the approval official determines that acceptance under the circumstances would cause a reasonable person to question the integrity of the agency's programs or operations. 41 C.F.R. § 304-5.3. The approval official shall be guided by all relevant considerations, including the following:
1. The identity of the non-Federal source;
 2. The meeting's purpose;
 3. The identity of other expected participants;

4. The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source;
 5. The significance of the employee's role in the matter; and
 6. The monetary value and character of the travel benefits offered by the non-Federal source.
- J. Gifts to spouses. A Federal agency may accept payment from a non-Federal source for an accompanying spouse when the spouse's presence at the meeting or similar function is in the interest of the agency. 41 C.F.R. § 304-3.14. A spouse's presence at an event may be determined to be in the interest of the agency if the spouse will:
1. Support the mission of the agency or substantially assist the employee in carrying out his/her official duties;
 2. Attend a ceremony at which the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulation; or
 3. Participate in substantive programs related to the agency's programs or operations. JER 4-100d; *see also* DOD/GC Memorandum entitled "Spouse Travel Under 31 U.S.C. § 1353," 8 Sep 95.
- K. Form of payment. DoD employees, and their spouses, may not accept cash payments on behalf of the Government. Payments shall be in kind, or by check or similar instrument made payable to the agency. 41 C.F.R. § 304-6.1 and 6.6;
- L. Format for obtaining approval. The website of the DOD Standards of Conduct Office (DoD-SOCO) and Army Standards of Conduct Office have Fact Sheets on 31 U.S.C. § 1353, as well as a format for a memorandum that approves the acceptance of travel payments under this law. These items are available at: <https://www.jagcnet.army.mil> (Click on Ethics Tab, Click on Library, Click on Travel and Forms Tab) and www.dod.mil/dodgc/defense_ethics/resource_library/1353_FactSheet_Memo_Revised.doc

- M. Written report of payments received. If the total value of the travel payments received in connection with an event exceeds \$250, the gift must be reported. 41 C.F.R. § 304-6.4. Standard Form (SF) 326 must be used to make this report. SF 326 is entitled “Semiannual Report of Payments Accepted from a Non-Federal Source.” There is also a Standard Form 326A, which is a Continuation Sheet for the SF 326. The SF 326 and 326A are available on the website of the GSA at: www.gsa.gov/forms/pdf_files/sf326.pdf

Federal agencies send the reports to the Office of Government Ethics, which is required to make them available for public inspection and copying. 31 U.S.C. § 1353(d)(1). The report must be received by OGE by May 31 (for the period of October 1 – March 31) and November 30 (for the period of April 1 – September 30). **OGE will look at an agency’s gift of travel reporting procedures and files as part of the agency’s program review.**

- N. Financial disclosure report. Travel payments are considered gifts to the Federal agency, not gifts to the individual employee. Thus, such payments to the employee (or the employee's spouse) do not have to be reported on the employee's Public Financial Disclosure Report (SF 278) or Confidential Financial Disclosure Report (OGE Form 450). 41 C.F.R. § 304-3.17.
- O. Gifts of travel that can be accepted under 31 U.S.C. § 1353 and another gift acceptance authority. “A DoD Component may not accept or approve acceptance of travel benefits from non-Federal sources under any other gift acceptance authority (10 U.S.C. § 2601, 5 U.S.C. § 7342, or 5 U.S.C. § 4111) if 31 U.S.C. § 1353 (reference (b)) applies.” JER para. 4-101a(3).

VIII. GIFTS OF TRAVEL FROM FOREIGN GOVERNMENTS.

- A. The Foreign Gifts and Decorations Act states, in relevant part:

An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than "minimal value" if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.” 5 U.S.C. § 7342(c)(1)(B)(ii).

- B. "Minimal value" is currently \$350. The Foreign Gifts and Decorations Act states that GSA will revise the definition of “minimal value” every 3 years to reflect changes in the consumer price index. 5 U.S.C. § 7342(a)(5).

- C. The Foreign Gifts and Decorations Act is implemented by DOD Directive 1005.13, Gifts and Decorations from Foreign Governments, 19 Feb 02.
- D. Approval authority. DODD 1005.13 does not indicate who has authority to accept a gift of travel from a foreign government. Check your agency regulation for guidance on this.
1. Air Force. For Air Force members and employees who are assigned or employed in the continental United States (CONUS), the approval authority is the individual's commander. For Air Force members and employees who are assigned or employed outside CONUS, the approval authority is the commander of the overseas MAJCOM where the individual is located. AFI 51-901, Gifts from Foreign Governments, 16 Feb 05, Table 1, Rules 1 & 2.
 2. Navy. Per SECNAVINST 1650.1H, para. 920.7, gifts of travel that meet the listed criteria may be accepted by the order issuing authority. Look to SECNAVINST 4001.2J for guidance on gift acceptance procedure for gifts to the Navy. A gift of travel may be accepted as a gift to the Navy if it meets the statutory and regulatory requirements, e.g. a gift of travel to a conference in a member's official capacity. The provisions of SECNAVINST 4001.2J would apply in those scenarios.
- E. Travel entirely outside United States. 5 U.S.C. § 7342 authorizes the acceptance of "travel taking place entirely outside the United States." Check your agency regulations for additional guidance on this issue.
1. Air Force. The Air Force Instruction on gifts from foreign governments creates a minor exception to the requirement that the travel take place entirely outside the U.S. The Instruction states that a gift of travel may be accepted if the travel "[w]ill take place entirely outside the United States, except when travel across the continental United States (CONUS) is necessarily the shortest, least costly or only route available to the destination." AFI 51-901, para. 4.3.2.1.
 2. Navy. The comparable provision for the Department of the Navy, in SECNAVINST 1650.1H, para. 920.7, states that the travel must begin and end outside the United States and "not cross the United States, except when travel across the United States is the shortest, least expensive or only available route to the destination (e.g., Canada or Mexico)."

3. Army. The Secretary of the Army Travel Policy states that travel must begin, end and connect entirely outside of the United States.

IX. OTHER GIFTS TO THE AGENCY

- A. 10 U.S.C. § 2601
- B. (a) authorizes the Secretary concerned (including the Secretary of Defense) to “...accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of his department.” [Underline emphasis added].
 1. Gifts of cash or proceeds from the sale of property received under 10 U.S.C. § 2601 shall be deposited into the Treasury of the United States in a General Gift Fund for each Department.
 2. Funds deposited into the General Gift Fund will be distributed for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.
- C. 10 U.S.C. § 2601 (b):
 1. Authorizes the concerned Secretaries to accept, hold, administer, and spend gifts of real or personal property, money, and services on behalf of:
 - a. Members of armed forces (including members performing full-time National Guard duty, who incur a wound, injury, or illness while in the line of duty;
 - b. DoD civilian employees who incur a wound, injury, or illness while in the line of duty;
 - c. Dependents of such members or employees; and

- d. Survivors of such members who are killed.
2. Prohibits acceptance of gifts of services from foreign governments or international organizations under this authority.
 3. Permits acceptance of gifts of property or money from foreign governments or international organizations if gifts are not designated for a specific individual.
 4. The authority in § 2601(b) was made permanent by the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181, Sec. 593). Sec. 593 also directs SECDEF to promulgate regulations implementing 10 U.S.C. §§ 2601 and 2608 to prohibit solicitation under certain conditions. Current implementing regulation prohibits solicitation.
- D. Restrictions on acceptance of gifts under 10 U.S.C. § 2601(a) and (b) imposed by amendments in the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, Sec. 374.
1. May not be accepted if gift would violate any prohibition or limitation otherwise applicable.
 2. May not be accepted if conditions of gift are inconsistent with applicable law or regulations.
 3. May not be accepted if the Secretary concerned determines that acceptance would reflect unfavorably on the ability of the Department (or employee of the Department or member of the armed forces) to carry out any responsibility or duty in a fair and objective manner.
 4. May not be accepted if acceptance would compromise the integrity or appearance of integrity of any program of the Department or individual involved in the program.
- E. For purposes of Federal estate, gift, or income taxes, gifts are considered to be gifts to the United States.
- F. Implementing regulation: Volume 12, Chapter 30, of the DoD Financial Management Regulation (FMR), DoD 7000.14-R.

1. Reporting requirements.
 2. Services report to Defense Finance and Accounting Service (DFAS) offices.
 3. DFAS reports to the Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer.
- G. 10 U.S.C. § 1588 authorizes the Secretary to accept voluntary services, but not goods associated with the services.
1. Categories:
 - a. Medical services, dental services, nursing services, or other health-care related services.
 - b. Voluntary services to be provided for a museum or a natural resources program.
 - c. Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:
 - (A) Family support programs.
 - (B) Child development and youth services programs.
 - (C) Library and education programs.
 - (D) Religious programs.
 - (E) Housing referral programs.
 - (F) Programs providing employment assistance to spouses.
 - (G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.
 - d. Voluntary services as a member of a funeral honors detail.
 2. Limitations in voluntary services include supervising the employee providing the voluntary service to the same extent as a compensated employee; ensuring that the person providing the service is licensed or credentialed in accordance with applicable law; not placing the person providing services in a policy-making position or compensating for voluntary services, except for necessary incidental expenses.

3. DOD Guidance: DODI 1100.21, Voluntary Services in the Department of Defense, Mar. 11, 2002
4. Navy Guidance: OPNAVINST 5380.1A, Voluntary Services in Department of the Navy, Feb. 26, 2007.
5. Army Guidance:
 - a. AR 1-100, Gifts and Donations: Implements 10 U.S.C. § 2601 and § 1588.
 - b. AR 1-101, Gifts for Distribution to Soldiers:
 - (1) Not applicable to 10 U.S.C. §§ 2601 and 1588.
 - (2) Specific limitation for gifts that promote health, comfort, convenience, and morale, e.g. reading materials and writing paper

X. DONATIONS OF FREQUENT FLYER MILES, CREDITS, AND TICKETS

- A. 10 U.S.C. § 2613 authorizes the Secretary of Defense to accept the donation of travel benefits:
 1. Eligible purposes:
 - a. To facilitate travel of a member of the armed forces who:
 - (1) Is deployed on active duty outside of the United States away from the permanent duty station of the member in support of a contingency operation; and
 - (2) Is granted leave, or

- (3) If the member is recuperating from an injury or illness incurred in line of duty during such a deployment, facilitating the travel of family members of the member to be reunited with the member.

XI. GIFTS TO INJURED OR WOUNDED SOLDIERS - NATIONAL DEFENSE APPROPRIATIONS ACT FOR FISCAL YEAR 2006, P.L. 109-148, § 8127

A. JER, Para. 3-400, Personal Acceptance of Gifts from Non-Federal Sources

1. Limitation \$350/\$1000 per source per calendar year
2. Retroactive to Sept 11, 2001
3. Must be unsolicited
4. Covered DoD employees – AD Soldiers with combat-related wounds or illnesses.

B. Joint Ethics Regulation Section 4 (see below):

SECTION 4. PERSONAL ACCEPTANCE OF GIFTS FROM NON-FEDERAL ENTITIES

3-400. Acceptance of Gifts by Injured or Ill Service Members and Their Family Members. Pursuant to the authority at section 8127 of P.L. 109-148, the FY 2006 Defense Appropriations Act,(reference (dd)), and notwithstanding 5 U.S.C. 7353 (reference (b)), 5 C.F.R. 2635 (reference (h)), and paragraph 1-300.b., above, covered DoD employees, described at subsection 3-401, below, and the family members of such employees may accept unsolicited gifts from non-Federal entities subject to the following limitations:

- a. This authority does not apply to gifts from foreign governments and their agents.
- b. This authority does not apply to gifts that
 - (1) are accepted in return for being influenced in the performance of an official act;

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- (2) are solicited or coerced; or
 - (3) are accepted in violation of any other statute, including 18 U.S.C. sections 201(b) and 209, (reference (i)).
- c. For gifts with an aggregate market value in excess of "minimal value," as adjusted by the General Services Administration in accordance with 41 C.F.R. 102-42.10 (reference (ee)), per source per occasion, or with an aggregate market value exceeding \$1000 received from any one source under the authority of this subsection in a calendar year, an agency ethics official must make a written determination that:
- (1) The gift is not offered in a manner that specifically discriminates among covered DoD employees merely on the basis of type of official responsibility or of favoring those of higher rank or rate of pay;
 - (2) The donor does not have interests that may be affected substantially by the performance or nonperformance of the covered DoD employee's official duties; and
 - (3) Acceptance would not cause a reasonable person with knowledge of the relevant facts to question the integrity of DoD's programs or operations.

An agency ethics official may issue a blanket determination to cover all or any category of gifts or all or any group of DoD covered employees.

3-401. Covered DoD Employees. For purposes of this section, covered DoD employees are

- a. active duty members of the Armed Forces, as described at paragraphs 1-211.b, 1-211.c., 1-211.d., and 1-211.e. for the purpose of title 10 authority, above, who
- b. while on active duty on or after September 11, 2001 incurred an illness or injury as described below:
 - (1) as described in 10 U.S.C. 1413a(e)(2), reference (f), currently
 - (a) as a direct result of armed conflict;
 - (b) while engaged in hazardous service;
 - (c) in the performance of duty under conditions simulating war; or
 - (d) through an instrumentality of war; or

- (2) in an operation or area designated by the Secretary of Defense as a combat operation or a combat zone. The Secretary designates the following as combat zones under this subparagraph.
 - (a) any area designated by the President of the United States by Executive Order as an area in which U.S. Armed Forces are engaging or have engaged in combat;
 - (b) any area designated for treatment as a combat zone by Public Law, including P.L. 104-117, reference (ff)); and
 - (c) any area certified by the Secretary of Defense for combat zone tax benefits for directly supporting military operations in combat zones.

3-402. Definitions

- a. Family Members. Parents, siblings, spouse, children, and dependent relatives.
- b. Gift. Gift shall have the meaning at 5 C.F.R. 2635.203(b), (reference (h)).
- c. Market value. Market value shall have the meaning at 5 C.F.R. 2635.203(c), (reference (h)).

3-403. Acceptance of Gifts by Certain Reserve and National Guard Members. Notwithstanding paragraph 1-300.b., above, enlisted members of the Reserve on inactive duty for training and all members of the National Guard, defined at paragraph 1-211.e. and subsection 1-233., above, who meet the criteria at subsection 3-401.b., above, and family members of such members, may accept unsolicited gifts from non-Federal entities in accordance with paragraph 3-400, above.

3-404. Retroactivity. This section shall apply to acceptance of such gifts beginning on September 11, 2001.

3-405. Delegation. To the extent not included in current delegations, DoD DAEOs and Deputy DAEOs may delegate authority to make the written determination required by paragraph 3-400.b., above, to any agency ethics official, including such officials outside the DoD Component, located at the duty station of covered DoD employees or cognizant of the conditions and circumstances of the covered DoD employees and the offered gifts.

3-406. Relationship to illegal gratuities statute. Unless accepted in violation of subparagraph 400.b.(1), above, a gift accepted under this section shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B), reference (i)).

XI. NEW GIFT STATUTE

A. Sec. 591 of the FY 2011 NDAA codified sec. 8127 of the FY 2006 Defense Appropriations Act, the statutory authority for paragraph 3-400 of the JER, at 10 USC 2601a. It added civilian employees, their family members, and survivors of members or civilian employees to the list of covered personnel. Survivors were added to the extent they are also Federal personnel and subject to the gift rules. It made changes to the earlier language, mainly deleting combat operation and combat zone to define covered DoD personnel, but added “other circumstances” warranting analogous treatment, as determined by each Service Secretary.

B. Bottom line: NOTHING CHANGES until implementing regulations are issued.

XII. FREQUENT FLYER MILES.

A. National Defense Authorization Act for FY 2002, P.L. 107-107, Section 1116, Dec. 28, 2001. Repealed Section 6008 of the Federal Acquisition Streamlining Act of 1994 (5 U.S.C. § 5702).

B. Federal employees (military and civilian) who receive promotional items (including frequent flyer miles, upgrades, or access to carrier club or facilities) as a result of using travel or transportation services obtained at Federal Government expense or accepted under 31 U.S.C. § 1353 may retain the promotional items for personal use provided the promotional items are obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government. JFTR para. U1200A; JTR para. C1200A; see also NDAA FY 2002, P.L. 107-107, Section 1116. Section 1116 applies to promotional items received before, on, or after the effective date of P.L. 107-107.

XIII. UPGRADES ON OFFICIAL TRAVEL -- WHEN YOU MAY ACCEPT THEM AS A GIFT.

A. An employee may accept an upgrade to first class (or business class) on official travel in any of the following circumstances.

1. It is an on-the-spot upgrade that is generally available to the public (or at least to all Federal employees or all military members). Examples include an upgrade to a first class airline seat to remedy overcrowding in coach class, and an upgrade to a larger rental car due to a shortage of smaller cars or for customer relations purposes. *See generally*, 5 C.F.R. 2635.203(b)(4).
 2. The upgrade results from a promotional offer that is realistically available to the general public (or to all Federal employees or all military members). For example: an upgrade to first class that is offered to anyone who opens a frequent flyer account. *See generally*, 5 C.F.R. 2635.203(b)(4). This includes vouchers or upgrade stickers, which are sometimes provided through the Government contract travel office.
 3. The upgrade is offered to anyone who accumulates enough frequent flyer miles to belong to a club or group (such as the Gold Card Club), even if some or all of the miles are from official travel. *See XIV (A) below*. For example, an employee who flies 50,000 miles or more in a year on an airline can be a member of the airline's Gold Card Club. If the airline gives all of its Gold Card Club members a free upgrade to first class and the employee earns a membership in the Club as a result of 50,000 miles of official travel, the employee may keep the first class upgrade. The upgrade is the property of the employee, who can do with it whatever he or she wants (e.g., use it for official travel, use it for personal travel, give it to his or her spouse, sell it, or donate it to charity). NDAA FY 2002, P.L. 107-107, Section 1116.
- B. However, no upgrade may be accepted if it is provided on the basis of the employee's grade or position. 5 C.F.R. 2635.202.

XIV. UPGRADES ON OFFICIAL TRAVEL -- BUYING THEM WITH YOUR PERSONAL FUNDS OR PERSONAL FREQUENT FLYER MILES.

- A. Upgrades with personal funds. Federal employees may use their personal funds to upgrade to first class or business class while on official travel. See note to 41 CFR Sec. 301-10.123 Upgrades with personal frequent flyer miles. Federal employees may use their personal frequent flyer bonuses to upgrade to first class or business class while on official travel. See note 41 CFR Section 301.123, Air Force Instruction 24-101, Passenger Movement, 27 Oct 04, para. 3.30, states in relevant part: “Air Force personnel when using their frequent flyer miles to upgrade to business or first class shall not wear a uniform or allow a rank or grade to be associated with an upgrade.” Therefore, if the Air Force member is unable to change into civilian clothes before boarding the aircraft, (s)he should not upgrade.
- B. SECARMY Travel Policy (Army Directive 2007-01), Jan. 25, 2007, section 4.C., allows for wear of uniform in this circumstance.

XV. THE INVOLUNTARILY BUMP.

- A. If a Federal employee is involuntarily bumped from an overbooked flight on official travel, any compensation the employee receives (such as a check or a complimentary ticket) belongs to the Government. JFTR para. U1200B2; JTR para. C1200B2; JER para. 4-202a(1); Matter of Charles E. Armer, 59 Comp. Gen. 203, 205 (1980); Matter of John B. Currier, 59 Comp. Gen. 95, 96-97 (1979); Matter of Tyrone Brown, Comp. Gen. Dec. B-192841, Feb. 5, 1979; Matter of Chester Sipkin, Comp. Gen. Dec. B-148879, Jul. 20, 1970, affirmed by Comp. Gen. Dec. B-148879, Aug. 28, 1970; 41 Comp. Gen. 806, 807 (1962).
- B. Depositing the check. If a Federal employee is involuntarily bumped from an overbooked flight on official travel and is given a check or cash, the money belongs to the Government. In the absence of a statutory provision that authorizes the money to be deposited to a specific appropriation, the money should be deposited into the miscellaneous receipts account. 41 Comp. Gen. 806, 807 (1962).

XVI. VOLUNTEERING TO GIVE UP YOUR SEAT ON AN OVERBOOKED FLIGHT (THE VOLUNTARY BUMP).

- A. If an employee is on official travel, the flight is overbooked, and the airline asks for volunteers to give up their seat and take a later flight, the employee may volunteer, as long as doing so would not interfere with the mission.

- B. The employee may keep any benefits or compensation earned as a result of voluntarily relinquishing his or her seat on an overbooked flight, as long as taking the later flight does not result in any additional cost to the Government, and the delay will not detract from the performance of official business. JFTR para. U1200B1; JTR para. C1200B1; JER para. 4-202d; Matter of Charles E. Armer, 59 Comp. Gen. 203, 206 (1980); Matter of Edmundo Rede, Jr., Comp. Gen. Dec. B-196145, Jan. 14, 1980. For example, the employee may not claim extra per diem for the extra time spent away from home because the employee took the later flight. Also, if the employee volunteers to take the later flight, the employee is responsible for any additional travel expenses he or she may incur (extra night in the hotel, additional meals, etc.). JFTR para. U1200B1; JTR para. C1200B1.

- C. Reporting the compensation. If the employee is required to file either a Public Financial Disclosure Report (OGE Form 278) or an OGE Form 450 (Confidential Financial Disclosure Report), and if the compensation has a value greater than \$200.00, the employee must report the compensation. The compensation is not a “gift,” since the employee received it in exchange for a service provided, i.e., taking the later flight. Thus, the compensation should be reported as income, in Part I of the form.

XVII. BENEFITS RESULTING FROM INCONVENIENCE TO THE EMPLOYEE WHO IS ON OFFICIAL TRAVEL.

- A. In Matter of Elizabeth Duplantier – Use of Bonus Lodging Certificates, 67 Comp. Gen. 328 (1988) (B-228696), an employee who was traveling on official business was denied lodging the first night at the selected hotel due to overbooking. The hotel gave the employee a bonus lodging certificate for one free night of lodging. The Comptroller General ruled that the certificate belongs to the Government because of the general rule that employees are required to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty.

- B. In Matter of Dwight Davis, Comp. Gen. Dec. B-257704, Nov. 14, 1994, an employee who was traveling on official business experienced a 5-hour flight delay, and the airline gave him a complimentary round-trip ticket as a "gesture of concern." The Comptroller General ruled that the airline ticket is Government property and may not be retained by the employee. The decision states that an involuntary delay is analogous to an involuntary "bump" from a flight. Note: The decision does not indicate whether the employee made a complaint to the airline about the flight delay. In Matter of Deborah E. White, GSBCA 13879-TRAV, 97-2 BCA 29,213, September 8, 1997, an Air Force employee was traveling on official business. The hotel where she stayed was less than satisfactory. The room had a slow plumbing leak that resulted in a damp odor and growth of airborne mold spores. The employee paid her bill in full, but complained while departing the hotel. The employee submitted a travel voucher seeking reimbursement for the maximum allowable lodging expenses (the actual rate paid by the employee exceeded the allowable rate). Sometime thereafter, the hotel manager and the employee agreed to reduce the room rate by approximately 50% because of the unsatisfactory condition of the room. The reduction was effected by a credit to the employee's American Express account. When the Air Force learned of the credit, it recouped the difference between what it paid and the amount actually paid by the employee (*i.e.*, the regular rate less the credit). The GSBCA upheld the Air Force recoupment. This case is on the web at:<http://www.gsbca.gsa.gov/travel/t138790.txt>
- C. Luggage. An employee may keep payments received from a commercial carrier as compensation for accompanied baggage that has been either lost or delayed by the carrier. JTR para. C1200(C); JFTR para. U1200(C).

XVIII. GIFTS OF TRAVEL IN CONTRACTOR AIRCRAFT AND VEHICLES.

- A. If the transportation is duty related (*i.e.*, received in connection with official duty and having the effect of reducing Government expenditures), it is a gift to the agency, not to the individual. The Government generally should not accept such travel unless: (1) it is permitted in the terms of a contract, (2) the Government has agreed to reimburse the contractor, or (3) acceptance was approved in advance under statutory gift authority. However, if the contractor offers travel after working hours, it would generally be a gift to the individual and could potentially be accepted under the \$20/\$50 rule. Office of Government Ethics (OGE) Informal Advisory Letter 98 X 8, Jun. 25, 1998.

- B. See Information Paper Travel Alternatives When Visiting Contractor Facilities, November 2003 on the website of the DOD Standards of Conduct Office at: http://www.dod.mil/dodgc/defense_ethics/

XIX. MISCELLANEOUS ISSUES.

- A. Companion tickets. An airline offers a “free” companion ticket when a round-trip ticket to a specified city is purchased. For guidance on when the Government buys one ticket and receives a second ticket at no additional cost, see Matter of Southwest Airlines—Free Companion Ticket, Comp. Gen. Dec. B-254858, Nov. 22, 1995; and Comp. Gen. Dec. B-270687, Dec. 26, 1995.
- B. Life insurance proceeds. In Comp. Gen. Dec. B-222234, Dec. 9, 1986, the Comptroller General ruled that the Government may enter into contracts for travel management services that provide incidental life insurance benefits for Federal employees who travel on official business and purchase their tickets through the contractor-travel agent. The Comptroller General also ruled that life insurance benefits paid under these circumstances may be accepted by the employee’s beneficiaries or estate.
- C. Use of appropriated funds to purchase membership in a travel club. There are three authorities on this issue.
1. In 57 Comp. Gen. 526 (1978) (B-103315), the Comptroller General ruled that individual travel club memberships in the name of a Federal agency and for the exclusive use of named Federal employees could be purchased with appropriated funds, where the purchases will result in the payment of lower overall transportation costs by the Government.
 2. 41 C.F.R. § 301-53.3 is a GSA regulation that is written in the plain-English, question-and-answer format. Section 301-53.3 reads as follows: “Question. May my agency reimburse membership fees in a frequent traveler program? Answer. Yes, if the benefits of membership are expected to exceed the cost of membership.”

3. In Matter of Donald Leavitt, GSBCA 15062-TRAV, Sep. 28, 1999, the General Services Board of Contract Appeals (GSBCA) ruled that an Army employee was entitled to be reimbursed for the cost of joining a travel club, where the cost of joining the club was \$40.00, and the employee, as a member of the club, was able to obtain a discounted fare that was \$378.00 less than the contract carrier's fare for the travel. This case is on the web at: <http://www.gsa.gov/gsbca/travel/t1506228.txt>